

# statewatch

monitoring the state and civil liberties in the UK and Europe

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## “Interoperability” - the end of checks and balances on EU databases

It has been apparent from some time that the so-called "principle of availability" between of law enforcement and other agencies would extend to planned EU databases. In November the European Commission produced a Communication (COM (2005) 597) on "improved effectiveness, enhanced operability and synergies among European databases".

"Interoperability" is defined as the exchange of data, information and knowledge; "Interoperability" is a technical rather than a legal or political concept". "Synergies", technically, apparently means: "a mutually advantageous conjunction of several elements". "Economically" it means: "an increase in the value of assets or an economy of scale". "Organisationally" it means: "combining previously distinct resources". And the "principle of availability" means that law enforcement and security agencies can access information and intelligence from anywhere in the EU.

The databases discussed are SIS II, VIS (Visa Information System) and EURODAC (fingerprints of refugees over 14 years old). The legitimisation for access by agencies is variously stated as terrorism, organised crime, serious crime or just crime in general.

There are two kinds of way databases can be searched: alphanumeric and biometric. EURODAC is a biometric database of fingerprints but it is said that "the quantity of data sent to EURODAC is a surprisingly low fraction of the total migratory flow". VIS too will use biometric searches of photos (not very reliable) and fingerprints (accurate but error rate increases with size of database). The biometrics planned for SIS II will only be used to confirm identity.

Alphanumeric searches are currently used (eg: machine readable passports or searching for a name) and planned for SIS II (and used on lots of check/watch lists). However, as has been obvious for some time:

*the probability of not obtaining correct results increases with the size of the database. The more names there are in the database, the harder it is to find a person and the more likely it is to identify a person wrongly"*

It will come as no surprise that the "shortcomings" identified by

law enforcement and security agencies are that they need access to EURODAC and VIS. The Communication identifies other "shortcomings": neither VIS nor SIS II "can identify persons illegally remaining in the EU". And, on biometrics:

*Automated Fingerprint Identification System (AFIS) and DNA databases allow [accurate biometric] identification. As such databases now exist in most Member States, the Commission services are currently working on a proposal to interlink national databases*

This begs a lot of questions. The basis on which fingerprints are gathered and held vary from state to state - in the UK the fingerprint and DNA databases will increasingly hold data on people who have been arrested but never charged and those charged but acquitted. As to DNA databases, the UK has the largest database in the world with 5.24% of the population (March 2004) other EU states have less than 1% - how long will it be before DNA will be demanded in order to get a passport or ID card? The Prum Treaty signed by seven EU government already allows for the exchange of fingerprint and DNA data without a positive alphanumeric search first (the Commission wants the SIS II to have this power too).

The Communication says there will be "no registration of EU citizens at European level" and that national passport/ID databases cannot be searched for terrorism or crime - well, they will in the UK under the ID Card Bill for starters. Indeed everyone resident in the EU - citizens, third country nationals, those given permission to stay and visitors - will all in time have biometric passports and/or ID cards. Every flight in and out of the EU by everyone will be recorded under the planned PNR (passenger name record) system.

It also says that the standards for searching EURODAC, SIS II and VIS should be "significantly higher than the threshold for querying criminal databases". First, it fails to address the fundamental principle of data protection that data collected for one purpose should not be used for another purpose. Second, the Commission proposal on access by all the agencies to VIS simply says that a search should "contribute" to the investigation of a suspected offence - which sounds more like a blank-cheque to carry out "fishing expeditions".

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Statewatch, PO Box 1516, London N16 0EW, UK

Tel: (00 44) 020 8802 1882 Fax: (00 44) 020 8880 1727 E-mail: [office@statewatch.org](mailto:office@statewatch.org) Website: <http://www.statewatch.org>

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UK

### Shoreditch's digital expansion a "21st century Big Brother"

Shoreditch, in Hackney, London, will implement Europe's largest broadband expansion when the *Shoreditch Digital Bridge* goes live early in 2006. Principally funded by the *Shoreditch Trust* (a government funded community association), the broadband network will deliver a range of services to 1,000 local residents from March with the total number of households receiving the service expected to be over 20,000 by the end of the year. For the price of £3.50 a week residents will receive cheap local calls, digital TV, public service channels and high-speed access to the internet.

