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EU

The surveillance of travel where everyone is a suspect

- *"all travellers are... considered a priori as potential law breakers"*

The Commission's "border package", announced in February, comes on top of EU biometric passports and ID cards (fingerprints) currently being implemented, biometric resident third country national permits (with optional e-gov "chips"), the Visa Information System (VIS, collecting and storing the fingerprints of all visitors) and a planned EU-PNR (passenger name record) database system.

The "package" covers an "entry-exit" system for visitors in and out of the Schengen area; an "automated border crossing system" for *bona fide* travellers and EU citizens; an "Electronic System of Travel Authorisation" (ESTA, like the USA is to bring in) requiring prior "authorisation to travel", a "European Border Surveillance System" (EUSOR) and the "Integrated European Border Management Strategy".

All in all, to quote the European Data Protection Supervisor (EDPS) we have:

far reaching proposals implying the surveillance of the movements of individuals follow[ing] each other at an amazing pace

The "sheer number" of proposals coming out in a "seemingly piecemeal way" make it extremely difficult for parliaments and civil society to "contribute meaningfully", the EDPS says.

This is compounded by a failure to explain why, for example, the 2004 EC Directive on the collection of API (Advance Passenger Information) has not been implemented across the EU - even though the deadline was September 2006 (API data is that contained in EU passports). Surely an evaluation of this system in operation is required before extending data collection to the same 19 categories (or rather the 34 categories collapsed into 19) being demanded by the USA.

The figures cited to introduce an "entry-exit system" for visitors are based on "estimates" or "samples" which are open to question. This comes with the admission that at least 50% of "overstayers" - collapsed into a category of "illegals" - are those who have overstayed their time limit, including visa waiver visitors from countries like the USA.

The "European Border Surveillance System" (EUSOR) to

"detect, identify, track and intercept" those attempting to enter the EU "illegally" (together with FRONTEX operations in the Mediterranean) runs contrary to the EU's obligation to respect the rights of people seeking sanctuary under international obligations for the protection of refugees. EUSOR plans include sending out surveillance "drones" to order boats to turn back.

The "package" comes with the admission, in the "Integrated European Border Management Strategy" Impact Assessment that the use of EU databases like the Schengen Information System (SIS) in tackling terrorism are limited as the "perpetrators" have mainly been EU citizens or living in the EU with official permits:

None of the policy options contribute markedly to reducing terrorism or serious crime...In view of the latest terrorist acts in the area of the EU, it can be noted that the perpetrators have mainly been EU citizens or foreigners residing and living in the Member States with official permits.

Usually there has been no information about these people or about their terrorist connections in the registers, for example in the SIS or national databases.

And as the European Data Protection Supervisor put it, there is an "*underlying assumption*" in the proposals that:

all travellers are put under surveillance and are considered a priori as potential law breakers.

On top of this the "package" proposes - for visitors and EU citizens - "Automated Border Control" processing - which is labour-saving as no people are involved:

Automated Border Control processes normally consist of the following: Fingerprint matching would be used in conjunction with an automated gate and kiosk.

The traveller enters the automated gate area, possibly by presenting their passport in order to open a door that closes behind them once they have entered (to ensure only one passenger uses the gate at a time).

The kiosk prompts the traveller to present the e-passport for scanning

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(visual and electronic) and is prompted to present one or two fingerprints for scanning. The fingerprint image is captured and the system converts both the captured image and the image stored on the e-passport into templates and attempts to match them, according to predetermined thresholds. If a good match is achieved, a second gate opens and the traveller is allowed to cross the border. If there is not a good enough match, or any other problem occurs, the gate does not open and the traveller is directed for processing by a border guard.

Tony Bunyan, Statewatch editor, comments:

"The idea that visitors and possibly EU citizens - including children aged six and above - should enter an enclosed box and be told what to do by machines and for computers to decide whether to let us out or not is a quite appalling proposal.

We are told it will save money because no officials need to be involved and that the EU should embrace all the benefits of modern technological developments. If this is the price of "progress" it is a bridge too far"

POSTSCRIPT

EU-PNR: Where the UK leads will the rest follow?

Prior to putting forward the EU-PNR proposal the Commission held a consultation exercise. Most illuminating are the options given and the response of EU governments (24 replied).

The first concerns the "scope" of the proposal, should it cover just air travel or sea and land travel as well? Six member states (Bulgaria, Spain, Latvia, France, Luxembourg and the UK) said it should cover all three. A further 12 said it should cover air and sea travel.

Second, should it cover just travel into the EU, or travel out of the EU as well or travel within the EU in addition? Seven governments want all three categories (Bulgaria, Cyprus, Germany, Estonia, France, Romania and the UK).

All wanted it to cover terrorism and serious organised crime - the UK wants it to cover "general public policy purposes" as well.

As to the "onward transfer" of PNR data nine governments (Belgium, Bulgaria, Cyprus, Estonia, Italy, Lithuania, Portugal, Romania and the UK) want the data to be passed outside the EU to third countries.

The UK leads the field by wanting just about everything covered - land, sea and air, in and out of the EU and inside the EU and all the data can be passed to third countries. It is already planning to "profile" all passengers entering and leaving the country and conduct security checks at main-line stations. It is even suggested that for boats leaving Orkney and Shetland for the mainland local people will have to prove their identity before boarding.

A note of caution should be made: the Commission's EU-PNR proposal only covers travel in and out of the EU but the scope of the scheme may change or be extended when the Council (the EU governments) start to look at the scheme in its working parties, as happens so often.

CIVIL LIBERTIES

GERMANY

Minister and judge: "Anti-terrorism goes too far"

After 11 September 2001, anti-terror laws granting far-reaching and unchecked powers to police and security services were introduced or extended in Germany and elsewhere without much public resistance and even less parliamentary scrutiny. Seven

years after Europe and the US were hit by an unprecedented wave of terrorism hysteria, voices are finally rising in Germany not only from civil liberties organisations but also from within the judiciary. The public debate on terrorism powers has become a regular feature in daily newspapers since the government's and police's dealings with the political activist movement in the run-up to the G8 Summit which took place in Heiligendamm in June 2007. Police raided dozens of homes, work places and social centres using anti-terrorism powers, and rounded up hundreds of peaceful protesters during the Summit. False media reports about the number of injured policemen and the erroneous claim that the "clown's army" sprayed officers with acid, the deployment of low-flying army fighter jets over a protest camp, far-reaching demonstration bans granted by the constitutional court, the use of *agent provocateurs* and the hindering legal defence work were only some of the incidents collated by the legal defence teams during the Summit.

These practices, most of which were retrospectively ruled unlawful by the courts, have been paralleled by a stream of authoritarian demands by Interior Minister Wolfgang Schäuble (*Christlich Demokratische Union Deutschlands* - CDU). He believes that the army should be given powers to shoot down hijacked passenger planes; that law enforcement officers should be able to carry out online searches of private computers without bureaucratic - or democratic - hindrances; that the application of the presumption of innocence should be discarded for the authorisation of counter-terrorist operations; that detention without trial at Guantánamo Bay is a necessary instrument in the fight against terrorism and that the government should be able to assassinate terrorist suspects.

However, despite these protracted demands for ever more state powers and ever less democratic control of the same, the G8 summit policing practices and the public prosecution's efforts to construct a terrorist threat against the German state by a "militant group", have suffered a series of blows in the Federal Constitutional Court recently and public opinion on the logic of anti-terrorism seems to be changing.

On 4 January 2008, the Federal High Court (*Bundesgerichtshof*) ruled unlawful the police raids from 9 May 2007 against activists, some of whom were organising the G8 summit protests. The court decided that the investigation had not been within the remit of the Federal Public Prosecution (*Bundesanwaltschaft*) because the activists had not formed a terrorist organisation, a claim which the police and prosecution had used to subject activists to disproportionate surveillance measures, interception of telecommunications and - one month before the summit - a large-scale raid on 40 private homes, offices and social centres in various regional states (see *Statewatch* Vol. 17 no 2).

This was the third time that the High Court has reprimanded German law enforcement and the public prosecutor's office in its application of anti-terrorist powers since October 2007, when the High Court overturned an arrest warrant against a Berlin activist and sociologist who had been accused - in an investigation into the "militant group" - of membership of a terrorist organisation. A month later, it ruled unlawful the indiscriminate interception of letters from 100 mailboxes in an alternative district in Hamburg on 22 May 2007 as part of the G8 investigations.

Wary judges have also started voicing their concerns for the democratic legal order more publicly. In an interview in the weekly newspaper *Der Spiegel*, the president of the Federal Constitutional Court, Hans-Jürgen Papier, criticised the international anti-terror lists drawn up by the UN Security Council Committee, also known as the al-Qaeda and Taliban Sanctions Committee: "If you are on such a list, you can do nothing anymore", he said. The accused are "not heard and not told the reasons for having been put on the list", and there "is no effective legal remedy".

Papier's concerns about indiscriminate anti-terror laws were

echoed by German Justice Minister Brigitte Zypries (SPD, *Sozialdemokratische Partei Deutschlands*). At the 11th European Police Conference that took place in Berlin between 28 and 30 January, Zypries gave a speech entitled "Protecting Liberty! A Challenge for Germany and Europe" with the statement that security laws were a "placebo" and warned that internal security debates should not be held "in permanent political conflict". Ever more anti-terror provisions, she said, "do not make this country any more safe". In particular, she opposes EU Commissioner Franco Frattini's plans for an EU-PNR (passenger name record) scheme, according to which European law enforcement authorities will gain access to details on the passenger's data, such as reservation and travel itinerary, name, address, passport data, telephone numbers, travel agent, credit card number, history of changes in the flight schedule and seat preferences (see front page story).

The former President of the Federal Constitutional Court and current president of the German *Goethe Institute* told the *Tagesspiegel am Sonntag* that:

security services and law enforcement are insatiable in their pursuit of ever new instruments and powers

and urged they be restrained by the judiciary. Judges and lawyers:

have to continue making clear that a democratic legal order is confronted with its greatest challenge when its enemies were trying to undermine [its basis]

Guantánamo, she said, was an expression of the "abandonment of fundamental rights in the face of fear and terror", yet basic rights should never be abolished in their defence.

EU-PNR observatory: <http://www.statewatch.org/eu-pnrobservatory.htm>

"Heiligendamm G8 Summit: A chronology of protest and repression"

Statewatch Vol. 17 no 2, 2007

"Germany: Crime by association - Terrorist law criminalises critical research", Statewatch Vol. 17 nos 3 and 4 2007

Homepage of the Eleventh European Police Congress: <http://www.europaeischer-polizeikongress.de/>

Süddeutsche Zeitung, 14 & 30.1.08; Der Tagesspiegel, 23.12.07

UK-ISRAEL

Dichter cancels trip in fear of war crimes arrest

In December 2007 the Israeli Public Security Minister, Avi Dichter, pulled out of an invitation to speak at a seminar at Kings College, London, because of fears that he would be arrested for war crimes. The charges arose from the Israeli government's assassination of a senior Hamas commander, Sheikh Saleh Shehadeh, which also killed 13 civilians in a "targeted strike" in Gaza in 2002 - Dichter was the head of Israel's internal intelligence agency, Shin Bet, at the time of the massacre. The Israeli Foreign Ministry is reported by *The Independent* newspaper to have advised Dichter that an "extreme left" group was likely to file a legal complaint over the deaths in the attack. The killings were the subject of a 2002 legal case in the United States brought by the Center for Constitutional Rights, but that was dismissed in 2007.

The assassination of Shehadeh, and the "collateral damage" that accompanied it, occurred around midnight on 22 July 2002, when the Israeli Defence Forces dropped a one-ton bomb on an apartment building in al-Daraj, a densely populated residential area in Gaza City in Occupied Palestinian Territory. It killed eight children and seven adults and wounded more than 150 others, but a spokesperson for Dichter claimed that it "is clearly not a case where civilians were targeted". Nevertheless, in the United States the Bush administration initially described the

killings as a "deliberate attack against a building in which civilians were known to be located", while simultaneously holding that no one should, or could, be held accountable for the deaths. In 2007, district New York district judge, William H. Pauley III ruled that Dichter had immunity under the Foreign Sovereign Immunity Act because according to the Israeli government he was carrying out official duties.

Dichter is not the first Israeli military figure to avoid charges. In September 2005 a retired Israeli army general, Doron Almog, refused to leave his El-Al flight at Heathrow airport after being tipped off by Israeli diplomats that police would arrest him on war crimes charges, relating to civilian house demolitions and "targeted" killings in Gaza. Lawyers representing Palestinian citizens had requested that the Metropolitan police act over the destruction of more than 50 Palestinian homes destroyed by the Israeli army as retribution for a militant attack. The plane returned to Israel with Almog on board. Recent papers obtained by the BBC show that British police refused to enter the plane because they feared an armed confrontation with armed Israeli security agents who were on board.

In 2006 former Israeli military chief, Moshe Ya'alon, cancelled a trip to London in fear of arrest for alleged war crimes.

The Center for Constitutional Rights: <http://ccrjustice.org/>; Independent 7.12.07; BBC News 19.2.08

UK

"Mosquito" told to buzz off

In February 2008 the Children's Commissioner for England, Professor Sir Al Aynsley-Green, launched the "Buzz Off" campaign and called for the banning of the controversial "Mosquito" audio device designed to disperse groups of children (see *Statewatch* Vol 16 No 1). The device, also known as the "Sonic Teen Deterrent", indiscriminately targets individuals within a 15-metre radius by emitting an ultra-sonic tone at a frequency only those under the age of 25 can fully hear (the human ear's capacity to hear upper frequency sounds begins to decline past this age).

At the launch, Aynsley-Green argued that the estimated 3,500 devices in use:

are indiscriminate and target all children and young people, including babies, regardless of whether they are behaving or misbehaving.

He claimed they also serve to "demonise children" and are "a powerful symptom of what I call the malaise at the heart of society". He later told BBC Radio 4's Today Programme:

I'm very concerned about what I see to be an emerging gap between the young and the old, the fears, the intolerance, even the hatred, of the older generation towards the young

Liberty, who helped launch the campaign, argue that the device is a disproportionate response to loitering and are deployed under the presumption that young people will act irresponsibly. The organisation's director, Shami Chakrabarti, said:

Imagine the outcry if a device was introduced that caused blanket discomfort to people of one race or gender, rather than to our kids...The Mosquito has no place in a country that values its children and seeks to instil them with dignity and respect

Liberty believes that a legal challenge would prove successful, specifically via the Environmental Protection Act 1990. And *The Observer* has previously reported that Aynsley-Green is willing to take a test case to court to question their legality. He also announced, at the launch, that he is planning to contact MPs and local authorities to highlight his concerns, and asked the public to report the whereabouts of Mosquito devices to him so that he can map their locations.

FRANCE

Suspension of Internet access to tackle piracy?

A report commissioned by the French culture ministry in September to detail the findings of a "mission on combating illegal downloading and for the development of legal offers of musical, audiovisual and film works" was submitted to the government on 23 November 2007. It proposes protecting authorship rights through the setting up of an independent administrative authority with powers to cut off Internet access and suspend subscriptions to Internet service providers' (ISPs) services for repeat offenders, if they illegally download music or images.

Forty companies and associations active in the publishing and film artists' and production sector, as well as major ISPs active in France, signed up to the Olivennes report (named after Denis Olivennes, its author and president/managing director of French book and music department store giant Fnac). It is described by its author as a system that is "dissuasive rather than repressive", in response to the widespread practice of the downloading of material subject to authorship rights. He describes France as the "paradise of piracy" which, if it is allowed to develop, will "threaten cultural diversity in the world and in our country". Culture Minister Christine Albanel welcomed the report and envisaged the submission of a legislative proposal in the first quarter of 2008, and its adoption before the summer, while "simultaneously" preparing "implementation decrees" in order "to move quickly", something that begs the question of how much importance is given to parliamentary scrutiny of the measure.

By tackling people making private copies of copyright protected material, the new law would supplement the 2006 law on authorship rights and related rights in the information society, which introduced an offence entailing prison sentences of up to five years and fines of up to Euro 300,000, applicable to large-scale Internet fraud involving the transmission of "thousands" of films and songs for commercial purposes. The consumer association UFC - *Que choisir* described the plans as a "repressive escalation", and the rescinding of service subscriptions as contravening the presumption of innocence and the European Convention on Human Rights, while socialist MPs Christian Paul and Patrick Bloche expressed their concern for "the temptation of permanent surveillance of the Net, independently of any crime or judicial procedure". There was also opposition from Sarkozy's own UMP party, two of whose MPs (Marc le Fur and Alain Huguenot) opposed the creation of an independent authority to punish Internet users who download material, talking of a "veritable special jurisdiction".