Alarmingly however, included in the package is "real time access to online community webcams across the estates that can be monitored by residents in their homes, through the network". This channel, already dubbed "Asbo TV" will provide access to the borough's 400+ CCTV cameras through which residents will be able to identify suspicious characters and report crimes, anti-social behaviour and ASBO breaches. Residents will be able to refer to an online gallery of those subject to orders and then use an anonymous e-mail system to report transgressions to the police.

This scheme under which residents will effectively be able to spy on each other could facilitate vindictive behaviour. Local councillors have also warned that burglars could use the channel to monitor empty premises. Atul Hatwell, a member of the *Shoreditch Digital Bridge* project claimed "the CCTV element is part curiosity, like a 21st-century version of Big Brother..." It is also difficult to see the scheme being compatible with the UK Information Commissioner's CCTV code of practice which stresses the importance of ensuring "access to, and disclosure of, the images recorded by CCTV and similar surveillance equipment is restricted and carefully controlled..."

Haringey Council has recently taken a similar approach after allocating £150,000 to fund video cameras which victims of anti-social behaviour can use to gather evidence. The money will also go towards the employment of "professional witnesses" people paid to observe persisting anti-social behaviour and give evidence in court.

*BBC News Website 10/1/06; The Sunday Times 8/1/06; The Register 30/12/05; Shoreditch Digital Trust: <http://www.shoreditchtrust.org.uk>*

SPAIN

### Galician nationalist youths accused of terrorism

On 14 November 2005, ten Galicians were detained in Lugo, Vigo, Ourense and Compostela as part of *Operación Castañeiras*, carried out by the *Guardia Civil's* Information Group for Obtaining Information in A Corunha, in relation to their alleged membership of the *Associació da Mocidade Independentista* (AMI, Association of Youth for Independence). They are under investigation for terrorist offences including *apología* (justifying terrorism), causing public damage and disorders, resulting in their appearance before an *Audiencia Nacional* judge in Madrid (who has exclusive competence for cases involving terrorist offences).

In an article in *Esculca* bulletin defence lawyer, Guillermo

Presa Suárez, gave an account of the police operation and explained the difficulties faced by the defendants. He noted that the use of trumped-up terrorist offences permitted the by-passing of the competent judicial authority in Galicia in favour of the *Audiencia Nacional*, which ordered that the content of investigations be kept secret. The serious nature of the charges was then used to justify subsequent searches, in which objects as varied as a Che Guevara poster, love letters, cash, social centre accounts and magazines were confiscated.

Presa Suárez details the defendants' changes of mood. Initial surprise and confidence, resulting from a precedent case against the left-wing nationalist youth association *BRIGA*, in which the *Audiencia Nacional* was called upon to intervene in relation to alleged terrorist offences, but had to return competence to a court in A Corunha. The prisoners' treatment was reportedly reasonable in A Corunha, but deteriorated once they were transferred in a police van to Madrid, as a result of the hostile attitude of officers in the General Directorate of the *Guardia Civil*. The men were forced to stand for several hours, suffered psychological pressure and insults (both personal and against the Galician language), were subjected to threatening interrogations and heard shouts and blows coming from the adjacent room.

The mood improved again in the *Audiencia Nacional*, because the judge was known for a strict interpretation of anti-terrorist norms, contrary to notions of the "criminalisation of scenes". The prosecuting magistrate did not ask for any of the defendants to be placed in pre-emptive custody, and they were released. The *Audiencia Nacional* subsequently decided to refer the case back to Galician courts, "meaning that the investigations do not involve charges of a terrorist nature, and showing that the *Guardia Civil's* Information Group tried to force" the situation, according to Presa Suárez. It is possible that a Galician court will reject the telephone taps, searches and e-mail account interceptions that the *Guardia Civil* sought to introduce.

*"A Guardia Civil e O Poster do Che", Esculca, n.11, December 2005, pp.9-10; available at: <http://www.esculca.net>*

### Civil liberties - new material

*Mitteilungen der Humanistischen Union e.V.* No. 190, III/2005, pp 28. This issue of the newsletter of the German civil liberties group explains the decision of the Federal Constitutional Court on the illegality of preventative interception of telecommunications and its impact on Bavaria's police regulation. It also includes a legal assessment of the decision of the Constitutional Court that annulled the German law implementing the European Arrest Warrant as well as the HU's campaign against the attempt by the regional government of Lower Saxony to withdraw the non-public elements of data protection from the remit of its data protection officer namely, to transfer the control of adherence to data protection rules in the private sector to a government department (regional interior and sports ministry). Available from [info@humanistische-union.de](mailto:info@humanistische-union.de)

**Crude Designs: The rip-off of Iraq's oil wealth**, Greg Muttitt. *PLATFORM*, November 2005, pp46. This important report is published by PLATFORM, with Global Policy Forum, the Institute for Policy Studies (New Internationalist Project), the New Economics Foundation, Oil Change International and War on Want and reveals how planned oil policy in Iraq, originating in the US State Department, allocates the majority of the country's oil fields (64%) for development by multinational oil companies. Philip Thornton, in the *Independent* newspaper, has estimated that this "privatisation" will cost Iraq US\$200bn. Available at <http://www.waronwant.org/?lid=11112>

**Keeping Broadcasting Public: The BBC and the 2006 Charter Review**, Tom O'Malley. *Campaign for Press and Broadcasting Freedom*, September 2005, pp36. This pamphlet considers the 2006 review of the BBC's charter and argues that community groups, trade unions and local political parties should intervene in the debate.

**MISC - Multi-systems & Internet Security Cookbook**. Issue 1, Oct-

Dec 2005, pp 82, EUR 8,50. First issue of a new bi-monthly German language computer magazine offering advice on practical defences to interception and laws relating to security. One central problem of technology and security is that software intended to fend off interception can also be used for interception (dual principle); this issue concentrates on the limitations of anti-virus programmes, intrusion prevention and detection systems and personal firewalls. Regular features cover new technological developments in IT security. Available from [redaktion@miscmag.de](mailto:redaktion@miscmag.de).

## IMMIGRATION

### UK

## Child asylum seekers left traumatised by their treatment

The Children's Commissioner for England, Professor Al Aynsley-Green, made a number of profound criticisms of government policy, or rather lack of a policy, towards child asylum seekers over the Christmas period. In December, following his visit to the Yarl's Wood Immigration Removal Centre in Bedfordshire he accused the centre of holding children in prison-like conditions. At the beginning of the New Year he said that the government was permitting immigration officials to "snatch" children from their homes leaving them traumatised, in a manner that was outrageous in a civilised society.

The respected paediatrician and former children's health advisor to the National Health Service published his report on a visit to Yarl's Wood Immigration Removal Centre, which is run by GSL, formerly part of Group 4, at the end of October 2005. Aynsley-Green's visit, in his capacity as the Children's Commissioner, came after concerns had been raised about the UK's immigration detention of children by the UN Committee on the Rights of the Child and the European Commissioner for Human Rights. A report on a visit to Yarl's Wood by the Inspector for Prison's, Ann Owers, in February 2005 also raised the alarm when she warned that children were being "damaged" by their detention at the removal centre.

During Aynsley-Green's visit to Yarl's Wood he spoke to a number of children and says that:

*The picture that emerged from the visit was one of bewilderment and insecurity for the children. They had no clear idea why they were being detained.*

He continued:

*Many [children] had no recollection of their country of origin...and in some cases, did not know their parents' state of origin. Indeed, one child, when asked where his mother came from, stated quite clearly that she had come from London. Many of the children clearly saw themselves as English children, (p. 9, Point 22).*

The Commissioner also noted that a number of children had been "snatched" from their home without any form of notice. He said:

*Children find it at the very least distressing, and at the worst traumatic, to be removed from their home without notice. There is research evidence that indicates that such sudden removal can have long-term negative effects on child's mental health (p. 9, Point 24).*

He cites the example of one schoolboy who was seized by an immigration detention team and arrived at Yarl's Wood still in his school uniform.