To "discourage" and make this activity "expensive and complicated", the report envisages a three-stage process. The first would consist in the issuing of two warnings to dissuade offenders from downloading material illegally. Subsequently, if users fail to heed the warnings, the temporary suspension of their Internet subscription would cut them off from the Internet for between 10 and fifteen days. Finally, they would have their contract rescinded and be "blacklisted" in a database of people who are forbidden from using Internet for an unspecified period that may be set at around a year, according to *Le Monde* newspaper. A newly-established independent administrative authority would be responsible for issuing warnings and adopting sanctions, and it would be headed by a judge, "so as to

guarantee personal rights and freedoms". This approach received the backing of ISPs, as it would recognise their "role as mere carriers", with the adoption of sanctions governed by a judicial authority, and gives them two years to develop filtering systems capable of recognising operations that violate authorship rights. ISPs would have a role in informing the authority of suspected offences after being alerted by copyright holders, and the authority would have powers to sanction ISPs for failing to carry out its instructions. Their partnership with the state and holders of authorship rights, sealed through the signature of an agreement and the support given to the Olivennes report, marks a departure from the previous line of ISP opposition to sanctions against their customers.

Le Monde, 24.11.07; *Libération*, 24-25.11.07.

Civil liberties - new material

On "Terrorism" lists versus the rights to self-determination and democracy. *Campaign Against Criminalising Communities*, July 2007, pp. 4. This briefing by CAMPACC, which was launched in 2001 to oppose the Terrorism Act 2000, was published as a supplement to *Peace News* and examines the continuing criminalisation of those who resist totalitarian governments and anti-democratic legislation. The irony is that those who oppose detention without trial in the UK or the abduction of unconvicted citizens for the purpose of torture by the USA or the bloody suppression of Kurdish culture and politics in Turkey, now find themselves branded as criminals or terrorists. This supplement examines some of these issues and includes articles on the Terrorist List, detention without trial in the UK, the fate of British prisoners in Guantanamo Bay, the *Friends of Kongra Gel* (Kurdistan) and the criminalisation of Tamils (Sri Lanka). CAMPACC can be contacted by email: knklondon@gn.apc.org

La Farnesina e la sorte dell'italiano Elkassim, Claudio Gatti. *Il Sole 24 Ore*, 20.12.07, p.13. Article in which the author welcomes the Italian foreign ministry's diplomatic effort to secure the approval by majority of a moratorium against the death penalty by the UN General Assembly, described as "symbolic" but nonetheless "worth celebrating". After noting the lack of diplomatic action by the same ministry in the case of Abou Elkassim Britel, the Italian citizen and rendition victim of Moroccan origin who is on hunger strike in prison in Casablanca, Gatti asks: "how much value can this symbolic victory against the death penalty have when one does not manage to save our fellow citizen who was illegally deported, falsely charged and unfairly convicted from a possible actual death?"

Gypsy and Traveller Law Update - Part 1, Marc Willers, Chris Johnson and Dr Angus Murdoch. *Legal Action* December 2007, pp. 13-15. This article highlights the latest developments in policy and case-law relating to Gypsies and Travellers. Part 1 focuses on changes in relation to planning law and enforcement.

The new politics of personal information, Peter Bradwell and Niamh Gallagher. *Demos* December 2007, pp. 60. The most significant finding of this report is a call for "a serious, renewed debate about the identity card scheme, with the kind of engagement that should have happened at the start of the process. Otherwise the scheme should be dropped." It also recommends that the Information Commissioner's Office gets "greater capacity to cope with the range of demands of an information society, which continue to extend away from just security of data towards data use and the nature of information sharing." The report's recommendations came less than a month after the HM Revenue and Customs "datagate" scandal in which it "lost" computer discs containing data on more than 25 million UK citizens and around the same time as the Information Commissioner, Richard Thomas, warned that a new wave of datagate scandals are likely to emerge once he has finished investigating a number of other breaches of data protection laws. See: http://www.demos.co.uk/files/Demos_FYI.pdf

Information law update, Dr David McArdle. *SCOLAG Legal Journal* issue 361 (November) 2007, pp. 265-266. This is a new feature in the journal and consists of a regular digest of information law. This article

covers computer crime, data protection, freedom of information and privacy.

SECURITY & INTELLIGENCE

UK-USA

Government complicit in US kidnapping and torture

The UK human rights organisation, Reprieve, has presented damning evidence to the Foreign Affairs Select Committee showing that government ministers have covered-up the use of the British island territory of Diego Garcia to "support illegal interstate transfer, enforced disappearance and torture in the context of the "war on terror"". The case is presented in Reprieve's submission to the Foreign Affairs Select Committee inquiry into the Overseas Territories, *Enforced Disappearance, Illegal Interstate Transfer, and other Human Rights Abuses involving the UK Overseas Territories*, which details the cases of three US "ghost prisoners", Khalid Sheikh, Abu Zubaydeh and Hambali. On 21 February the Foreign secretary, David Miliband, was forced to concede that - despite repeated denials in the face of convincing evidence over several years - Diego Garcia was indeed used to facilitate US abductions.

Along with other European states, the UK government has either carefully evaded answering questions over its knowledge of its US partner's policy of "extraordinary rendition" or flatly denied participating in it. When ministers have responded to inquiries about these gross violations of international law they have asserted that blanket denials by the US authorities are a more than adequate response. Their serial refusals to probe credible claims of abuse should be balanced against the actions of these same government departments behind the scenes where they are rather less lethargic. In a recent article in *The Independent* (1.2.08) its law editor Robert Verkaik has drawn attention to how the government has blocked applications under the Freedom of Information Act, including those made by the All Party Parliamentary Group on Extraordinary Rendition, for detailed information on the US-UK arrangements.

In his statement, on 21 February, Miliband said that he was "very sorry" about previous denials, which had been made in "good faith" but were wrong. Earlier denials, no doubt in good faith also, had been made by former prime minister, Tony Blair, in 2005, 2006 and 2007, when he was emphatic that there was no evidence that US renditions had involved the island; the former Foreign secretary, Jack Straw, gave similar assurances to Parliament. Miliband added that the US Secretary of State, Condoleezza Rice, had offered her "deep regret" about the "mistakes" which were due to oversights. However, Labour MP, Mike Gates, chairman of the foreign affairs select committee, was less charitable. He told the BBC that the US administration "has clearly misled or lied to our government, [which] has resulted in our government misleading...members of the House".

Later the prime minister, Gordon Brown, threw light on his knowledge of the situation in a tortuous statement that recalled Donald Rumsfeld's infamous "unknown knowns" speech. He said, "It is unfortunate that this was not known and it is unfortunate it happened without us knowing that it happened but its important to put in procedures [to ensure] this will not happen again". The Lib-Dem opposition was a little more forthright in its response to the UK's collaboration in torture with Edward Davey describing extraordinary rendition as "state-sponsored abduction" that Britain must not "facilitate". Former Lib-Dem leader, Sir Menzies Campbell, added, "The truth is this is a gross

embarrassment, in spite of its good faith, for the British government, involving as it does a breach of our moral obligations and possibly our legal responsibilities as well."

Interestingly, the three men named in the Reprieve submission do not appear to be the same as the two unnamed individuals referred to by Miliband, suggesting that more examples of US "oversights" and government ignorance are likely to unexpectedly come to light in the future. The two men referred to by Miliband "did not leave the plane" at Diego Garcia and therefore were not subject to torture. On the other hand the three men cited by Reprieve had been subjected to "torture, cruel, inhuman and degrading treatment and prolonged incommunicado detention on or with the material support of resources from British Indian Ocean Territory at Diego Garcia". The report also says that "prisoners may have been held on one of the many US amphibious assault ships in the waters surrounding Diego Garcia" and names the USS Bataan and the USNS Stockholm as the most likely sites for these floating interrogation centres. The presence of Diego Garcia's secret onshore prison and offshore torture ships should also be seen in the light of the government's refusal to give permission for the Chagosians to return to their home, (see *Statewatch* Vol. 17 nos 3/4, Vol. 16 no 1 and 2).

Reprieve also documents rendition flight logs recording 23 stopovers of US rendition flights in another British Overseas Territory, Turks and Caicos. These flights were en-route from sites of US extrajudicial detention and contradict pledges, received by Miliband from the US, that there was "no other evidence of renditions through UK territory". The US authorities appear to have misplaced or overlooked vital evidence obliging the UK government to refute sources of evidence to the contrary. The report says, "Over thirty individuals associated with at least two of the planes regularly visiting Turks and Caicos have been indicted in Germany and Italy for their role in the renditions of Khaled I-Masri and Abu Omar." The organisation calls on the "UK government to fulfil its obligations under international and domestic law, and commence a prompt and effective inquiry into the role of Turks and Caicos for rendition operations."

Reprieve specifically accuses the UK government of complicity in the US torture programme in Diego Garcia in the following areas:

- * the UK government is potentially systematically complicit in the most serious crimes against humanity: of enforced disappearance, torture and prolonged incommunicado detention.

- * the UK has repeatedly failed to investigate these credible allegations, relying on vague US 'assurances' that rendition and imprisonment have not taken place in or around Diego Garcia.

- * Reprieve submits that the UK's failure to conduct a prompt, independent and effective inquiry into these claims is a further clear breach of its duties under international and domestic law.

Reprieve's submission, "Enforced Disappearance, Illegal Interstate Transfer, and other Human Rights Abuses Involving the UK Overseas Territories":

<http://www.reprieve.org.uk/documents/FinalReprieveSubmissionFASC.pdf>

Robert Verkaik's article, "Government blocks access to secret military papers on Diego Garcia" was published in The Independent 1.2.08; Miliband's rendition statement, BBC News,

<http://news-bbc.co.uk/go/pr/fr/-/1/hi/uk.politics/7257500.stm>; *BBC News 21.2.08*

ITALY/MOROCCO - SPAIN/USA Rendition updates

Abou Elkassim Britel was on hunger strike for 53 days, and documents have now surfaced concerning flights that used US airbases in Spain, and flew in the airspace of several European countries *en route* to Guantánamo Bay.

Britel called off his hunger strike on 7 January 2008, after a request from Italian consul Stefano Pisotti, three days before he was visited in Oukasha prison in Casablanca by MPs Ezio

Locatelli (*Rifondazione Comunista*) and Tana de Zulueta (*Verdi*). They described his conditions as "serious" and called for an improvement in his detention conditions and for the Italian government to intervene, putting the case for freeing him to Moroccan authorities. Italy's foreign affairs minister, Massimo D'Alema, visited Morocco on 21 January, and Britel's wife suggests that he may have handed a letter in support of Britel to his Moroccan counterpart, although she notes that "I have not received any official communication on the matter".

Evidence has surfaced following enquiries by Portuguese MEP Ana Gomes of the use of US airbases in Spain to transfer prisoners from Afghanistan to Guantánamo, including the first such flight, a C-17 carrying 23 named prisoners. According to Portuguese air traffic records and US military flight plans, it stopped in Morón de la Frontera, in the province of Seville, on 11 January 2002, where the detainees were transferred onto a C-141, flight RCH 7502, that set off for Guantánamo and crossed Portuguese airspace off the Azores archipelago. At least another flight transferred prisoners to Guantánamo after stopping at a US airbase in Spain, this time in Rota (Cádiz) on 28 October 2002 (a C-17, flight RCH 319Y), and another crossed Spanish airspace from Turkey, heading towards the Guantánamo prison-camp on the same day, as several others carrying over 100 prisoners are alleged to have done.

Controls on flights run by or for the US armed forces were made less stringent in the renewal of the convention by which US airbases operate in Spain in 2002, where conditions in the 1989 convention on aircraft "flying over, entering or leaving" Spanish airspace entailed "the previous notification to the Permanent Committee at least seven working days prior to the start of the programme". Article 25.2 was changed, making such flights subject to "a general quarterly authorisation", provided that "they do not carry dangerous personalities or merchandise, nor passengers or a load that may be controversial for Spain".

Audiencia Nacional judge Ismael Moreno is conducting inquiries into the alleged flights and is set to question officials from three airbases (Morón, Rota and Torrejón de Ardoz, a Spanish military airbase near Madrid), following a lawsuit filed by *Izquierda Unida* (the United Left party) and the *Asociación Libre de Abogados* (ALA, Free Lawyers' Association). *El País* reports that the suit calls for the release of information including: the identity of the representatives of the defence and foreign affairs ministries in the Permanent Hispano-North American Committee; documents concerning the suspicious stop-overs; exhaustive information concerning the regulations of the internal regime in bases' airports; US requests and authorisations or refusals concerning "people [who are] not US officials, detained or made prisoners by these country's [armed] forces"; the flight plans of 12 flights arriving from or travelling to Guantánamo; and any authorisation for civilian or military flights run under the US administration's responsibility, "pointing out whether the aircraft missions' purposes detailed the transfer of prisoners".

Stephen Grey, author of the book *Ghost Plane*, that reconstructs the network of rendition flights carrying the victims of this unlawful practice, has estimated that at least 170 other prisoners were flown over Spanish territory; more than 700 crossed Portuguese airspace and that many flights also crossed Greek and Italian airspace. In the case of rendition victim Maher Arar, in a video interview for the DVD accompanying the book *I segreti di Abu Omar* (Abu Omar's Secrets), he states that he knew perfectly well that one leg of his flight to Damascus on 8 October 2002 was taking him to Rome, because there was a screen "like the ones found in commercial flights" that "clearly" indicated Rome as the destination. Eurocontrol flight logs indicate that the aircraft's next stop was Amman.

Journalist Paolo Biondani cross-checked the information provided by Arar with the Federal Aviation Administration's flight records, and was able to confirm that the airport in question was Ciampino (in Rome) and that the aircraft, a

Gulfstream 3 whose identification code was N829MG, was the same one used for other rendition flights. Spanish Foreign Affairs Minister Miguel Angel Moratinos told the European Parliament that:

Our territory may have been used not to commit crimes on it, but as a stop-over on the way to committing crime in another country.

Portuguese foreign minister Luis Amado stated that flights over Portugal took place "under the aegis of the UN and NATO" and that "Portugal naturally follows the principle of good faith in relations with its allies". In fact, a secret agreement on 4 October 2001 was reached by NATO members to provide "blanket overflight clearances for the United States and other allies' aircraft for military flights related to operations against terrorism", as stated by the then British Defence Secretary Lord Robertson, who later became NATO Secretary-General. His successor Jaap de Hoop Scheffer now denies that NATO had any "involvement or co-ordinating role in providing clearance or overflight rights for other flights". Clive Stafford Smith, the legal director of *Reprieve*, an organisation seeking legal redress for rendition victims and Guantánamo prisoners, claimed that despite their "pious statements":

Some European governments, it's now clear, systematically assisted in clandestine flights and illegal prisoner transfers to Guantánamo Bay. We need a full investigation and Europeans need to face their responsibility for these crimes.

El País, 25.11, 24.12.07; Stephen Grey, "The Guantanamo Airlift: how Europe helped transport the prisoners", 25.11.07, available at: <http://www.stephengrey.com/2007/11/guantanamo-airlift-how-europe-helped.html>; Andrea Purgatori, "I segreti di Abu Omar", *Biblioteca Universale Rizzoli*, November 2007, book + DVD, Euro 19. Eurocontrol flight logs: <http://www.statewatch.org/cia/documents/flights-eurocontrol.pdf>

Security and intelligence - in brief

■ **Germany: Social Forum infiltrated:** Since its foundation in 2002, the Berlin Social Forum has been infiltrated by at least four undercover internal secret service informers who collected vast amounts of personal data on its participants. The regional intelligence service (*Landesamt für Verfassungsschutz*) had at least one informer who was revealed to have been active over the past 10 years in the autonomous scene in Berlin. The public protocols of the service's parliamentary oversight committee show far-reaching surveillance and spying operations on the political activists. The political and social groups affected work on issues that range from anti-corruption in the so-called "Berlin Bank scandal" that left the city bankrupt, a planned social centre, the unemployment movement and the initiative to abolish subsidised public transport. Around 20 Berlin Social Forum participants have demanded sight of their files held by the Berlin *Landesamt für Verfassungsschutz*. This was rejected because it might reveal the working methods and sources of the service. Now four of the participants have issued a complaint against the municipality stating: "We will not accept such an infringement on our right to privacy. [With this complaint] we want to enforce access to the files and have the deployment of informers declared unlawful. We feel obliged to set a mark against such a violation of our civil rights and against the obstruction of extra-parliamentary political engagement." *Contact: info@socialforum-berlin.org. A chronology of the infiltration can be downloaded at: <http://www.soziales-berlin.de/sfb/?p=26>*

Security - new material

National security in the twenty-first century, Charlie Edwards. *Demos* December 2007, pp. 120. This report expresses growing concern that the government is becoming too focused on international terrorism, to the detriment of other threats and hazards in the UK.

The Guantanamo Airlift: how Europe helped transport the prisoners, Stephen Grey. Stephen Grey website 2007. (<http://www.stephengrey.com/2007/11/guantanamo-airlift-how-europe-helped.html>). Grey is the author of the book *Ghost Plane*, on the US practice of illegally trafficking and torturing their political opponents, and he has played an important role in exposing the hypocrisy of European governments in their collusion with this neoconservative policy. Here Grey discusses how at least five European countries gave the United States permission to fly nearly 700 unconvicted people across their territories.

IMMIGRATION

EU/LIBYA

The odyssey of migrants in transit through Libya

Fortress Europe, the organisation that brings together material concerning deaths of migrants in their attempts to enter Europe, has produced a damning report, *Escape from Tripoli*, on the plight of migrants from sub-Saharan Africa who attempt to reach Europe after crossing Libya. It illustrates the effects that the externalisation of restrictive EU policies in this field are having on the ground in transit countries. Based on statements by migrants who have passed through Libya, the report traces the different stages in the migrants' journeys, that often last several years.

It documents the hardships the migrants suffer with abuses at every stage of the journey, perpetrated by smuggling networks, people in the street, police officers and military personnel, and guards in detention centres. Noting that "Libya is merely a transit country", and that the "number of victims [in the channel of Sicily] is increasing in spite of a decrease of arrivals" with 502 deaths in the first nine months of 2007 compared 302 for the whole of 2006 -, partly as a result of the use of longer and more dangerous routes "in order to avoid patrols or refoulement at sea", the report condemns increasing European (and especially Italian) co-operation with Libya in spite of evidence from NGOs and an EU technical mission to Libya in 2004 reporting the "arbitrary arrest of foreigners, abuses, collective deportations and the failure to recognise the right of asylum".

The existence of 20 sites (three of them funded by Italy) where migrants are held is detailed, as are mass expulsions to the desert (often resulting in deaths), a ten-fold increase in repatriation figures (198,000 between 2003 and 2006), deportations to countries of origin of refugees fleeing violence or ten-year national service (as in the cases of Sudan and Eritrea respectively), and an enormous number of migrants detained (60,000 in May 2007, according to a Frontex report), higher than the entire Italian prison population, in a country that has approximately one tenth of its population. A map of the detention centres is provided, and there are witness statements from a dozen people regarding abuses and the crowded and unhygienic conditions that often result in infections that spread quickly among detainees.

However, what is most disturbing is the migrants' lack of protection from abuse during their journey and the hardships they have to withstand. These begin during the journey across the desert and into Libya, where smuggling networks charge them hundreds of dollars to embark upon journeys during which many die. They withstand extreme conditions and are often abandoned in the desert. The people who pick them up for the second leg of the journey ask them for more money to continue the trip, or leave them there. A sense of impotence is evident in

many of the statements, such as that of Sennai, who was 17-years old at the time:

I had set off from Eritrea in 2004 with a dear friend of mine, Mussie...Mussie travelled with his 20 year-old sister. The driver had set his eyes on her straight away. On the first night he started bothering her, he took her away from the group and tried to rape her, and she started screaming. Mussie heard her and ran over to protect her. The driver was armed and stabbed him to death in the fight that followed. Afterwards, he took the girl with him again. We could have defended him, but we were in the middle of the desert and, without the driver, we would have never found the way.

Once in Tripoli, the situation hardly improves, as detailed by Abraham:

I set off from Tripoli in July 2007. It is a city where it is impossible to live. On every street corner you meet people who ask you for money. They know you must leave for Italy and think that you have lots of money. If you don't pay up they attack you. Children, boys also ask you for money. And if you don't pay, you find yourself having to deal with the larger group of friends, and risk being beaten up right in the street for no reason or, even worse, being reported to the police.

Other testimonies speak of robberies and beatings suffered by sub-Saharan migrants at the hands groups of children, including deaths by stabbing, and of the inhumane treatment meted out to them by Libyan civilians in the street and police officers. Moreover, "if they attack you and you call the police, you're the one who is arrested", and the people are "twice racist" because "we are black and Christian".

With regards to abuses by the smugglers, they are presented as routine, including the killing of a man who refused to embark during a storm, shot, beaten and burned to set an example, without the police making any effort to question migrants in detention to discover the identity of the smugglers. Other cases that are detailed include beatings by police in detention centres resulting in deaths, collective refoulements at sea with would-be migrants handed back to the Libyan coastguard by Italian or Maltese patrols, sexual violence against women in detention and deportations to the desert.

"Escape from Tripoli. Report on the conditions of migrants in transit in Libya", Gabriele del Grande, Fortress Europe, available in Italian, English, French and German at: <http://fortresseurope.blogspot.com>

ITALY

Restricting freedom of movement for EU citizens

After a turbulent passage through parliament, a new decree to guarantee security through the expulsion of EU nationals who endanger public safety was approved on 28 December 2007, and published in the *Gazzetta Ufficiale* on 2 January 2008. In fact, unless it was converted into law, the security decree approved "urgently" for this purpose on 1 November 2007 in the wake of a murder by a Romanian, would have ceased to be valid (see *Statewatch news online*, November 2007). Moreover, this meant that it needed to be changed somewhat, as the same decree cannot be introduced repeatedly. The measure is especially significant because it sets a precedent that undermines the principle of freedom of movement in the EU, allowing expulsions on the basis of a wide interpretation of what a "threat to public security" consists of, and identifying "foreigners" from other EU countries as liable to present such a threat.

The decree initially targeted Romanians, but was drafted so as to avoid any charges of discrimination against this nationality that would render it unlawful, resulting in it being applicable to "foreigners" from any EU country. Thus, new grounds for expelling or limiting the movement of EU nationals were established, following those conceived to tackle football hooligans and demonstrators. The conversion of the decree into

law involved a number of controversial issues, such as the introduction of a norm against racial and gender discrimination that was eventually struck off after a drafting error meant that it referred to the wrong EU instrument, the Amsterdam Treaty rather than the Treaty establishing the European Community (TEC).

The new decree: expulsions for suspicion of terrorist activity

The measure seeks to ensure the immediate effectiveness of expulsions and to establish rules for the removal of EU member state citizens for the prevention of terrorism. The changes introduced include the involvement of ordinary judges in the oversight of expulsion decisions, originally entrusted to *giudici di pace* (honorary "judges of the peace", responsible for civil cases and minor criminal offences, given competencies to validate expulsions in September 2004) and the possibility of expelling EU citizens suspected of terrorism as a result of:

well-grounded reasons to believe that his presence in the territory of the State may facilitate terrorist organisations or activities, including of an international kind, in any way.

This involves an extension of the scope of law 155/2005 (see *Statewatch News Online*, August 2005) to counter international terrorism, and of legislative decree 30/2007 on the removal of third-country nationals suspected of terrorism, envisaging expulsion proceedings for EU nationals, while "respecting the principle of proportionality" and without resulting "from reasons that are unrelated to the interested party's own behaviour" (this also applies to expulsions for public security reasons, below). In these cases, "the expulsion order is immediately executive", to be carried out under the authority of the *questore* (local administrative police chief) irrespective of whether the decision is impugned or appealed.

Appeals may be filed both before the competent Italian courts or through consular or diplomatic offices abroad, and may include a request for the measure to be suspended, although this does not necessarily entail its actual suspension, and the appellant may be allowed back into Italy for the proceedings. In cases involving people who are undergoing trials for criminal offences, they may be allowed back into Italy for the "time [that is] strictly necessary to exercise the right of defence", insofar as their presence would not "cause serious disturbances or serious danger for public order or security" (this condition also applies to appeals, above). Such orders also entail re-entry bans for no less than five years and a maximum of ten years. When three years or more than half the ban's duration have passed, the banned individual may request for it to be revoked, through an application that details the change in circumstances on which the request is based. Thus, the new decree extends a regime whereby punishment (namely, at least expulsion and the disruption of their professional and personal life, where they are not liable to suffer abuses or threats to their integrity in their countries of origin) can be meted out to third-country nationals in the absence of sufficient evidence to mount an effective prosecution, to EU nationals. Nonetheless, commentary has highlighted the "increased guarantees" for expulsions, based on the introduction of a role for judges in validating the orders.

Imperative public security reasons

"Imperative public security reasons" justifying the expulsion of an EU national or a member of one's family, will be deemed to exist if a person's behaviour has been such as to constitute a:

concrete, actual and serious threat to human dignity or to someone's fundamental rights, or to public safety, making the removal urgent because [the person's] continuing presence is incompatible with civil and safe co-existence.

Any guilty verdicts reached by judges in Italy or abroad will be

taken into account when a *prefetto* (local police chief) or the Interior Affairs Minister orders an expulsion for public security reasons, as will preventive or removal measures adopted by foreign authorities. The re-entry ban may not be for longer than five years in the case of minors and people who have resided in Italy for over ten years. Punishment for contravening the re-entry ban may entail "detention for up to three years" followed by immediate removal, four years in the case of orders issued in relation to suspicion of terrorist activity or facilitating terrorism.

"Misure urgenti in materia di espulsioni e di allontanamenti per terrorismo e per motivi imperanti di pubblica sicurezza", DI 249/2007, G.U. 2.1.08.

Immigration - new material

When is a child not a child? Asylum, age disputes and the process of age assessment, Heaven Crawley. *ILPA* May 2007, pp. 11. This publication considers the plight of the thousands of individuals who arrive in the UK as separated children and have their age disputed and are treated as adults with significant repercussions on their rights to welfare and educational support. Among its findings are the following points: i. age disputes are linked to a prevailing culture of cynicism among immigration officers and some social workers, ii. there are failings in Home Office procedures, iii. there is wide variation in the quality of age assessment procedures and iv. there is a conflict of interest between the requirements of social services to undertake age assessments and the obligation to provide services to children in need. <http://www.ilpa.org.uk/publications/ILPA%20Age%20Dispute%20Report.pdf>

Immigrant regularization processes in Italy. Analysis of an emblematic case, Vincenzo Cesareo. *Fondazione ISMU*, (Polimetria International Scientific Publisher, Milano) 2007, pp.92, Euros 10, electronic version available (free of charge) at: www.polimetria.com. A retrospective analysis of regularisation processes carried out in Italy that looks at the measures introduced to regulate migration flows, enact amnesties and for the regularisation of immigrants residing "irregularly" in Italy. It goes on to offer an overview of the migrant population in Italy, and breaks down the varied profiles of the more than 700,000 regularisation candidates who filed their applications during the so-called "big regularisation" in 2002 (around 635,000 were regularised by the end of 2003), highlighting the increase in flows from eastern Europe, a process of "feminisation", and a rising average age (32 years) compared to the past. It looks at aspects ranging from mobility to employment sectors and incomes, the different experiences and paths taken by immigrants in Italy, and compares the experiences of regularised immigrants and other "regular" immigrants who had already settled at the time.

Support for asylum-seekers and other migrants update, Sue Wilman. *Legal Action* December 2007, pp. 16-20. Latest update on welfare provision for asylum seekers and other migrants.

The Twelfth Italian Report on Migrations 2006, Vincenzo Cesareo (ed.). *Fondazione ISMU*, (Polimetria International Scientific Publisher, Milano) 2007, pp.265, Euro 19, electronic version available (free of charge) at: www.polimetria.com. The twelfth edition of this report by *Fondazione ISMU*, which provides a wealth of statistical data, as well as in-depth reports on immigration into Italy, foreigners' presence in Italy, legislative developments, trends at an EU level, employment, schooling, health, housing solutions and settlement patterns, the case of unaccompanied foreign minors, with a final study concerning immigration in the northern region of Lombardy.

Millions in flight: the Iraqi refugee crisis. *Amnesty International* September 2007, pp 21. This report describes the humanitarian disaster of the mass exodus of refugees fleeing from widespread and extreme violence in Iraq, with an estimated 2.2 million internally displaced and another 2 million fleeing to Jordan and Syria. More than four years after their "liberation" the situation of these refugees has been largely ignored by the rest of the world, and by the UK in particular. Despite serious human rights violations the UK is one of several European countries that has failed to provide protection to Iraqi asylum seekers, using punitive measures, such as cutting off assistance (including accommodation and benefits) to people who reach the end of the

asylum process, to coerce them into "voluntary" return. The report says: "Despite the critical situation, the response of many in the international community, including states that participated in the US-led invasion and can be considered to have a particular obligation to address the humanitarian effects of their military action, has been inadequate." Available at: <http://www.amnesty.org/en/report/info/MDE14/041/2007>

Immigration law update, Alan Caskie. *SCOLAG Legal Journal* issue 361 (November) 2007, pp. 261-264. This piece is a review of significant court cases from Scotland and England in the fields of asylum, immigration and nationality law.

"The truth may be bitter, but it must be told": The Situation of Refugees in the Aegean and the Practices of the Greek Coast Guard. *Pro Asyl (Germany) & Group of Lawyers for the Rights of Refugees and Migrants (Greece)*, October 2007, pp 40. Asylum seekers are being sent back to Greece from Germany and other European countries without their applications for asylum having been thoroughly examined. The legal basis for this is the European Dublin II Regulation under which the state through which the asylum seeker entered European territory is responsible for processing the asylum claim. For a large number of people, particularly those from Iraq, Afghanistan, Iran and Somalia, the escape route leads them across the Aegean into Greece. This report forms part of a series of fact-finding missions (to Spain/Morocco, Italy, Slovakia/Ukraine) about human rights violations committed at the external borders of Europe, conducted by PRO ASYL. It finds systematic refoulement of refugees at sea, illegal deportations and detention and inhumane detention conditions and makes a series of emands. http://www.lathra.gr/images/stories/GR_Doku_291007_Web.pdf.

FRONTEX-led EU Illegal Immigration Technical Mission to Libya. 28 May - 5 June 2007, Frontex, 2007, pp 44. Frontex, the "European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union", second EU technical mission on illegal immigration to Libya: Available at: http://www.infinitoedizioni.it/fileadmin/InfinitoEdizioni/rapporti/Libya_MissionMayJune07ReportFrontex.pdf

Illegaal verblijf en veiligheid in Nederland ("Illegal residency and security in the Netherlands"), Arjen Leerkes. *Doctoral thesis* (Faculty of Social and Behavioural Sciences, University of Amsterdam) 2007, pp 238. Dutch immigration policy aims to exclude undocumented migrants from social institutions such as the formal labour market, the housing market, social security and education. In spite of (and owing to) this restrictive policy, illegal aliens represent a substantial segment of the population, particularly in certain urban neighbourhoods. It is estimated that 150,000 illegal aliens, or approximately one per cent of the total population, live in the Netherlands. In some urban neighbourhoods, illegal immigrants may constitute six to eight per cent of the residents. This study asks the extent, and under what conditions to which, the residence and migration of illegal aliens impacts on public safety in the Netherlands and to what extent immigration policy contributes to that. It examines the degree to which their possible involvement in crime can be explained by the illegality of their residence and its consequences. Attention is also paid to the more subjective aspects of safety. These questions are partly researched from a spatial angle as illegal residence is concentrated in a relatively limited number of deprived urban neighbourhoods. Another important question is: to what extent, and in what way, is illegal residence spatially concentrated within the Netherlands, and how can patterns of spatial concentration and incorporation be explained? Available for download at: <http://dare.uva.nl/document/93537>

Building an anti-deportation campaign: a practical and political guide to fighting to remain in this country. *No One Is Illegal* September 2007, pp. 24. This pamphlet is aimed at those facing deportation or removal and explains that relying upon the law is not enough - campaigning is essential and it means "organising and working with other people. It means demonstrations and pickets. Most of all it means publicity and going public." In short "a campaign means fighting back politically." Available for download at the No One is Illegal website: <http://noil.org.uk>

Recent developments in immigration law, Jawaid Luqmani. *Legal Action* December 2007, pp. 21-24. This article examines the UK

Borders Act (UKBA) 2007 which received its royal assent on 30 October 2007. Among other areas, it considers detention at ports, biometric registration, enforcement, deportation of criminals and the Border and Immigration Inspectorate.