The report also condemns the length of detention that some children suffer. Ministerial authority is required for the detention of a child for more than 28 days, and this arrangement has been described as "less than satisfactory" by the European Commissioner for Human Rights. The Yarl's Wood report shows

that 24 children were detained for between 22 and 28 days; 24 for between 29 and 56 days and 3 children were incarcerated for more than 57 days (p. 10, Point 25). This is "highly regrettable" the Commissioner states. Not knowing what was going to happen to them is also another source of distress for the children, but there was no mechanism for their concerns to be expressed.

Aynsley-Green also attacked unnecessary security measures that meant that children had to pass through as many as ten locked doors and a barred "cell" door. He found that there was a lack of toys and inadequate education measures. Some young people complained of being bullied. Commenting on his report, Aynsley-Green expressed concern to *The Times* newspaper that the treatment of asylum seeking children was at odds with the goals of the government's "Every Child Matters" legislation. He added that his concerns were shared by the Children's Commissioners for Scotland, Wales and Northern Ireland.

*Children's Commissioner "An Announced Visit to Yarl's Wood Immigration Removal Centre", 31.10.05:*

[http://www.ncadc.org.uk/newszine66/Yarlwood\\_children\\_commissioner.pdf](http://www.ncadc.org.uk/newszine66/Yarlwood_children_commissioner.pdf)  
*The Times* 5.1.06.

### EU/AFRICA

## Migrant deaths at sea persist as focus shifts onto the African mainland

In the last quarter of 2005, there were a number of incidents at sea that resulted in the death of migrants.

\* On 1 October, a shipwreck near Fuerteventura resulted in the confirmed death of three people and the disappearance of 14, presumed to have died, after their dinghy capsized during a rescue attempt by a commercial fishing boat.

\* On 12 October, a migrant drowned as he attempted to swim to the shore after a dinghy crossing in Adra (Almería).

\* On 31 October, a dinghy carrying over 50 migrants was intercepted by the *Guardia Civil* Maritime Service and the Sea Rescue Service to the south of Adra, in which two men, one Moroccan and one sub-Saharan, had died.

\* On 4 November, a small boat heading for Greece sank off the coast of Cesme (Turkey) resulting in 12 people dying and 18 disappearing.

\* On 17 November, a shipwreck off the coast of Ragusa (Sicily) resulted in 9 confirmed deaths, and between 20 and 30 disappearing after falling into the sea.

\* On 26 November, passengers of a dinghy which was intercepted to the south of Cabo de Gata (Almería) with one dead body on board, said that 22 migrants had fallen into the sea. After a search operation, they were declared missing, presumed dead.

\* On 27 November, a tropical storm caused the shipwreck of a dinghy attempting the crossing from Morocco to the Canary Islands, 30 miles from the Moroccan coast, leading to the death of six people and 12 more being declared missing.

\* On 30 November, the *Guardia Civil* found a body in an advanced state of decomposition in Tarifa (Cádiz).

\* On 19 December, at least 30 people died off the coast of Mauritania after the boat in which they embarked to attempt the crossing to the Canary Islands sank, and 14 people were rescued.

\* On 24 December, a dead body was found floating in the water by *Guardia Civil* officers in the province of San Roque (Cádiz). On the same day, a dinghy carrying 16 youths from the Western Sahara went missing during an attempt to reach the Canary Islands. This instance was reported by the NGO *Alter Forum* as being the first attempt by Western Saharan youths to reach the Canary Islands in a dinghy, and an effect of "the terrible social and economic condition in the occupied

territories" and of the persecution by the Moroccan army and police.

\* On Christmas Day, the dead body of a 30-year-old Moroccan was found at sea in the province of Tarifa, alongside a float tied to plastic bins that were tied together. This was, presumably the apparatus he had put together to attempt the crossing.