LAW

GERMANY

60 per cent of G8 investigations dropped

The German public prosecution service has announced that 955 of the 1,474 preliminary investigations initiated by police in relation to the G8 summit last summer have been dropped do far for lack of evidence. Legal teams present at the protests describe the high number of arrests and low conviction rate as a scandal that shows that many arrests were unwarranted and violated the right to demonstrate. Furthermore, many protesters spent days in prison and had personal belongings confiscated and not returned. Others suffered violence at the hands of the police. The German judicial system makes compensation claims difficult and they are largely unsuccessful because of the lowered threshold for the police to arrest people without evidence of criminal activity or even intent.

Besides many investigations being dropped, those who are prosecuted are often faced with ludicrous charges: Alexander S. was accused of bearing "passive arms" and the prosecution demanded a fine of 160 euro because he carried a mouth guard on him. He explained: "I didn't want my teeth to be kicked in", a reasonable precaution given the history of summit policing in Genoa and the infamous Diaz school incident. The judge who summoned him to court admitted during proceedings that it could not count as passive arms and cleared him of the charges. Another police tactic was to confiscate scarves from protestors at a demonstration in order to present them as evidence for the intent to disguise oneself, which is illegal under German law. One woman was given an 11-month prison sentence without probation in an accelerated trial procedure for allegedly having thrown a stone.

So far, 44 demonstrators have been sentenced; 41 have received fines and three received suspended prison sentences.

<http://gipfelsoli.org>; <http://www.globalinfo.nl>; *Süddeutsche Zeitung* 5/6.1.08; For an overview of court cases and trial dates see <http://www.ermittlungsausschuss.antifa.net>

Law - new material

Gewaltbereite Politik und der G8-Gipfel. Demonstrationsbeobachtungen vom 2-8 Juni 2007 rund um Heiligendamm ("The G8 summit and violent-prone politics. Demonstration observations from 2-8 June 2007 around Heiligendamm"). *Komitee für Grundrechte und Demokratie* 2007, 10 euro, pp 190. This report provides a meticulous description of the 2007 G8 summit protests and the way they were policed and criminalised in the months leading up to the event. The German Committee for Fundamental Rights and Democracy, founded in 1980, monitors mass protests in Germany in an attempt to provide objective information on the course of events in an era of increasingly politicised media spin on "violence" that serves to delegitimise protest. In 2007, 29 volunteers attended all major marches and blockades from 2 to 8 June around Heiligendamm. Chapter 1 describes how in the run-up to the event, police and the public prosecutor's office "predicted" violence during the summit which was the not only used to criminalise activists but also to impose a blanket of suspicion over residents. This scare created the conditions for courts to impose a blanket demonstration ban around

Heiligendamm, in turn justifying police measures against demonstrators that violated their basic right to demonstrate. Chapter 2 provides a chronological description of what happened at the different demonstrations and blockades. Chapter 3 outlines the laws, police strategy, conduct, technology and public relations, as well as the deployment of armed forces and the media coverage. Chapter 4 analyses how the criminalisation strategy helped to repress the protests to the extent they that they did while chapter 5 draws some conclusions. This report is an invaluable contribution to the corpus of material analysing the policing of recent summits and a useful tool for those media commentators who are actually interested in the way events unfold. Available from info@grundrechtekomitee.de.

Paths to Justice? Essays prompted by the Gill Review. David McArdle (editor) *SCOLAG Legal Journal* 2007, pp. 36. This publication carries a series of articles discussing the review, by Lord Gill, of Scotland's civil courts and the way that they work. The review contains a collection of short essays on the subject. It is available by email from: d.a.mcardle@stir.ac.uk

Feindbild Demonstrant. Polizeigewalt, Militäreinsatz, Medienmanipulation. Der G8 Gipfel aus Sicht des Anwaltlichen Notdienstes ("The demonstrator as enemy: police violence, military deployment, media manipulation. The G8 summit from the perspective of the lawyer's emergency service") *Republikanischer Anwältinnen- und Anwälteverein/Legal Team*, (Assoziation A) 2007, 10 euro, pp 173. After the violent police repression of the 2001 summits in Gothenburg and Genoa, the European Democratic Lawyers (EDA) association began organising international legal teams to offer emergency legal aid during international summit protests. Predicting the violent policing of the German G8 summit in 2007, and the related criminalisation of political activists and other rights infringements, one of the EDA's German members, the Republican Lawyer's Association (RAV) had started preparing its work for the G8 summit in Heiligendamm by mid-2006. With a network of German legal teams (EA) that have long-standing experience in offering legal support during demonstrations, the RAV and EAs provided vital help for the protesters by demanding regular arrest conditions with access to their clients and documenting rights violations by the police. This report offers a legal analysis of police and secret service practices in the run-up to and during the summit, ranging from surveillance operations, interception of telecommunication applied under anti-terrorist powers, Schengen controls and entry bans, the use of the military and *agent provocateurs* and disinformation for media spinning. It considers the concepts, arguments and evidence that the police used to arrest and issue blanket bans on demonstrators that lacked any evidential base and violated fundamental democratic principles. With a plethora of evidence and analysis this book shows how the security state, through preventative policing, has created a system that fundamentally violates the right to freedom of expression, the right to demonstrate, defence rights as well as press freedom. Available from *Assoziation A*: assoziationsa@freenet.de, Tel: +49 30 69582971, Fax +49 30 69582973.

Lessons in Liberty - Pre-charge detention. John Patrick McGroarty. *SCOLAG Legal Journal* no. 362 (December) 2007, pp. 279-80. This article discusses yet another proposed piece of anti-terrorist legislation that suggests raising the limit on pre-charge detention (or imprisonment without trial as it is known in non-western countries that don't support the United States) from 28 days to 42, 56 or 90. As McGroarty accurately points out: "The issue of detaining an individual for up to ninety days without a criminal charge and on grounds of hearsay or potentially unreliable evidence is, to many, an affront to the rule of law, our ancient civil liberties and the jurisprudence of the European Convention on Human Rights." *SCOLAG* email: admin@scolag.org

Human Rights Law Update, Ken Dale-Risk. *SCOLAG Legal Journal* no. 362 (December) 2007, pp. 284-286. This review of significant human rights cases considers control orders and deprivation of liberty, Human Rights Act 1998 and Article 6 ECHR, confiscation orders and bail conditions and extradition and Article 8 ECHR.

Security and Migration: Law in the less brave new world, Catherine Dauvergne. *Social & Legal Studies* Volume 16 no. 4, pp. 533-549. This article considers "the shifting relationship between security concerns

and migration law" focusing on "a series of high profile cases testing provisions allowing for indefinite detention of non-nationals in the United Kingdom, the United States, New Zealand and Canada." Dauvergne concludes that legal rulings in the UK and New Zealand and the "overall approach to indefinite detention in the United States" is "consistent with a shift in the relationship between migration law and security concerns that results in security issues being "normalized" within migration law.

POLICING

ITALY

Demonstrators convicted for G8 clashes

On 14 December 2007, 24 of the 25 demonstrators on trial in Genoa were found guilty for the violence and damage caused during the G8 summit in Genoa in July 2001, and only one was acquitted. Fourteen were convicted for their involvement in clashes in via Toilemaide, with sentences for all but one of them running from 5 months to two and a half years; the remaining defendant received a longer 5-year sentence for bodily harm inflicted on the driver of a Defender vehicle, a *carabiniere*. For three defendants, resistance to police charges was not deemed to be of penal significance, as it was interpreted as a reaction to an arbitrary act, although subsequent violence and damage were punished. Charges of "destruction and looting" against the fourteen were dropped, but not for ten others who were convicted of this offence in relation to the damage caused by the so-called "black block" during attacks on a supermarket and a prison in the Marassi neighbourhood. They received sentences ranging from six to eleven years, which, for four of them, will also involve a further three years probation and exclusion from exercising public functions. Those sentenced will reportedly benefit from a three-year tariff discount resulting from the *indulto* (a mini-pardon entailing a shortening of prison sentences and early release scheme adopted to relieve the problem of overcrowding in prisons).

The trial has also thrown up the possibility of four officers (two carabinieri, captain Antonio Bruno and lieutenant Paolo Fredda and police officials Angelo Gaggiano and Mario Mondelli) facing charges of providing false testimony, after their declarations were passed on to investigating magistrates. Their reconstruction of events in the lead-up to some of the heaviest police charges on 21 July 2001 appeared not to match other information examined by the court.

The *Genoa Legal Forum* has produced a video that is enlightening in this respect, collating images from security cameras with communications between units of carabinieri and the operative command centre, that shows a battalion not following instructions about their route to Marassi and about avoiding an encounter with demonstrators on via Toilemaide as it could have resulted in disturbances (see *Statewatch*, vol. 17 no. 2). The fines to be imposed on the defendants for damage caused to property will be established in a subsequent civil lawsuit, as is also the case for non-patrimonial damage (to Italy's image) payments of 2.5 million euro that the government is demanding. Thus, the court accepted the argument that it was the demonstrators who harmed Italy's image, rather than the indiscriminate police brutality whose images were seen worldwide, and felt on their bodies by demonstrators from several countries.

Supporto Legale, an organisation that has been involved in the defence of demonstrators and in disseminating information drawn from its meticulous work around the trial, including

transcripts of hearings, responded with a press release that describes the cumulative sentence of 110 years decreed by the judges as "the price that must be paid for expressing one's ideas and opposing the current state of affairs". The three judges presiding over the trial are accused of "not having the courage to oppose the fierce reconstruction of events" by prosecutors, and the possibility of officers being charged for false testimony is dismissed as a "pittance in which we are not interested".

It criticises the use of the offence typified as "destruction and looting" for events deriving from a political demonstration because it "clears the way for a dangerous operation" seeking to make people "supine" in relation to the choices of governments, "helpless when faced by the daily injustices of a system that is in the midst of a democratic crisis". The use of charges of "destruction and looting", devised for situations involving a popular insurrection in the absence of public order, is becoming more common, as in the case of the trial of the *Sud Ribelle* activists who are facing charges for subversive activity in Cosenza, or demonstrators who received heavy sentences for clashes during an anti-fascist march in Milan on 11 March 2005 (see *Statewatch* Vol 16 no 3). The statement is also critical of the reticence by the "movement" and centre-left politicians to offer adequate support to the 25, in spite of the 80,000 who demonstrated in Genoa on 17 November 2007, whose support for the accused and demands were diverted towards discussions about a parliamentary inquiry, and notions of truth and justice, rather than the case at hand.

Il manifesto, 18.11.07; *Il Messaggero*, 15.12.07; *Supporto Legale*, press statement "In ogni caso, nessun rimorso" and "Sintesi udienza sentenza processo ai 25", December 2007, available at: www.supportolegale.org

SWITZERLAND

Policing of the anti-WEF demonstration in Davos

The policing strategies deployed at the anti-G8 summit protests in Germany in 2007, led a legal observer from the *Committee for Fundamental Rights and Democracy* [1] to conclude:

The G8 summit was implemented from above. This explains its blanket security and the fact that costs were met without any estimates. This is why the financial costs were high. If political costs were estimated at all, they only concerned the "global role" of German politics. What had to be categorically avoided were political costs...The word summit means: to be able to act without any consideration for citizens.

This logic came to dominate summit policing from the moment that people started expressing their dislike of the decisions made by heads of state through mass demonstrations that are felt not only outside but also inside of the meeting rooms. This logic also dominated the Swiss government's policing strategy in January this year, at the annual World Economic Forum (WEF) in the ski resort of Davos, which accommodates several thousand politicians and industrialists from around the world.

Protests against the event took place on 19 January in the Swiss cities of Bern (500 people) and St. Gallen (150 people), with protesters arguing that the WEF is an undemocratic event where economic decisions are made by industry and governments that have disastrous consequences on billions of people world-wide. For instance, this year's opening speech was provided by the American secretary of state, Condoleezza Rice. This year's topics were climate change, terrorism and the global credit crunch [2].

Alongside the 5,000 Swiss army soldiers supporting police forces on the ground (AP 18.1.08), "regular" policing consisted in particular of preventative arrests and the use of water cannon, tear gas and rubber bullets [3]. Two hundred and forty two

people were arrested in Bern alone; they were detained for hours in abysmal circumstances, allegedly in order to "ascertain their identity".

The tone of the demonstration was set by the late approval for it by the municipality, and their even later withdrawal of the same on grounds of media-generated scaremongering fed by the security service (*Dienst für Analyse und Prävention*) that predicted that "militant" demonstrators from all over the country would come to riot. With the announcement the regional police (*Kantonspolizei*) claimed to be unable to guarantee public safety, a pressure to which the municipality gave in.

In a manner similar to the G8 summit, the police predictions were simply false. In total three incidents of damage were detected in Bern, one of which caused by a violent arrest by the police. Undercover officers swarmed amongst demonstrators and the public, pointing at alleged offenders who were accosted by arrest teams [4].

Powers for preventative policing under Article 32 of Bern police law form the legal basis for the majority of these arrests. Preventative policing is supposed to be invoked to apprehend a person who is about to commit a "serious crime" but is typically applied against demonstrators before they have even reached a demonstration. Invariably, demonstration bans by the civic authorities or courts are used as an excuse by the police to arbitrarily arrest citizens who have nonetheless decided to exercise their constitutional right to protest [4].

In Switzerland, the arrests specifically targeted journalists as well. Dinu Gautier, a journalist from the Swiss weekly *Wochenzeitung* (WOZ), together with a colleague and another journalist from the Swiss daily paper *Courier*, were arrested the moment they left the WOZ editorial office in central Bern. They were greeted on the streets by Kurt Trollier, chief of the security service of the Bern regional police force, who informed them they were arrested to ascertain their identity under Article 32. Ten riot police shackled the journalists. The head of the police unit, when shown a letter by the WOZ confirming Gautier's journalistic role, said: "I might as well wipe my arse [with the letter]". Another journalist was searched and on finding his press card the officers shouted: "Arrest him - we can deal with that later" [5].

These blatant violations of press freedom are a worrying development that could also be observed at the German summit protests, where a bus hosting dozens of journalists and their equipment (laptops, photos) was confiscated by police. Although the bus was released a day later by the regional court who ruled the confiscation unlawful, the police continued to protest its release with the argument they had not had enough time to copy all the computers' hard drives [6].

Alongside the violation of the fundamental right to freedom of the press, those arrested in Bern received degrading treatment at the hands of police: people were stripped-searched in sight of others, one person reported he had to spread the cheeks of his buttocks. People were kept in outside cages, made of cement walls with a roof, where people were forced to urinate in a corner after having been detained for hours without being offered access to a toilet. When people protested the police sprayed liquid CS gas into the cell. Police further denied medical treatment to a haemophiliac who suffered internal bleeding in his leg. When he showed the officers his medical pass, he was told: "Then you shouldn't have taken part in a banned demonstration". A doctor was called only when the people in the cell started panicking, shouting that there was a medical emergency. Only when the doctor on duty said that he could suffer kidney failure and die, did the police finally release him.

[1] *International Herald Tribune*, 19.1.08, "Swiss police temporarily arrest 200 in illegal anti-WEF demonstration":

<http://www.ihf.com/bin/printfriendly.php?id=9341475>

[2] *Komitee für Grundrechte und Demokratie* (2007): "Gewaltbereite Politik und der G8-Gipfel. Demonstrationsbeobachtungen vom 2-8 Juni 2007 rund

um Heiligendamm" (The G8 summit and violence-prone politics. Demonstration observations from 2-8 June 2007 around Heiligendamm)

[3] Indymedia: "Protests in Switzerland against the World Economic Forum" <http://www.indymedia.org.uk/en/2008/01/389914.html>

[4] Heiner Busch & Carlos Hanimann: "Papi, was macht die Polizei?" (Daddy B, what are the police doing?)

[5] Dino Gautier: "Anti-WEF-Demo - Augenzeugenbericht aus dem Berner Waisenhaus-Knast" (Anti-WEF demonstration - eye witness report from the Bern prison)

[6] Indymedia: "Media Bus confiscated":

<http://de.indymedia.org/2007/06/182874.shtml>

SWITZERLAND

200 arrests at peaceful street party

A peaceful street party in the Swiss city of Luzern was stopped by a massive police deployment of 400 officers who arrested 200 people including a few tourists who happened to stand too close to the operation. In view of the mass arrests and "zero tolerance" policing strategy applied to small protests against the World Economic Forum in Basel, it appears that the Swiss police force is practicing crowd control in preparation for the EURO-08 football championship which will take place in Switzerland and Austria this summer.

The 200 people who had gathered for the "street party for more cultural public spaces" were encircled by 400 riot police. Journalists were pushed away to prevent them reporting violent arrests and a second procession was attacked by police with water cannons and plastic bullets without any violence having been committed by the protesters. The organisation responsible for the street party, *Aktion Freiraum* (Action Free Spaces) reports that information from police circles show that the operation had been prepared long in advance of the street party. There is concern that the police operation creates a precedent for the next event organised by the alternative scene. The municipality ignored extensive talks with the organisation for the procession to move peacefully through the city.

<http://de.indymedia.org/2007/12/201157.shtml>

Policing - new material

Police Road Traffic Accidents: a study of cases involving serious and fatal injuries, Maria Docking, Tom Bucke, Kerry Grace and Helen Dady. *Paper 7* (IPCC Research and Statistics Series) September 2007, pp84. This IPCC study covers public accidents involving the police between the period from April 2004 to September 2006. The IPCC makes a number of recommendations including that data recorders be fitted to all police vehicles and video monitoring cameras be fitted to the vehicles of specialist traffic officers. Further recommendations address police tactics, guidelines and response. Available at: http://www.ippc.gov.uk/rti_report_11_9_07.pdf

Police station law and practice update, Ed Cape. *Legal Action* October 2007, pp. 10-14. This is the latest in a bi-annual series that covers developments in law and policing affecting police stations.

Annual Report 2006-2007. Forum for Preventing Deaths in Custody, 21.9.07, pp 35. This is the FPDC's first annual report. It says almost 600 people die in custody (police cells, prisons, secure hospitals and other approved premises) each year and raises concerns about the number of mentally ill people in custody, suggesting that they would be better looked after in psychiatric care. The report is available at: http://www.ppo.gov.uk/download/reports/Forum_for_Preventing_Deaths_v.4.pdf

Police misconduct and the law, Stephen Cragg, Tony Murphy and Heather Williams. *Legal Action* October 2007, pp. 17-22. This piece examines recent case law developments in police misconduct law,

covering the following areas: failure to protect victims of crime; compensation for wrongful convictions; Enhanced Criminal Record Certificates and the police and inquests.

Prisons

UK

Prisoners "to be chipped like dogs"

Ministers are planning to implant "machine-readable" microchips under the skin of thousands of offenders as part of an expansion of the electronic tagging scheme that would create more space in British jails.

Despite ongoing concerns about the security of existing tagging systems and prison overcrowding, the Ministry of Justice is investigating the use of satellite and radio-wave technology to monitor criminals. But, instead of being contained in bracelets worn around the ankle, the chips would be surgically inserted under the skin of offenders in the community, to enforce home curfews. The radio frequency identification (RFID) tags are able to carry scannable personal information about individuals, including their identities, address and offending record. The tags are already used to keep track of dogs, cats, cattle and airport luggage. The chips are also being considered as a method of "helping to keep order" within prisons.

A senior Ministry of Justice official confirmed that the department hoped to go even further, by extending the geographical range of the internal chips through a link-up with satellite-tracking similar to the system used to trace stolen vehicles. "All the options are on the table, and this is one we would like to pursue," the source added.

The move is in line with a proposal from Ken Jones, the president of the Association of Chief Police Officers (Acpo), that electronic chips should be surgically implanted into convicted paedophiles and sex offenders in order to track them more easily. Global Positioning System (GPS) technology is seen as the favoured method of monitoring such offenders to prevent them going near "forbidden" zones such as primary schools.

The tags, injected into the back of the arm with a hypodermic needle, consist of a toughened glass capsule holding a computer chip, a copper antenna and a "capacitor" that transmits data stored on the chip when prompted by an electromagnetic reader.

Shami Chakrabarti, director of Liberty, said:

If the Home Office doesn't understand why implanting a chip in someone is worse than an ankle bracelet, they don't need a human-rights lawyer; they need a common-sense bypass.

Degrading offenders in this way will do nothing for their rehabilitation and nothing for our safety, as some will inevitably find a way round this new technology.

Liberty: <http://www.liberty-human-rights.org.uk>; *The Independent* 13.1.08

UK

Jail overcrowding blamed for rise in suicides

The prison overcrowding crisis has been blamed for a rise of nearly 40 per cent in the number of prisoners killing themselves.

Prison reformers expressed outrage after figures released by the Ministry of Justice showed that 93 prisoners killed

themselves in jail last year, up from 67 in 2006. The figures include seven inmates under 21 and one boy of 15 who killed himself while serving a sentence of 45 days for breaching a supervision order. The ministry also said more than 100 prisoners were resuscitated after "serious self-harm incidents".

Seven women were among those who killed themselves in prison, up from just three in 2006. Overall, remand prisoners made up 41 of the deaths, while 18 lifers killed themselves along with four on indeterminate sentences.

Frances Crook, director of the Howard League for Penal Reform, said: "A leap of 37 per cent in the annual prison suicide rate is the human cost of the prisons crisis. The prison service has taken great strides in suicide prevention in recent years but it is all for naught when the system is on its knees with record overcrowding. Staff and resources are strained to the limit coping with an ever-swelling prison population rife with mental health problems, drug and alcohol addiction and histories of neglect and abuse. She added:

Prison is where we seek to sweep away social problems, blithely unaware of the fact that we are simply compounding the problems we seek to avoid. Little or nothing is done to tackle the underlying causes of crime in custody. While prisoners are inside, their families struggle to cope without fathers and mothers. For those individuals who survive a prison sentence, two thirds will be reconvicted within two years of release and most likely for more serious offences than before.

The campaigning group Black Mental Health UK has condemned the rapid rise in the number of suicides in prison over the past 12 months, and is seeking the backing of community and faith groups in its call for urgent government action.

The latest official statistics indicate that black prisoners are currently passing through the prison system at a rate five times higher than that of white prisoners. "Clearly there are concerns about this and we need to have an ethnic breakdown of exactly who has died in prison in the last 12 months in order to establish current trends," Lord Herman Ouseley, former head of the Commission For Racial Equality (now part of the Commission on Equality and Human Rights) said. He continued:

One suicide is one to many and we have seen figures on the over representation of ethnic minorities within prison settings but have not been given any answers as to why this is not being addressed.

Black Mental Health UK has welcomed Prisons Minister Maria Eagle's call for an inquiry into the reasons behind the increase in deaths and to look into measures to improve security for those suffering from mental health problems:

An inquiry is welcomed and urgently needed. We must ensure that there is appropriate and equal representation of all stakeholders, especially from the communities most adversely effected by this problem, declared BMH UK director Matilda MacAttram.

The Prisons Inspectorate has also warned that too many mentally ill offenders are jailed rather than given the specialist help that they need. The influx has continued despite overcrowding problems in jails and repeated calls from successive Home Secretaries for fewer sufferers from mental illness to be locked up.

Anne Owers, the Chief Inspector of Prisons, said that jail had become the "default setting" for many people who posed little risk to the public. She said the quality of treatment inside jail had declined over the past five years, with sufferers encountering a series of problems. They included inadequate screening on arrival and poor communication between the health professionals charged with their care. Offenders who have problems with emotional well-being were at higher risk of reconviction, and yet not enough was being done to support them on release.

Ms Owers acknowledged that some mentally ill offenders had to be jailed. But she said:

There are also people who, if they were picked up earlier, need not

have got so risky as they became. And there are people who are in prison with very low risk who are there simply because there's no community provision.

Arguing that resources should not be used up on people who should not be in prison in the first place, she said:

Prisons can provide better and more focused care for those who need to be there.

She found that 80 per cent of mental health teams going into prisons felt unable to respond properly to the range of problems they met:

Prisons can provide better and more focused care for those who need to be there, but they will only do so effectively if there is sufficient alternative provision for those who should not be there, and effective community support for those who leave prison. Unless those gaps are filled, mentally ill people will continue to fall through them and into our overcrowded, increasingly pressurised prisons.

Howard League for Penal Reform: <http://howardleague.org>; Black Mental Health UK: <http://blackmentalhealth.org.uk>; The Independent 25.10.07; Ekklesia 3.1.08, <http://www.ekklesia.co.uk/node/6521>

UK

Children assaulted routinely in Young Offenders' Institutions

Thousands of assaults are being carried out each year on children in custody by the people employed to look after them. Hundreds suffer cuts and bruises and some require hospital treatment for dislocated or broken bones. Professor Sir Al Aynsley-Green, the Children's Commissioner for England, has highlighted the "over-use of restraint and force" in Young Offender Institutions and Secure Training Centres, and is calling for an immediate ban on the practice of painful restraint, which includes hitting children in the face, twisting their thumbs and limbs and pinning them down in painful stress positions as a form of punishment or to ensure compliance.

In a new report to a government-commissioned inquiry into the issue, he writes:

The use of violence and force to control and punish some of the most vulnerable children in society is unacceptable.

Physical restraint - which is supposed to be a last resort - was used 3,036 times in Secure Training Centres (STCs) in 2005/06. More than 50 cases were judged so serious that a report was made to the Youth Justice Board (YJB).

Staff at STCs, which house some of the country's most vulnerable children, are trained to subdue children using forms of physical violence such as sharp blows to the septum area of the nose, bending thumbs to near breaking point and forcing a fist against ribs in the back. Young people in STCs, Youth Offender Institutions (YOIs) and Secure Children's Homes (SCHs) were subjected to more than 2,000 cases of restraint between April and June this year, according to figures from the Youth Justice Board. Eighty of these required medical treatment for injuries such as cuts, concussion, bruising or sprains; children in STCs were twice as likely as those in YOIs to suffer injury as a result of restraint.

Answers to recent Parliamentary Questions have revealed a catalogue of hundreds of injuries suffered by young people in 10 YOIs over the past two years. These range from severe nosebleeds, cuts, and bruising, to fractured or broken bones. Young people in YOIs face what is described as "pain compliant" control and restraint designed for adult prisoners.

A government-commissioned inquiry into the risks of death or injury associated with physical restraints is under way. In his submission to the inquiry, Sir Al Aynsley-Green concludes that there needs to be a review of the juvenile justice system and that

restraints should be used only as a final option, and even then "only when the child poses an imminent threat of injury to themselves or others". He calls for improved training of staff to safeguard children and says:

The use of techniques to inflict pain is in violation of the child's right under the United Nations Convention on the Rights of the Child (UNCRC) to be free from cruel, inhuman or degrading treatment or punishment.... We believe the practice in relation to restraint in some YOIs and STCs is in clear breach of the UNCRC.

In some circumstances it may also contravene the European Convention on Human Rights, he said.

"Some of the restraints could be viewed as assaults. We're doing things to children which they don't even do in Guantanamo Bay," says Frances Crook, director of the Howard League for Penal Reform. "Painful distraction is assault and I cannot see why the police aren't involved in investigating it," she says.

Sunday Independent 30.12.07

UK

Samar and Jawad refused parole

Samar Alami and Jawad Botmeh were convicted in 1996 of conspiracy in relation to bombings of the Israeli Embassy and Balfour House in 1994. The conviction was obtained despite evidence pointing to suspects unrelated to Samar or Jawad which was not disclosed to the defence and then suppressed by ministers through gagging orders.

Jawad's parole hearing took place on Monday 17 September 2007. Samar's parole hearing took place on Wednesday 19 September 2007. Jawad's application was turned down on Monday 24 September, and Samar's on Wednesday 26 September 2007. The legal team has lodged an appeal. Jawad had already been turned down by the Home Secretary two years ago. Samar has been waiting for two and half years for her case to be heard. According to campaigners, the parole board cut and pasted paragraphs from the text for Jawad and used it for Samar's parole rejection. "This is symbolic of their attitude: the parole board essentially views them as two irredeemable terrorists."

The Parole Board Decision:

- * Overlooked the excellent prison behaviour that the two have maintained since 1996.

- * Overlooked the fact that their risk assessment scores are so low that they should have been in open prison since 2004

- * Dismissed the dozens of supportive letters as being misguided by the belief that Samar and Jawad are innocent.

- * Dismissed the fact that both took rehabilitation courses.

- * Dismissed the fact that they have family and friends here and in Lebanon to look after them and live with them.

- * Dismissed the political guarantees offered by Lebanon and public figures in the UK to re-assure that their release does not represent a risk.

- * In Samar's case, the board argued that they are concerned about public security in Lebanon not just in the UK. They also dismissed the urgency of her parent's very poor health because the parents are being looked after by other siblings.

The campaign states:

The gist of the reasons behind the rejections are inadmissible and unjust. They are about prejudice and discrimination. Worst of all, they offer no way forward. What can you do to earn release if you have fulfilled all the objective requirements and you have passed the halfway point of your 20-year sentence? What can you do if all you say and all the positive points you earn after a decade of incarceration are dismissed as "self-reporting" progress? What can a prisoner do if the system does not believe its own standards and criteria?

To date, the fingerprints of the bombers have never been

identified or linked to the appellants. To date, key questions about the bombings remain unanswered.

Dr Young, a psychologist, was employed by the Home Office to produce a report on Samar as to her suitability for parole. Her report suggested that Samar should not be released. In Jawad's case a psychologist had twice recommended he be released, but this is not what the Home Office wanted to hear so Dr Young was asked to report on Jawad for his second parole hearing. She claimed the previous positive conclusion by the government expert and prison staff was due to Jawad's manipulative nature, and therefore recommended continued incarceration. Her report on Samar has been discredited. It was the unanimous opinion of all 6 experts engaged by the defence, that Dr Young had made so many value laden statements and unsafe assumptions in the report that it had little place in a professional clinical opinion.

Snapshots from Dr Young's report: Catch 22

- * Samar could use her sister's passport (as a twin) to escape

- * Samar's wearing of a headscarf and a "make poverty history" wristband are suspicious and controversial

- * Samar's appeal to Dr Young to hurry up with the submissions because her parents are old and in ill health shows that Samar is giving orders and being manipulative (the parole process took nearly two years before the final hearing)

- * Dr Young suggested that Samar's concern about her parents means that if she does not see them before they die, then this could be a motive for her to consider attacking British targets in the Middle East if released

- * Dr Young suggested that Samar could be manipulated by terrorist groups because she openly believes in human rights

Write to Samar and Jawad at: Samar Alami, RL1436, HMP Send, Ripley Road, Woking, GU23 7LJ Jawad Botmeh, EP3888, HMP Rye Hill, Willoughby, Warwickshire, CV23 8SZ . Freedom & Justice for Samar & Jawad, BM Box FOSA, London WC1N 3XX; Randa@freesaj.org.uk <http://www.freesaj.org.uk/>

UK

Farid Hilali update

A Moroccan man wanted by Spain in connection with the 9/11 attacks has lost a four year extradition battle after the House of Lords overturned a High Court decision in April 2007 which held his detention was unlawful and that he should be extradited to Spain.

Farid Hilali, 39, has been held in British prison without charge since September 2003, but it is unclear exactly how Spain will put him on trial because the Spanish Supreme Court unanimously has already held in relation to the trial of so called Al-Qaeda Spanish Cell in September 2006 that there is no connection to between Spain and the events in 9/11 attacks. More interestingly the Spanish Supreme Court also held that the only evidence which the Spanish have relied on to seek Mr Hilali's extradition was obtained unlawfully and is inadmissible.

The US National Commission on Terrorist Attacks on the United States (also known as the 9/11 Commission) public report also found that there was no Spanish link to the 9/11 attack and despite being sought by Spain the USA has never regarded Mr Hilali a suspect. In a statement released by his solicitor in early February, Mr Hilali said

today is a disgraceful day for British values. I am very disappointed at the way the British have harassed me over the last 9 years even though I have never been charged or convicted of any criminal offence.

In 1999 I was tortured in the United Arab Emirates and Morocco in the presence of British MI6 officers because I refused to become a spy for them. My extradition to Spain is a smokescreen to conceal Britain's true intentions of sending me to Morocco to face torture

leading to death. If I am ultimately sent to Morocco and tortured Britain will be held legally and morally responsible.

I am a victim of British state terror. Before lecturing the world on justice, democracy and human rights Britain should get it own house in order first.

For further comments please contact Moazzam Begg on 07875090494. For a campaign pack contact www.helpthepersons.org

UK

Parole board ruling opens door for prisoners

Hundreds of prisoners have been given fresh hope of an early release from jail after two landmark legal rulings. The Appeal Court has said the Parole Board, which decides whether inmates should be freed, is too close to the Government and should be made independent. This will require an overhaul of the Parole Board, which was set up in 1967 and considers about 14,000 cases a year. Lord Phillips, the Lord Chief Justice, said it was unduly influenced by ministerial pressure to consider the impact on victims and cannot take "objective" decisions. Ministers appoint board members and can remove them if they fail to perform their duties satisfactorily. Lord Phillips said:

The Parole Board must both be and be seen to be free of executive interference or influence.

The executive has sought to alter the criteria applied in selecting members of the board with a view to affecting the decision reached by the board.