\* On 27 December 2005 the dead body of another Moroccan migrant was found by a scuba diver and retrieved by an underwater Sea Rescue team.

This list, which predominantly mentions deaths that occurred during attempts to reach Spain, is not comprehensive, although it illustrates the large number of countries where these tragedies are occurring.

### **Ceuta and Melilla**

Mass attempts by migrants to cross the border fences in the Spanish north African enclaves of Ceuta and Melilla in September and October, and the death of at least 11 sub-Saharan Africans in two such incidents, in Ceuta on 28 and 29 September 2005, and in Ceuta on 6 October (when six migrants were shot), provide evidence of the effects of the EU's immigration policies and the increasing pressure exerted on countries of origin and transit to curb immigration flows. However, and in spite of the outrage that the events caused, this was neither unprecedented nor was it the end of the story, as a range of questionable practices were revealed.

The deaths of men in different incidents during the previous month, which included a national of Cameroon who, according to eye-witnesses, was shot with rubber bullets by members of the *Guardia Civil* at point-blank range after climbing the fence in Ceuta, had caused concern. Nonetheless, internal investigations cleared members of the paramilitary police force of any responsibility in the death. Likewise, after the multiple shootings of 6 October, the Spanish press focused on whether the shots had come from the Spanish or Moroccan side of the border (Moroccan authorities assumed responsibility for the incident in October, arguing that four migrants were shot by border guards acting in "self defence").

Abuses committed by *Guardia Civil* officers also surfaced, with one officer caught on film repeatedly kicking a migrant who lay passively on the floor (broadcast in a *Tele5* news programme). Photographs of others illegally expelling migrants through an opening in the border fence were shown, although these incidents failed to arouse much criticism of the force. The possibly lethal use of plastic bullets was not deemed noteworthy either. Statements made by eye-witnesses criticised the extreme violence used by *Guardia Civil* officers deployed on the border, some of which reportedly resulted in deaths.

The Zapatero government reacted by deploying the army in the border region, announcing that the border fences would be raised from three to six metres, carrying out the illegal expulsion (without judicial scrutiny) of a group of 73 migrants that included refugees who were denied the opportunity to file asylum claims, and expelling minors. The practice of expelling unaccompanied migrant minors was introduced by the previous government, but repealed by the *Fiscal General del Estado* (attorney general) on 26 November 2004 (see "*Spain: Update: Order on the treatment of migrant minors as adults repealed*", *Statewatch news online*, February 2005). The refugee support organisation *Comité Española de Ayuda al Refugiado* (CEAR) provided details of the 73 expelled migrants, noting that an embassy officer from the Congo was involved in identifying its members, which included asylum seekers from Congo, a practice that contravenes international agreements of which Morocco is a signatory. The mass expulsions were criticised by the head of the Council of Europe Human Rights Commission, Alvaro Gil-

Robles, among other organisations.

On the Moroccan side of the border, the situation was even worse, and human rights groups documented raids against would-be migrants by the army and security services in border areas near Ceuta and Melilla. These groups also noted mass expulsions to the desert, where many people were abandoned and left to make their own way home, near the Moroccan borders with Algeria and Mauritania, resulting in dozens of documented deaths. Over 50 people were saved by rescue missions from the long-term refugee camps hosting members of movements for Western Saharan independence (from Morocco).

On this occasion, the European media were vigilant and followed up the events, but Spanish NGOs *Asociación pro Derechos Humanos de Andalucía* (APDHA) and *SOS Racismo*, as well as *Chabaka* (a network of human rights organisations from northern Morocco) warned that both the brutal raids against sub-Saharan migrants, and the abandonment in the desert of many of the ones who were detained, had been taking place for some time. In February 2005 (see *Statewatch news online*, February 2005, "*Appeal highlights the human rights implications of the transfer of responsibility for immigration controls to third countries*"), they claimed that 20 people had died after being abandoned near the Algerian border, as well as providing information about army raids against immigrants near Ceuta.