He added:

Both by directions and by the use of his control over the appointment of members of the board, the Secretary of State has sought to influence the manner in which the board carries out its risk assessment.

In a second judgment, the Appeal Court criticised the way the Government had introduced a new open-ended jail terms for serious offenders. Thousands of criminals have been given indeterminate sentences for public protection (IPPs) and are eligible for release when a tariff set by the court expires. However, they must first demonstrate to the Parole Board that they are fit for release and a lack of funds means many cannot fulfil these conditions. Not enough money has been made available for proper rehabilitation courses or for interviews to be conducted. The Appeal Court called this "an unhappy state of affairs." It added: "There has been a systemic failure on the part of the Secretary of State (Jack Straw) to put in place the resources necessary to implement the scheme of rehabilitation necessary." The judges upheld a High Court ruling that Mr Straw had acted unlawfully because IPP inmates were unable to prove they were no longer a risk. *The Telegraph* 01.02.08.

Prisons - new material

Abuse of Muslims in Frankland Prison. *Help the Prisoners*, 2007. This campaign pack examines the racism and violence - and the lack of media coverage of it - inflicted on the 20 Muslim prisoners held at Frankland prison. Part 1 of the pack examines Frankland's longstanding reputation for racism while section 2 considers three case studies of prisoners detained there: Eesa (Dhiren) Barot, Hussain Osman and Omar Khyam. The third section advises on how you can help, with a series of model letters. Available at www.helpthepersons.org

Their house, their rules, Peter Quinn. *Prison Report* no 71 (Spring) 2007, pp. 9-10. Quinn is the co-author of a report into brutality by prison officers on inmates at Wormwood Scrubs prison during the 1990s. Six officers have since been found guilty of assaulting and

imprisoning 14 prisoners while Daniel Machover, the solicitor who represented some of the prisoners, has spoken of "senior managers and staff drinking during the working day; of a "steroid taking" culture among some of the officers; and of the unhelpful influence Freemasons." Here Quinn says that despite calls for a public inquiry into the scandal none has been forthcoming.

Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 13 October 2006. *Council of Europe* October 2007. This report finds Irish prisons to be "unsafe for inmates and staff" (Paragraphs 38, 40, 78) and calls on the Irish authorities to eradicate the "degrading" practice of "slopping out from the prison system" (Paragraphs 56, 91). A "considerable number" of prisoners interviewed complained of verbal and physical ill-treatment by the *Gardai*, the latter consisting mainly of "kicks, punches and blows with batons to various parts of the body." Available at: <http://www.cpt.coe.int/documents/irl/2007-40inf-eng.htm>

Response of the Prison Reform Trust to the consultation produced by the Department for Constitutional Affairs: "Voting Rights for Prisoners Detained within the United Kingdom - the UK Government's response to the Grand Chamber of the European Court of Human Rights in the case of Hirst v. the United Kingdom" This Prison Reform Trust (PRT) paper points to the anomaly between Article 3 of the ECHR which guarantees free elections and has been incorporated into the Human Rights Act, becoming law in the UK in October 2000, and the electoral ban on sentenced prisoners in Section 3 of the Representation of the People Acts 1985 and 2000. This had led to the contradictory situation whereby British citizens imprisoned in jails overseas are eligible to vote in the UK as an overseas elector but are barred from voting if they are imprisoned in the UK. The PRT believes that the government's "consultation" exercise is flawed because "it precludes a legitimate option from consideration: that all sentenced prisoners should be enfranchised as is the case in many other EU countries."

Shared responsibility, Andrew Dinsmore MP. *Prison Report* no 71 (Spring) 2007, pp. 11-13. Dinsmore, MP and chair of the Joint Committee on Human Rights (JCHR), argues for the inclusion of deaths in custody in the Corporate Manslaughter Bill.

MILITARY

NATO

Ex-defence chiefs: pre-emptive nuclear strike an option

According to a manifesto for a new NATO by four former senior western commanders the west must be ready to resort to a pre-emptive nuclear attack to try to halt the "imminent" spread of weapons of mass destruction. In the words of the report (p94):

The first use of nuclear weapons must remain in the quiver of escalation as the ultimate instrument to prevent the use of weapons of mass destruction, in order to avoid truly existential dangers.

And further (p97):

It should therefore be kept in mind that technology could produce options that go beyond the traditional role of nuclear weapons in preventing a nuclear armed opponent from using nuclear weapons." (...) "Nuclear escalation is the ultimate step in responding asymmetrically, and at the same time the most powerful way of inducing uncertainty in an opponent's mind.

The authors, generals Shakashvili (US), Naumann (Germany), Van den Breemen (Netherlands), Field Marshal Inge (UK) and Admiral Lanxade (France) paint a pretty bleak picture of the

post-9/11 world and the future of NATO.

To cope with the threats (fundamentalism, fanaticism, the "dark sides" of globalization, climate change, energy security, conflicts around resources and mass scale migration) they plead for a new grand strategy and a thorough reorganization of Nato:

- * A new "steering directorate" of US, European and NATO-leaders must be formed to respond rapidly to crises and end EU "obstruction" of and rivalry with NATO.

- * A shift from consensus decision-taking to majority voting at all levels below the NATO Council

- * Abolition of national caveats and veto's in NATO operations as far as possible

- * No role in decisions on NATO-operations for members who are not taking part in a mission

- * The NATO-commander in theatre should get operational command over the troops

- * Pre-delegation to military commanders to launch defensive measures in case of an acute crisis such as a missile attack or cyber attack

- * A cost-sharing mechanism for operations

- * A so-called "Berlin Plus in Reverse" agreement with the EU to stipulate that the EU should come to the aid of NATO with non-military assets and capabilities on a case-by-case basis.

- * The possibility of use of force without UN security council authorisation when immediate action is needed to protect large numbers of human beings".

According to Ron Asmus of the German Marshall Fund think-tank in Brussels, that promotes the report, "this report means that the core of the NATO establishment is saying we're in trouble, that the west is adrift and not facing up to the challenges."

The report is written under the shadow of the alliance's current problems in Afghanistan "where NATO is at a juncture and runs the risk of failure." (p. 5)

SecurityNetwork.com, "Towards a Grand Strategy for an Uncertain World - Renewing Transatlantic Partnership"; Guardian, 22.1.08 (Ian Traynor)

UK

Belated apology for Porton Down test victims

At the end of January, and after more than fifty years of campaigning, several hundred veterans of covert Ministry of Defence (MoD) chemical and biological tests at the Porton Down chemical warfare installation, learnt that they will receive compensation for their ordeals (see *Statewatch* Vol 13 no 5, Vol 16 no 1). Defence minister, Derek Twigg, announced at the end of January that the MoD would pay £3m, amounting to approximately £8,300 each for the 369 surviving veterans. He said that "The government sincerely apologises to those who may have been affected." The servicemen had launched a legal action against the MoD in March 2006, shortly after it eventually admitted the unlawful killing of Leading Aircraftsman Ronald Maddison due to gross negligence. He died from lethal exposure to sarin after being duped into believing that he was participating in tests to find a cure for the common cold. His family received £100,000 in compensation. Lawyers for the 369 men have said that their acceptance of the offer will bring an end to legal actions against the MoD.

However, while a number of veterans have expressed relief that their campaign is now over, some of the victims felt that were coerced into accepting the government's terms. Glaswegian, Joe Kearns, a former radio aircraft engineer who was used as a guinea-pig at Porton in the 1970s told *The Guardian*:

I haven't been able to work for 37 years. I couldn't even get a job as a hospital porter. I have short term memory problems. I'm really blind. I'm back and forth to hospital. I've had two hips replaced and spinal operations. It's the pure injustice. I've had no option but to sign and accept the form. Otherwise they will wash their hands of us. I just don't want the MoD to walk away smelling of roses.

Other servicemen have refused the government's offer, as insufficient. Derek Shenton told the BBC that "There was very high pressure to sign - threats basically: Take it or leave it".

In February 2004, the Foreign Office, on behalf of MI6, paid compensation to three ex-servicemen who participated in tests of the hallucinogen LSD without their consent in the 1950s. The out-of-court settlement is reported to have been under £10,000 each. In a statement at the time the MoD said it was:

grateful to all those whose participation in studies at Porton Down made possible the research to provide safe and effective protection for UK armed forces.

In June 2006 the Crown Prosecution Service said that no scientists would be charged over the tests that took place at the Wiltshire based facility, because there were insufficient grounds to prosecute.

The Porton Down saga recalls other recent military experiments in which the MoD first coerced servicemen into unnecessarily endangering their lives and then turned its back on them when they began to suffer the consequences. The MoD has flown in the face of scientific evidence in denying that there is any evidence to link medical problems to the atomic bomb tests in the Pacific in the 1950s, when servicemen were forced to stand unprotected in the open.

For more information on Porton Down's serviceman victims see Rob Evans "Gassed: British chemical warfare experiments on humans at Porton Down" (House of Stratus) 2000; BBC News 17.1.08, The Guardian 31.1.08.

Military - In brief

■ **France: Planned UEA naval base.** France plans to establish a permanent naval base in the United Arab Emirates (UAE) in 2009 to counter the "growing threat from Iran" and to keep sea lanes open for oil tankers. The base will be set up in the commercial port of Abu Dhabi under a French-UAE defence pact, signed in 1995. The staff of 450 will almost entirely consist of personnel that at the moment is stationed at France's base at Djibouti. The base will also serve as a key outpost for France's foreign intelligence agency (*Direction Generale de la Securité Exterioire* - DGSE). According to *The Economist* this development shows that "the French are ready to move outside their traditional sphere and to match their military presence to strategic interests rather than colonial links". *Jane's Defence Weekly*, 23.1.08 (*JAC Lewis*), *The Economist*, 17.1.08

Military - New material

EU - Policy Department External policies, The Battle Groups: Catalyst for a European Defence Policy, 2.10.07 (briefing paper on request of the EP's Subcommittee on Security and Defence).

European Defence Agency, Framework for Joint European Strategy in Defence R&T, 19.11.07 (adopted by EU defence ministers at the EDA Steering Board)

Committee seeks an inclusive UK-US treaty. *Jane's Defence Weekly* 19.12.07 (Keri Smith). A restricted UK "approved community" of defence companies on both sides of the Atlantic could seriously undermine both the existing UK-US defence trade treaty and bar European owned companies, according to a House of Commons Defence Committee report released on 10 December.

Shocking evidence of British abuse in Iraq, Phil Shiner. *Socialist Worker* 3.11.07. This is a text of a talk given by Phil Shiner, the lawyer

who represented Iraqi civilian Baha Musa who was beaten to death by British soldiers while detained in custody in Iraq, at the *Stop the War* annual conference. Shiner draws attention to the extensive coverage given to US abuse of prisoners and the British government's cover up of evidence - because it has something to hide: "Think of everything the Americans did - the iconic pictures of Abu Ghraib. We [the UK] did everything, absolutely everything the Americans did, and worse." *Socialist Worker*, PO Box 42184, London SW8 2WD

UK land operations in Iraq 2007. *House of Commons Defence Committee* (HC 110) (House of Commons, UK) 29.11.07, pp 44 + Evidence (53 pp). Perhaps the most salient observation in this influential report is that British forces in Basra have - unsurprisingly - not only failed to create an environment for political and economic reconstruction and but have abandoned the area to warlords and criminal gangs "undermining the development of civil society", (Recommendation 5). The Committee asks what is the point of leaving troops there when it is impossible to carry out any useful function (Points 14-16). The report also expresses concern at the imprisonment of Iraqis without trial (Rec 13, Redress Trust's submission). <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmdfence/110/110.pdf>

RACISM & FASCISM

SPAIN

Soldier on fascist march kills under-age protestor

On 11 November 2007, Carlos Javier Palomino died after he was stabbed to death on a train in Legazpi metro station by a 24-year-old off-duty soldier who was on his way to a fascist march against immigration in Usera (a neighbourhood in the south of the city where many migrants live) by *Democracia Nacional*. The 16-year old and his group were travelling to demonstrate against the far-right march. Palomino was stabbed in the heart through his thorax with a hunting knife (a machete according to some reports) and attempts to revive him failed. Three others also received knife wounds, serious in the case of a 19-year-old who was stabbed in the chest and had his lung pierced. The attacker, Josué Estébanez de la Hija was arrested by police and Metro security staff as he fled the station, after being chased by the anti-fascists. He was remanded in custody on 13 November, and military sources stated that he was suspended from duty and would be held in Alcalá de Henares military prison until he appeared in court. If convicted would then be stripped of his military status, and serve his sentence in a civilian prison. His lawyer complained about the media treatment surrounding the case, arguing that he "has been convicted before being tried"

A girl in Palomino's group said that the attack was unprovoked and friends told *El Mundo* newspaper that:

He was a kid from a working class family with few economic resources who wanted things to be better for everyone, and now a fascist has killed him.

Shortly afterwards, there were clashes between anti-fascists seeking to stop the demonstration and police officers protecting it. Four people were arrested, three of those opposing the march and one man who was on it. There were further disturbances that evening in Malasaña. The killing resulted in nationwide gatherings and demonstrations by anti-fascists. In Barcelona, where there were police charges, rubber bullets were fired and 22 officers of the *Mossos d'Esquadra* (Catalan police force) were reportedly injured, leading to the arrest of seven protestors. A fortnight later, on 24 November, there were clashes involving police charges by officers armed with truncheons and the firing of rubber bullets. Bottles and missiles were thrown by anti-

fascists during a march in memory of the youth from Atocha station to Legazpi after the government's representative in Madrid banned the march.

An article in *Diagonal* newspaper examined how the murder was presented in the media to give the impression that it was a clash between radical groups that resulted in a death, rather than an unprovoked knife attack by a soldier supporting a fascist march on youths travelling to demonstrate against racism. Some of the main trends highlighted, were the use of unchecked police reports in describing anti-fascist groups, who were presented as the alter-ego of fascist groups, and criminalised by going so far as to allege links with "ETA-Batasuna". It was an impression that was heightened in coverage of gatherings in memory of Palomino in subsequent weeks, at which violence between police and demonstrators occasionally broke out.

Diagonal regularly reports instances of attacks by fascists, and noted that a soldier from a Parachute brigade was arrested following attacks on passers-by around 30 fascists in the streets of the Barrio del Pilar neighbourhood in September. A further attack in this neighbourhood in December targeted the *La Piluka* cultural centre. The growing problem of fascists in positions of authority on the streets was further highlighted in the attack by a security guard on duty in Aravaca train station against a left-wing militant, also in December.

El País, 12, 16, 25.11.07, 9.1.08; *Agencia EFE* 13.11.07; *El Mundo* 12, 16, 19.11.07; *Las Provincias*, 19.11.07; *La Vanguardia*, 12.11.07; *Diagonal*, nos. 66 (29.11-12.12.07), 68 (26.12.07-9.1.08) and 69 (10.1-23.1.08).

FRANCE

French nazi-apologist sentenced

The far-right leader of the *Front National* (FN), Jean Marie Le Pen (79), has been given a three month suspended sentence for condoning war crimes after describing the nazi occupation of France in the Second World War as "not particularly inhumane". Le Pen's comments were made in an interview with the far-right magazine, *Rivarol*, in January 2005, when he said: "In France at least the German occupation was not particularly inhumane, even if there were a number of excesses...If the Germans had carried out mass executions across the country as the received wisdom would have it, then there wouldn't have been any need for concentration camps for political deportees." The nazi-apologist also partially exonerated the nazis over the Villnueve d'Ascq massacre of 86 people in 1944, claiming that it was not policy but the result of the actions of a junior officer.

The Vichy government is estimated to have deported over 70,000 French Jews to death camps during the occupation between 1940 and 1944. The court ruled that Le Pen had denied a crime against humanity and was complicit in condoning war crimes. Le Pen, who has previous convictions for racism and anti-Semitism, was last found guilty of denying nazi war crimes in 1987 when he described the nazi death camps as a mere "detail of history".

In a separate incident, the French Interior Minister, Michell Alliot-Marie, suspended three French police officers who are alleged to have made nazi salutes and shouted racist insults in a drunken incident in the northern town of Amiens at the beginning of February. The three policemen, who were in plain clothes, were accompanied by two other men and shouted "Sieg Heil" leading the bar's owner to report their behaviour to the authorities. The interior minister described their behaviour as "intolerable" and added that it totally contradicts police ethics.

BBC News 8.2.08

Racism and fascism - in brief

■ **Switzerland: Xenophobe ousted from Swiss coalition**

government. The far-right, anti-immigrant leader of the *Schweizerische Volkspartei* (Swiss People's Party, SVP), Christoph Blocher, who has been compared with Jean Marie Le Pen and Jorg Haider, had been serving as Justice Minister in the Swiss coalition government, and was unceremoniously removed in mid December 2007. The SVP has threatened to pull out of the coalition government unless he is reinstated, in what many people hope is a promise rather than a threat. The SVP ran a campaign in the lead-in to last October's polls, using racist posters depicting three white sheep kicking a black sheep off the Swiss national flag. Swiss artists have now reproduced the poster, placing Blocher's head on the black sheep with the slogan: "For security: kick Blocher out of the cabinet." (*Independent* 13.12.07)

■ **UK: Memorial vandalised by racists.** In January the Stephen Lawrence memorial centre, an architectural centre built in memory of the black youth who was murdered in a racist attack 15 years ago, was vandalised by racists. Damage was done to eight windows at the south London building, each worth £15,000 as they were designed by Turner prizewinning artist, Chris Ofili. The three storey building, which was designed by architect David Adjaye, and opened a week before the attack, will offer young people from deprived backgrounds the opportunity to start a career in architecture, offering courses in engineering, architecture and building. No arrests have been made in connection with the attack, which police have described as a racially motivated crime.

Racism & fascism - new material

Trouble at the Court of Mad King Nick, Nick Lowles and **All the king's men,** Sonia Gable. *Searchlight* no. 389 (November) 2007, pp. 4-9. Lowles article examines recent developments in the higher echelons of the British National Party which include resignations, defections and personality clashes. Sonia Gable looks at party leader Nick Griffin, and his "trusted lieutenants", most of whom are not members of the party.

"Bussing" in the UK during the 1960s and 1970s, Vicki Butler. *Runnymede Trust Quarterly Bulletin* September 2007, pp. 8-9. "Bussing", the government policy of dispersing migrant children from schools where their numbers reached 30% of the population, was a common procedure in parts of Britain - such as west London and Bradford - during the 1960s and 1970s. This degrading and abusive practice was imported from the United States and was justified as based

purely on "educational needs"- however, it has more in common with the "virginity tests" imposed on Asian women arriving in this country during the 1970s and 1980s. This article is part of a wider study which will attempt to unearth this secret history.

Shame on Us, Ronan Bennett. *The Guardian* 19.11.07. Bennett's article is a response to the the novelist Martin Amis. As Bennet observes in his conclusion: "He [Amis] got away with as odious an outburst of racist sentiment as any public figure has made in this country for a very long time. Shame on him for saying it, and shame on us for tolerating it."

European Race Bulletin no 61 (Autumn) 2007, pp. 32. This bulletin contains country summaries on anti-terrorism and civil liberties issues across Europe and a feature article by John Higham on "Austria: an examination of the Freedom Party's election campaign material", which analyses the far-right party's calls for tougher restrictions on immigration during the 1999, 2002 and 2006 general election campaigns.

Independent investigation into complaints following "The Boys Who Killed Stephen Lawrence". *Independent Police Complaints Commission* October 2007, pp. 32. This IPCC report into the 2006 BBC documentary that investigated allegations of a corrupt police officer who contributed to derailing the police investigation into the murder of Stephen Lawrence concludes that there is no evidence to support the programme's allegations. Stephen Lawrence was murdered in a racist attack in 1993 and his killers have never been brought to justice. The police investigation was the subject of the McPherson Inquiry which concluded that it was riddled with racism and incompetence, but to many observer's the "elephant" in the inquiry room was the allegation of police corruption through a financial arrangement between Detective Sergeant John Davidson and the father of one of the main suspects, Clifford Norris. Following the publication of the IPCC's report the BBC said "We stand by the journalism of the programme" and many of those involved in the campaign for justice for Stephen question why, nearly 15 years after Stephen's murder, this issue still remains unresolved, and despite this report, uninvestigated.

Available at: http://www.ipcc.gov.uk/stephen_lawrence_final_report.pdf

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Viewpoint

"White man's burden": criminalising free speech

While the recurring publication of the 'Danish cartoons' of the Prophet Mohammed continues to provoke anger in the Muslim world and a defence of 'free speech' in the West, a proposed EU law on "public provocation" to terrorism could criminalise widely held political views – but it has barely raised a murmur.

by Ben Hayes

In November 2007 the European Commission submitted a proposal to add three new criminal offences to the 2002 EU Framework Decision on terrorism [1]. If agreed by governments, EU countries will be obliged to criminalise "provocation", "recruitment" and "training" for terrorism. Charges of "recruitment" and "training" will need to show a direct link with terrorist groups or activity (as defined in 2002), but the "provocation" offence is extremely broad, as it does not require a direct encouragement to commit terrorist acts but applies to any statements which create a "danger" of such acts being committed. According to the proposal:

public provocation to commit a terrorist offence" means the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of [a terrorist offence as defined in the Framework Decision], where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed.

As *Statewatch* pointed out in its analysis of the proposal, the wording of this definition is clearly likely to result in the criminalisation of the expression of political views (for example on the situation in Middle East or on certain conflicts within

Member States), *even if that expression does not in any way include the advocacy of terrorism to support those opinions* [2]. It will be enough that the authorities deem that there is a “danger” that this will happen, an actual terrorist offence as a consequence is expressly not necessary for the Framework Decision to apply.

The origins of the proposal

All three offences in the proposed Framework Decision are taken from the text of the 2005 Council of Europe convention on the prevention of terrorism [3]. This Convention started life in 2003 in a working group established by Council of Europe Justice ministers to consider the harmonization of laws on incitement to terrorism and the act of “justifying terrorism”, which was already illegal in Spain (where prosecutions for the crime of “apologia” have been extensive) and France (where prosecutions for “apologie” are extremely rare). After the Madrid bombings in March 2004 the Council of Europe mandated a far-reaching Convention addressing “public expressions of support for terrorist offences and/or groups”; “the instigation of ethnic and religious tensions which can provide a basis for terrorism”; “the dissemination of “hate speech” and the promotion of ideologies favourable to terrorism”.

The Council of Europe already had some experience in this area, having adopted in 2003 a Protocol to the “Cybercrime Convention” (of 2001) concerning the “criminalisation of acts of a racist and xenophobic nature committed through computer systems”, which addresses the dissemination of “racist propaganda” over the internet [4]. However, while this Protocol contains an opt-out based expressly on established national principles concerning freedom of expression, there is no opt-out in the terrorism Convention agreed in 2005. There is at least a “safeguards” clause (in article 12) which obliges states to respect “freedom of expression, freedom of association and freedom of religion”, “proportionality” and the prohibition of “arbitrariness or discriminatory or racist treatment”. But in the EU proposals, even these limited safeguards have been dropped.

The EU negotiations

The EU proposals are a recipe for an overbroad offence encompassing political opinion and giving prosecutors enormous discretion in deciding when and if to bring cases for “public provocation” to terrorism. So bereft of human rights safeguards is the Commission’s proposal that the member states are considering introducing some of their own – a first for EU decision-making. The EU Council presidency describes the Commission’s proposal as “very delicate... situated on the borderline of fundamental rights and freedoms such as freedom of expression, assembly or of association and the right to respect for family life” [5]. It is therefore “essential”, suggests the presidency, “that the right balance is struck”, as in the Council of Europe Convention. Of course, if the CoE Convention strikes such a delicate balance, why bother tinkering with it at all?

The solution proposed by the presidency is the insertion of a recital in the preamble to the draft Framework Decision based on article 12 of the Council of Europe Convention. However, as a recital, it will be of limited effect because member states are only obliged to align their national legal systems with the substantive obligations in the actual articles of the text. In opposition to the Commission proposal, Sweden – supported by other unnamed EU member states – has proposed a new article based on the draft EU Framework Decision on racism and xenophobia, which (like the CoE Cybercrime Protocol) contains an express opt-out allowing member states to abstain from enacting “measures in contradiction to fundamental principles relating to freedom of association and freedom of expression and assembly, in particular freedom of the press and the freedom of expression in other media”.

The limits to free speech

Jyllands-Posten, the Danish newspaper that commissioned the cartoons depicting the Prophet Mohammed as, among other things, a terrorist, argued – provocatively and erroneously the eyes of many – that its actions addressed an important issue of self-censorship in the media:

The modern, secular society is rejected by some Muslims. They demand a special position, insisting on special consideration of their own religious feelings. It is incompatible with contemporary democracy and freedom of speech, where you must be ready to put up with insults, mockery and ridicule [6].

While newspapers in many countries reprinted the cartoons, it is notable that the overwhelming majority of media organisations in the UK, USA, Canada and elsewhere chose not to. In doing so, they tacitly acknowledged the limits to free speech. As A. Sivanandan has put it:

Europe holds that freedom of speech is the very basis of western democracy and cannot therefore be compromised or watered down. It is an absolute.

But that is a fallacy. No freedom is an absolute. Every freedom carries with it its own responsibility. The right to freedom of speech does not, as Oliver Wendell Holmes, the great American judge said, give you the right to falsely cry ‘fire’ in a crowded theatre [7].

Indeed, laws criminalising holocaust denial and incitement to racial hatred show very well the limits to free speech in western democracies. The *status quo* is an uneasy compromise based on the principles of respect for minority communities and social cohesion. Here the media occupies a crucial position, particularly when it comes to moderating the so-called “clash of civilisations”. Aidan White, Secretary-General of the *International Federation of Journalists*, has warned that:

journalists need to be more conscious than ever about the dangers of media manipulation by unscrupulous politicians and racists [8].

Index on censorship

What began in Denmark as an exercise in counter-self censorship – albeit one of extremely dubious judgment, to say the least – quickly exploded into a politically charged issue seized upon by both sides of the ‘debate’. Exactly the same thing happened last year when Oxford University’s Student Union chose to hold a debate on free speech involving David Irving and Nick Griffin. Last month the Archbishop of Canterbury provoked a similar storm when his views about Sharia Law in Britain were seized upon by other champions of free speech in the media. Yet for all the limits on free speech, all three examples show that freedom of expression is alive and well for cartoonists, racists, Archbishops and, for the time being at least, those that they offend.

The new EU proposals will radically alter the *status quo* by criminalising speech that *may* provoke terrorism, even if where it does not directly advocate acts of terrorism. Because the EU’s definition of terrorism is so broad, the scope for criminalisation is enormous. “Terrorism” was defined in EU law in 2002 as:

seriously intimidating a population, or unduly compelling a Government or international organisation to perform or abstain from performing any act, or seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.

To suggest that the Palestinians, Lebanese, Iraqis or Afghans have the right to resist occupation and aggression through armed struggle could easily be construed as public provocation to terrorism. Advocates of direct action against corporations, government policies and intergovernmental organisations like the EU may also fall foul of the new laws.

Those who argue that the new laws are necessary argue that

they are necessary to deal with “preachers of hate” and “Jihadi” websites. On the other hand, since incitement to murder and incitement to terrorism (included in the 2002 EU Framework Decision) are criminal offences, why not let the courts decide if that what people are guilty of? It seems reasonable for states to attempt action against websites that directly encourage atrocities such as ‘9/11’ and the Madrid and London bombings, however futile the uncontrollable nature of the web may render this exercise, but it is patently absurd to use them as a justification for the introduction of new offences criminalising people for their political beliefs or opinions

The limits to permissible thought

In November 2007, Samina Malik, the 23-year-old self-professed “lyrical terrorist”, was convicted under section 28 of the UK Terrorism Act 2000 for the possession of material that is “likely to be useful to a person committing or preparing an act of terrorism”. The articles in question included the “terrorist manuals” she had downloaded from the internet and poems she had written about “Jihad”. After five months in prison on remand, Ms Malik was acquitted of the more serious charge of “possessing an article for terrorist purposes” under section 58 of the Act. So despite the jury finding no evidence to suggest that she ever actually intended to carry out an act of terrorism, she was given a suspended sentence for having even entertained the idea.

On 13 February 2008, the Court of Appeal quashed the earlier section 58 convictions of five young Muslim students for downloading extremist literature. The Court decided that while there was no doubt the men had possessed extremist literature, there was no proof that they ever intended to do anything with it. This demand for legal certainty exposes the inherent flaws in the EU proposals – they seek to criminalise the possession of a “dangerous” opinion. Christopher Hitchens recently defended the author Martin Amis of racist attacks on Muslims, saying “the harshness Amis was canvassing was not in the least a recommendation, but rather an experiment in the limits of permissible thought”. As John Pilger and others asked in a letter

to the *Guardian* newspaper following the conviction of the “lyrical terrorist”, is the right to “experiment with the limits of permissible thought” now only accorded to people who have the correct skin colour, religion and academic background? [9]

Footnotes

1. COM (2007) 650, 6.11.07. See SEMDOC website: <http://www.statewatch.org/semDOC/503.html>
2. See Statewatch News online, November 2007: <http://www.statewatch.org/news/2007/nov/03eu-com-terror-plans.htm>
3. Council of Europe Convention on the Prevention of Terrorism of 2005 (CETS No.: 196)
4. Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (CETS No.: 189)
5. Council doc. 6761/08, 20.2.02.
6. “Muhammeds ansigt”, *Jyllands-Posten*, 30.9.05
7. “Freedom of speech is not an absolute”, interview with A. Sivanandan, *Race & Class*, July 2006.
8. “Journalism and Combating Intolerance: Those Cartoons and a Challenge to Free Expression and Quality Media”, Aidan White, http://www.tff-asia.org/page/white_danish_cartoons.html
9. “Race, class and freedom of speech”, Iain Banks, Caryl Churchill, Lindsey German, Michael Kustow, Adrian Mitchell, Andrew Murray, John Pilger, Michael Rosen, *Guardian*, 7.12.07.

For all EU JHA proposals see:
Statewatch European
Monitoring and Documentation
Centre (SEMDOC):

<http://www.statewatch.org/semDOC>

State power beyond the law:

The transatlantic fight against human rights

by Heiner Busch and Norbert Pütter

Whilst state executives on this and the other side of the Atlantic incessantly reiterate that international Islamic terrorism poses the gravest threat against democracy and freedom today, it is becoming increasingly clear that it is these very governments that are systematically and lastingly violating human rights and civil liberties.

The new, not only transatlantic, but global fight against terrorism is characterised by three core elements: Firstly, an international surveillance infrastructure is created in its name. Secondly, it is used to justify wars and military operations. And thirdly, the “war on terror” creates instruments that rise above conventional categories. Namely, it creates instruments that no longer serve criminal prosecution or the prevention of threat, but conflate military with police and secret service activities; they stand above the legal order and deny those affected by the war on terror their basic fundamental rights; they exclude the public and the parliaments and, last but not least, they link secret executive practices with a comprehensive repertoire of sanctions.

Citizens are generally understood as “sovereign” in

definitions of modern democracies. In states’ practices, however, they are treated as the ultimate risk that needs to be reduced by way of far-reaching control mechanisms and data collection. In light of the global flow of people, goods and information, this risk perspective necessitates a synchronised alliance of national and international measures. These are no longer restricted to the exchange of police data or mutual judicial cooperation in criminal cases, which had already lost its judicial character, rather they are being extended with new powers such as common investigation teams and undercover cross-border cooperation. Above and beyond this extension of powers, the war against terror allows for the implementation of measures aimed at controlling the mobility and behaviour of citizens at all times. The retention of telecommunications data, the inclusion of biometric data in passports or the routine exchange of air passenger data, are all elements of the European, or rather, internationally harmonised surveillance structure. (1) The inclusion of biometric data in passports and the routine exchange of air passenger data are not the only examples of EU institutions willingly giving in to US demands and ignoring the protests of

EU Member States. In June 2007, the EU granted the US permanent access to information on international financial transactions. Since autumn 2001, the US government has been accessing data collected by the Belgian financial service provider SWIFT (Society for Worldwide Interbank Financial Telecommunication) without an existing agreement.⁽²⁾ The fact that this practice lacked any form of legal basis and was made public only by chance is symptomatic of the new fight against terror.

The wars that have been waged since 2001 in the name of anti-terrorism more than just violate international law. The progressive militarisation of conflicts is proving ineffective and counter-productive when assessed according to their proclaimed aims. Six years since the start of the war against the Taliban in Afghanistan, they have not been defeated and the Afghan government has lost control of large parts of the country. The cultivation of poppies and opium production has increased significantly. The war against Iraq was justified from the outset with transparent lies; weapons of mass destruction were fabricated, as was the Iraqi government's reputed "support" for al-Qaeda. War and occupation have not "pacified" the country, but left it with an unprecedented and seemingly never-ending wave of attacks, causing suffering, first and foremost for civilians. Religious and ethnic differences have been exacerbated by the conflict. At the same time, the invasion has strengthened the opinions of those who see themselves at war with the Western world. The torture practiced in Abu Ghraib was not only a manifestation of the brutality that accompanies wars, but is an underlying principle of the war on terror, which views opponents as rightless enemies.