On 30 December 2005, at least 27 (according to the Egyptian authorities, several dozen more according to other sources) Sudanese were killed as police in Cairo cleared a protest camp near to UN offices that had existed for three months. The protestors had set up the camp after the UNHCR stopped aid to asylum applicants whose applications had been refused. Protestors claim that it is not safe for them to return to Sudan due to the armed conflict in the Darfur region. Eleven people had earlier died in the camp from hunger, cold or exhaustion.

"*Derechos Humanos en la Frontera Sur 2006. Informe sobre la inmigración clandestina durante el año 2005*", *Asociación pro Derechos Humanos*, January 2006, pp.22, available at:

<http://www.apdha.org/documentos/inmigracion/informe2006.doc>

"*Morire di frontiera*", by Gabriele del Grande

(<http://www.redattore sociale.it>), 25.11.05, available at:

<http://www.meltingpot.org/articolo6359.html>; and related chart of migrant

deaths: [http://www.meltingpot.org/IMG/doc/Morire\\_di\\_frontiera.doc](http://www.meltingpot.org/IMG/doc/Morire_di_frontiera.doc); The MIGREUROP network has produced exhaustive press reviews regarding the

events in Ceuta and Melilla, available at:

<http://www.migreurop.org/IMG/pdf/ceutapresse.pdf> (29.9-13.10); and

[http://www.migreurop.org/IMG/pdf/revue\\_de\\_presse\\_Ceuta-Melilla\\_6-](http://www.migreurop.org/IMG/pdf/revue_de_presse_Ceuta-Melilla_6-10_au_2-11.pdf)

[10\\_au\\_2-11.pdf](http://www.migreurop.org/IMG/pdf/revue_de_presse_Ceuta-Melilla_6-10_au_2-11.pdf); ongoing coverage and background material at:

<http://www.migreurop.org/rubrique177.html>

### **UK**

## **Deportation a "regrettable mistake"**

The Home Office practice of deporting asylum seekers to unsafe countries in the middle of the night before they have had an opportunity to seek legal advice has been condemned by a senior judge after the Home Secretary, Charles Clarke, admitted an Iraqi Kurd - Mr. A - was unlawfully deported to Iraq. British officials are searching for the man who was not allowed to make an appeal to stay. Mr. A was one of 15 Iraqi Kurds who was forced onto a plane at Stansted airport shortly after midnight on 20 November; an earlier attempt to deport the men in August had failed after legal challenges were mounted. A lawyer representing the Home Office said that "a regrettable mistake" had been made and that if he could be found he would be allowed to make an appeal to stay in the UK with his partner and two children. The events only came to light when Mr. A's fiancée,

who is a British citizen, turned to the Refugee Legal centre for help.

Responding to the Home Offices' remarks, High Court judge Mr Justice Collins said: "Frankly, the court has got a little fed up with how the Home Office is putting these removals into practice." He asked why it was necessary to remove people at "midnight in the middle of the weekend" and said that the practice forces costly emergency, late night applications to judges to block the deportation. "The Home Office must accept that in 99 cases out of 100 the duty judge really has no option but to make an order staying the return until the matter can be brought to court", he added, before noting that "This is happening far too often." A spokesman for the Home Office said that it had taken notice of the judges comments and "we will consult the courts as we always do in relation to any review of our practices." The spokesman then said that Britain was planning to increase the numbers of forced and voluntary removals.

*Kurdish Media*, <http://www.kurdmedia.com/news.asp?id=10933>; *BBC News* 19.5.05; *Times* 20.12.05

## Immigration - in brief

■ **UK: Scottish Amnesty petition launched:** Positive Action in Housing has launched a petition condemning "dawn raids" and the criminalisation of asylum seekers in Scotland. The campaign "is deeply concerned at the inhumanities emanating from Home Office asylum policy on Scottish soil. These raids are devastating whole communities left heartbroken by the sudden disappearances of their friends and neighbours and pupils. We seen no reason why Scottish asylum families should not be able to remain in Scotland when Scotland has an economic need for people to work and settle in this country." It add that "dawn raids", "anytime" raids or the weekly disappearance of innocent families have no place in a civilised society. *Positive Action in Housing can be contacted by email at: home@paih.org. The petition can be accessed at <http://petitiononline.com/amn2005/petition.html>*