Global declaration of war

The fact that the "war against terror" was not only intended as a military battle but a declaration of war against human rights and against the democratic control of state actions is confirmed by the treatment of individuals and groups suspected of being or supporting terrorists. In view of its preventative orientation, the new anti-terrorism measures are a continuation of its predecessors. When scrutinising the definition and application of the German anti-terrorist provision Article 129a of the Criminal Code, it becomes clear that by the 1970s the state's intention was not primarily to solve criminal acts, but to uncover and destroy networks from within which it was expected future activities would arise. However, the global anti-terrorism strategies of the post-9/11 era have the following novel characteristics:

1. Specific people or groups are categorised as falling outside of the protection granted under the regular legal framework; not only are their individual rights infringed upon but their entire person is excluded from the legal system. They are denied elementary human rights as well as the possibility of seeking redress to demand these rights. The procedure, and the decision on who is affected by it and how, lies entirely within the remit of the executive powers. The individuals are, directly and helplessly, at the mercy of state powers. Guantánamo has become the epitome of this system; the creation of an "unlawful enemy combatant" category is the attempt to ascribe a rightless status to these subjects.

2. Rightlessness, in the anti-terrorist era, implies rendition, torture and imprisonment. The intention is not only to neutralise the alleged terrorists, but also to force them to make statements about other alleged terrorists. Different practices of "extraordinary rendition" have emerged: arrests in the US, abductions in third states or arrests in the framework of war activities. The rendition to other states, preferably those that are renowned for their torture practices (i.e. Egypt, Syria, Morocco), the creation of secret prisons and detention centres outside of the US has, and still is, taking place without a legal basis, without a court ever having ordered an arrest, abduction or the deprivation

of liberty.

3. Cooperation between the different responsible authorities gives the fight against terror a new quality: the military, secret services, state security and police special forces of different countries openly cooperate. Alongside prisoners of war, the military is now also arresting "enemy combatants" to which not even martial law applies. Police forces pass on information of alleged suspects and/or arrest them, hand them over to secret services, who in turn pass them on to national police forces in different continents or imprison them in specially created military camps. Since 11 September 2001 an anti-terrorist archipelago has developed under US leadership which is supported by a network of transnational military-police-intelligence cooperation.

4. Those who are targeted, by investigation authorities searching for individuals active in or supporting international terrorism, not only have to fear for their freedom or their bodily integrity, but also for their social and material position. With the creation of "terror lists", states have constructed a system of sanctions outside of the legal order. Governments, or rather their representatives, decide if a person or group will be included on these lists. Whilst an effective and sustainable legal address is lacking, the sanctions imposed on those who are listed is enormous: they are publicly declared terrorists or as supporters of terrorism; their freedom of movement is restricted; if applicable their asylum is refused and their material existence is threatened. Terror lists have turned the principle of the presumption of innocence on its head: those listed (and therefore already sanctioned) have to prove their innocence without the existence of a reliable procedure that would allow them to do so.

Democracy interferes with the Coalition of the Willing

Secrecy is an increasingly popular trend. Whilst lists of alleged terrorists are publicly communicated, they are created in closed circles by anonymous bureaucrats and no one is accountable for their content. How and on what basis the decisions were reached is not seen as information relevant to the public interest. The fact that rendition, incarceration and torture are practiced in secrecy is assumed to be self-evident. Even today, it is not known how many people have been abducted by "agents" of civilised states and sent to secret prisons, to Guantánamo Bay or handed over to torturing states. Everything that should distinguish a democracy from a terrorist regime - a legal basis for imprisonment, a judicial order, a formalised and accountable procedure in which those accused have rights which they can enforce - does not exist here.

Persistent investigation by journalists ⁽³⁾ and human rights organisations ⁽⁴⁾ uncovered the system of "extraordinary rendition". Only then could the otherwise powerless parliamentary assembly of the Council of Europe and the EU Parliament start their work. Even so, not all national parliaments of the countries involved in renditions conducted investigations. The complaints put forward in the second Marty report, with regard to the lack of support for his investigation by the European governments ⁽⁵⁾, as well as the refusal of the German government to disclose information to the German parliamentary investigation committee dealing with a series of secret service scandals (*BND-Untersuchungsausschuss*) ⁽⁶⁾, are clear indications that executive powers have no interest in shedding light on these events. It is to be expected that an individual's attempts to hold the kidnappers accountable for their actions through national criminal prosecution mechanisms will fail because of the resistance of government authorities.

The US is the main agent in the international anti-terror struggle. Even if the governments of "old Europe" have belatedly distanced themselves from Guantánamo, they still tolerated abductions (Germany), cooperated with them (Sweden, Italy) and kept them secret from the public. They profited from the system of "rendition" by interrogating, or letting others

interrogate, those abducted or by using information extracted by the "interrogations" for their own national wars against terror. The fact that the Coalition of the Willing included states notorious for their torturing practices (Pakistan, Uzbekistan, Syria, Egypt etc.) did not prevent governments from cooperating in these abductions. The German red-green coalition government's behaviour during the Murat Kurnaz case showed how little human rights count for in the global fight against terrorism. Even though it became evident at a very early stage of his imprisonment that he had not committed any crime, the German government classified Kurnaz as a security risk they would prefer remained in Guantánamo rather than be returned to his home town of Bremen. In this war against terror, the freedom of the individual is deemed unimportant. Those who happen to believe in the "wrong" religion, or are in the wrong place at the wrong time, cannot expect to find human rights defenders in the governments of those states that have declared themselves guarantors of human rights.

In the spiral

The global fight against terror reveals how thin the veneer of civilisation in democratic states really is. The German interior minister's "suggestions" for the suspension of the presumption of innocence, or the legitimisation of targeted killings of terrorists, are expressions of helplessness as well as being unscrupulous. In view of the obviously heterogeneous terrorist structures (ranging from loose networks to "home grown terrorists" and individual fanatics), the success of such an extension of any state's arsenal is more than questionable. The role that these declarations of war within the "homeland" play are similar to those declared in the Islamic world. They range from wars, threats of war and economic exploitation to closing ranks with dictatorial regimes. The new anti-terrorism thereby becomes a self-fulfilling prophecy by reinforcing the image of the enemy that terrorism wants to fight. By continually providing their self-declared enemies with new justifications, western states at the same time abolish that which they claim to defend. In the battle between the terrorist and the anti-terrorists, the only loser is human rights.

* This article is a translation of the introduction to the journal *CILIP/Bürgerrecht & Polizei*, no 87 (2/2007), with the thematic focus on international terrorism. This article refers to contributions in the journal covering case studies on extraordinary rendition and terror lists. CILIP can be contacted by email at info@cilip.de

Footnotes

- (1) see Zöller, M.: "Grundrechtseingriff auf Vorrat", in: *Bürgerrechte & Polizei/CILIP* 85 (3/2006), pp. 21-30; Busch, H.: "Biometrische Pässe", in: *Bürgerrechte & Polizei/CILIP* 79 (3/2004), p. 86
- (2) *Handelsblatt*, 28.6.07
- (3) e.g. Mayer, J.: "Outsourcing torture", in: *The New Yorker*, February 2005, pp. 106-123; Grey, St.: "United States: trade in torture", in: *Le Monde Diplomatique*, April 2005 (<http://monde.diplo.com/2007/04/04usatorture>)
- (4) Human Rights Watch: *The road to Abu Ghraib*, New York 2004 (<http://hrw.org/reports/2004/usa0604/2.htm>); Amnesty International: *United States of America. Below the radar: Secret flights to torture and 'disappearance'*, London 2006 (<http://web.amnesty.org/library/index/ENGAMR510512006>)
- (5) Marty, D.: *Explanatory Report, Secret detentions and illegal transfers of detainees involving Council of Europe member states, Second Report*, Strasbourg 2007 (http://assembly.coe.int/CommitteeDocs/2007/EMarty_20070608_NoEmbargo.pdf)
- (6) In May 2007, the opposition parties lodged a complaint with the Federal Constitutional Court, with the aim of forcing the government to disclose more information for the work of the parliamentary investigation committee, see *Der Tagesspiegel*, 22.5.07.

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Italy

Manslaughter trial for officers in Aldrovandi death

On 19 October 2007, the trial of Paolo Forlani, Monica Segatto, Enzo Pontani and Luca Pollastri, four "flying squad" police officers accused of manslaughter, began in Ferrara (Emilia-Romagna). On 20 June 2007, following preliminary investigations, a court ruled that the four officers would stand trial for their responsibility in the death of Federico Aldrovandi. The teenager died during a violent early morning encounter with flying squad officers on 25 September 2005 whilst returning home after a night out (see *Statewatch* Vol. 16 no.1 and *Statewatch news online*, January 2006). Suspicious events that have surfaced during the trial include the temporary disappearance of two broken truncheons that re-appeared, cleaned, on the following day to become available for the scientific investigations police. Other matters that must be cleared up include the failure to inform Federico's family, in spite of their repeated calls to their son's mobile phone, and the late appearance of a coroner over three hours after the death.

The charges: "excesses" and "imprudence" contributing to death

The officers are accused of engaging in "excesses" and "imprudence", such as to have unintentionally had an important

or decisive role in the youth's death, although the judge considered their intervention to have been in the fulfilment of their duties, ruling out intentionality. The manslaughter charges stem from a number of elements. One of these was the failure to "immediately" call for medical help, in spite of their claims that the youth was in a state of "psycho-motor excitement". Having decided that restoring public order was their priority after receiving calls from citizens complaining that someone was causing a disturbance that justified the intervention, their attempts to subdue Aldrovandi were conducted "in an imprudent manner" that "exceeded the limits of legitimate intervention". He was allegedly kicked, punched and struck with truncheons (two of which were broken) in several parts of his body, despite the officers' "evident numerical advantage" and the fact that Aldrovandi had been immobilised. The officers also failed to provide first aid when Aldrovandi repeatedly called out for help and for them to stop. The officers apparently did not recognise his critical condition and the fact that they were making it more difficult for him to breathe by handcuffing him in a prone position.

The defence argued that several of the claims were unfounded, that emergency services were called repeatedly and

in timely fashion, that it had not been shown that the youth had shouted for help so clearly, and that testimony by expert witnesses heard in December 2006 did not identify a causal connection between the death and the officers' actions, either as a result of the position Aldrovandi was placed in or of the use of weapons. Noting that the officers' position improved as they were accused of "excess in exercising their duty", one defence lawyer claimed that Federico Aldrovandi's altered physical state, rather than the officers' conduct, explained the death. Thus the defence maintained the initial reports from the police and municipal authorities that blamed the death on drugs, despite tests for chemical substances in Aldrovandi's body only finding traces in his blood, insufficient to have serious or lethal consequences.

Forensic tests ruled out the external blows as the decisive factor, pointing to asphyxia as the cause of death resulting from exceptional psycho-physical stress leading to a breakdown of bodily functions. The tests commissioned by the family pointed to a compression of the thorax as the possible cause for the asphyxia. Defence lawyers interpreted the report as confirming the officers' innocence, while lawyers representing the Aldrovandi family argued that the event leading to the death, a violent incident involving the police, was clearly established.

A witness who had observed the incident stated that she had seen two police cars with four policemen standing outside them. Aldrovandi approached them and, when he was between them, executed a scissor kick, but without striking any of them. The four officers allegedly started beating him, striking him with truncheons and continuing to do so when he was held on the floor by three of them. The officers were allegedly holding Federico's body down, one at the feet another on his thighs, a third on his thorax and a fourth was seen kicking him. Aldrovandi's mother, Patrizia Moretti, commented: "Every time we acquire new details about our son's death they turn out to be more dreadful". An unidentified witness was heard on 26 June on the television programme *Chi l'ha visto?*, claiming that the police "gave him a good beating". The man, who offered a wealth of accurate details according to the Aldrovandi family, later retracted his claims.

Prosecuting magistrate resigns after criticism

The initial prosecuting magistrate, Maria Emanuela Guerra, withdrew from the case as a result of messages questioning her impartiality and noting that her father was a police officer that appeared on the Aldrovandi family's blog about the case. Federico's mother complained about charges brought against the magistrate's son for drug dealing being presented in the local press by Guerra's son as "a conspiracy against him hatched by my son's friends", thus making her son "responsible, apart from his [own] death, also for your son's legal troubles". Moretti was highly critical of the magistrate's involvement in the case in her blog on 10 July 2007:

We are very sorry to have to say that between 22 January and 14 March, the prosecuting magistrate carried out frenetic investigative activity to ascertain the cause of my son's death, which mainly consisted in hearing... his ... friends: always in the framework of one-track investigations' aimed at establishing conditions to be able to certify "death by drugs" in spite of the expert testimony heard by the judge for preliminary investigations that pointed elsewhere. Media interest in the case and investigations into the youth's death followed the starting of a blog in January 2006 that began with Federico's mother describing the family's plight after the death, and attempts to conceal the truth from them.

The trial begins

Hearings began on 29 November 2007, when officers read a statement directed at the Aldrovandi family, saying that they expected the trial to clear up any doubts about their behaviour:

"We understand and share the pain for the loss of their son, but at the same time we re-affirm with calm firmness our conviction in the absolute correctness of our behaviour on that tragic morning". Federico's mother, responded: "I find what they said because they were before a judge, and after two years of absolute silence, offensive". She was also upset by the large presence of police trade union representatives in the courtroom, complaining that they have supported the accused from the start and that there may be an intent to intimidate witnesses "who have not spoken or have not said everything yet".

Residents of the area where the incident occurred were called to testify, including a woman who was responsible for the first phone call to the emergency services, who spoke of a youth who was out of control, shouting and cursing and kicking out. Earlier police reports claimed that he had been banging his head against lamp-posts. Different neighbours saw part of his body in a prone position with a policeman on top trying to handcuff him and heard a car engine start, wheels squealing and the noise of metal bodywork crumpling, although witnesses appeared less forthcoming than during investigations. Friends of Federico's were also heard, including Paolo Burini, who said that he was informed by the head of a flying squad, who told him: "Your friend has died. He died because he is a drug addict. You're a drug addict as well. You are all drug addicts. Tell us who you got your drugs from".

Federico's mother testified that Nicola Solito, a *Digos* (police special operations general direction) official and friend of the Aldrovandi family, first told them of Federico's death, and later advised them to get legal counsel and a forensic doctor. Solito allegedly told Patrizia Moretti that his colleagues said that Federico had hurt himself by banging his head on a wall and that they intervened to stop him, but he had died before they were able to do anything. She claimed that the family became suspicious after they were called to police headquarters and "we were attacked", because an article in *Il Resto del Carlino* newspaper quoted their lawyer saying that Federico's face was "disfigured". The administrative chief of police (*questore*) said that they had enjoyed favourable treatment, as the press was told he had died as a result of a "collapse", whereas investigations were focusing on a social centre in Bologna where he had spent the night and had consumed drugs.

Three statements alarmed them: firstly, the claim by the *questore* that four officers had had medical reports produced for them, but did not intend to ask for damages; secondly, that the chief investigating magistrate "told the press, even before the autopsy, that Federico had not died as a result of the blows", the first time they heard anything about blows; and thirdly, when Solito came to their home advising them to place their trust in the investigation and not to use a lawyer. He continued: "I am a father as well, and if I were you, I'd follow my heart".

After the autopsy, their forensic doctor noted that Federico was violently beaten, but none of the blows he received was lethal. In court, Solito told the court of his surprise when he asked the senior official at the crime scene whether a judge had been called and he merely shrugged his shoulders. Another officer, Luca Casoni, told the trial that as soon as he arrived on the scene "I understood that it would have ended up in court". Elements of doubt highlighted by the defence include the two broken truncheons that were not kept as evidence until they reappeared clean the next morning, and the falsified records of the emergency response operative room, which have given rise to a second investigation, as well as pictures taken by the forensic doctor that are not included in the trial material.

Il manifesto, 27.6.07, 29.1.08; *La Nuova Ferrara*, 18.1, 21.2, 17.6, 12.11.06, 11.1, 19.10, 30.11, 7.12.07, 13.1.08; *Estense.com* 20.10, 8.12.07, 11.1.08; *Osservatorio sulla Repressione* (www.osservatoriorepressione.org), 13.1.08; further information is available on the Aldrovandi family's blog: <http://federicoaldrovandi.blog.kataweb.it>

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