## Immigration - new material

"**Salud mental e inmigración**" [Mental health and immigration], *Mugak*, n.32 July-September 2005, pp. 59, (6 Euros). This issue looks at the mental health disorders that are experienced by a growing number of migrants (most notably Ulysses' syndrome, aka Syndrome of Immigrants with Chronic and Multiple Stress disorder), as well as events in the border region of the North African Spanish enclaves of Ceuta and Melilla. The enclaves produced "images that are too strong for our stomachs [to bear]". The editorial is entitled "Paying the executioner" in reference to Spanish and European pressure on, and funding for, Morocco to take care of the enclave problem. This has seen Morocco resort to its "sadly famous" security forces and army, the shooting of six migrants in Melilla and the abandonment of hundreds in the desert where many died. "But well", the author ironically concludes, "now it is others who are in charge of the massacre. Now we can sleep better". Another essay analyses the mental disorders that migrants are suffering as a result of their journey, because "Today, migrating is becoming, for millions of people, a process that involves such intense levels of stress that they surpass human beings' ability to adapt". Available from: *Centro de Estudios y Documentación sobre racismo y xenofobia, Peña y Goñi, 13-1 - 20002, San Sebastián.*

**Making the City Work: low paid employment in London**, Yara Evans, Joanna Herbert, Kavita Datta, Jon May, Cathy McIlwaine & Jane Willis. *Queen Mary, University of London*, 2005 (ISBN 0-902-23818-3), pp 37. This report examines four sectors of the London economy (hospitality work, home care, food processing and contracted cleaning) and concludes that the overwhelming majority of London's low paid workers are migrants. It found that 90% out 341 randomly selected low paid workers who were interviewed were born outside of the UK; they earned less than one third of the average earnings in London. The report

also found that half of the workers do not get annual pay increases; half of them work unsocial hours and 70% have no access to a pension scheme. The report also found that, contrary to popular opinion, 94% pay tax and national insurance while only 16% claim any kind of state benefit: <http://www.geog.qmul.ac.uk/globalcities/Report2.pdf>

"**Nodi e snodi. Progetti e percorsi di integrazione degli stranieri immigrati**", Rita Bichi & G. Giulio Valtolina. *Fondazione ISMU, Iniziative e Studi sulla Multiethnicità*, pp.227, July 2005. This study looks at the different stages involved in migration, from the initial decision to emigrate to the ways in which migrants structure their daily existence, seek to fulfil their needs and overcome the obstacles they face with regards to employment, housing and documents; it also examines how migrants interact with the host society and its institutions, as well as networks of fellow migrants on their arrival. A number of interviews with migrants are included, and the authors draw up a useful table in which they identify up to eight key stages during this process, and analyse the different options that are open to, and adopted by, migrants, in key moments when they must make decisions that have important implications. Available from: *Fondazione ISMU, Via Copernico, 1 20125 Milano.*

"**The Tenth Italian report on Migrations 2004. Ten Years of Immigration in Italy**", *Fondazione ISMU, Iniziative e Studi Sulla Multiethnicità*, pp.290, July 2004. This report traces the evolution and characteristics of immigration to Italy over a ten-year period. It includes a wealth of data and statistics as well as examining developments in fields including law, labour, schooling, health, housing crime and "deviance", and community trends and the attitudes towards immigration in Italian society. Significant issues that are raised include strategies for managing migration (from amnesty to regularisation, bilateral agreements, border checks and rejections), shifts in employment patterns, housing (from tenants to owners), types of immigration (from individual to family-based immigration), schooling (with many countries represented in classrooms), leading to changes in the mentality of the host population and authorities ("from fear to pragmatic realism"). These issues are considered in a discussion about the model of integration that would best suit Italy. Available from: *Fondazione ISMU, Via Copernico, 1 20125 Milano.*

**My Eyes are Storms of Tears**, Kate Adams. *Red Pepper* December 2005, p. 8. This article, by a member of the Kent Campaign to Defend Asylum Seekers, examines the tiny number of successful asylum applications by unaccompanied children. It focuses on the government's new deportation quotas, the abolition of indefinite leave to remain and cuts in legal aid which combine to make the young easy targets for immigration raids. The Kent Campaign to Defend Asylum Seekers can be contacted at: [kadams314@hotmail.com](mailto:kadams314@hotmail.com)

*Abolishing Borders from Below* Issue 22 (December) 2005, pp 60. This bi-monthly Anarchist Journal from Eastern Europe covers political developments in over 20 eastern European countries. This issue highlights the repression of left-wing movements in Russia, the Ukraine and Lithuania and institutionalised homophobia in Poland and tackles sex work in eastern Europe. Also included is an interesting background article on the complex composition of the left-wing movement in Russia and its relationship to nationalist ideas. Available from: [abolishingbb\\_sub@riseup.net](mailto:abolishingbb_sub@riseup.net)

**Detention of Asylum Seekers in the UK and USA: deciphering noisy and quiet constructions**, Michael Welch & Lisa Schuster. *Punishment and Society* Vol. 7 no. 4 (October) 2005, pp. 397-417. The authors' conclude that "Despite their divergence on popular conceptions of asylum seekers, American and British governments have adopted similar strategies, namely detention." Citing the work of Stanley Cohen, they continue: "The unnecessary detention of asylum seekers in the UK is facilitated by over-reaction in the form of moral panic driven by politicians and tabloid journalists who characterise those fleeing persecution as bogus and threats to the welfare state. That over-reaction simultaneously produces under-reaction whereby human rights violations against those asking refuge fail to reach a critical mass. Similarly, in the USA, quiet constructions of asylum seekers as threats to national security also serve to keep their unjust confinement from entering the collective conscience."

**Immigration Law Update**, Alan Caskie. *SCOLAG Legal Journal*, Issue 337 (November) 2005, pp. 259-261. Review of significant court cases from England and Scotland in the field of asylum, immigration and nationality law.

## EUROPE

### EU

## First Galileo satellite launched

On 28 December 2005 the launch of *Giove-A*, the test satellite for the EU's Galileo system, from Baikonur in Kazakhstan, was celebrated for paving the way for future independence for Europe from the US controlled GPS (global positioning system). The celebrations mask a far more insidious future - a future in which the 4 billion euros that Galileo will cost can only be recouped through the sale and deployment of unprecedented surveillance technologies.

The UK, which already leads the EU as far a surveillance policy and practise is concerned will pioneer many of the new technologies. The much vaunted "road-pricing system" in which every single car journey in Britain will be monitored and recorded so as to bill the driver for using the road network was always going to use Galileo and the government already appears committed to its introduction. It is hard to think of a more intrusive way of making people pay for the privilege of using the roads in their country.

At the same time, Galileo will bring many benefits to those with access to the technology. As the European Commission puts it:

*Individuals, companies and administrations will all be able to benefit, whether on the roads, railways, in the skies or at sea: hikers will be able to find their way, and tourists will be able to find the museum or restaurant they are looking for, and taxi drivers will arrive at the right destination.*

And for this reason, Galileo will be presented as a technological triumph - its surveillance capabilities will at best be ignored and at worst repackaged and sold as progress to a tech-hungry world.

This, of course, is the fundamental flaw in the prevailing wisdom. "More and more often", asserts the Commission, "it will become necessary to ascertain one's precise position in space and time in a reliable manner". But necessary for whom? Given that most sane people are perfectly well aware of exactly where they are in both time and space could it rather be that it is governments and corporations who want to know exactly where their citizens and customers are?

BBC: <http://news.bbc.co.uk/2/hi/science/nature/4555298.stm>; European Commission: "Galileo: European Satellite Navigation System" [http://europa.eu.int/comm/dgs/energy\\_transport/galileo/index\\_en.htm](http://europa.eu.int/comm/dgs/energy_transport/galileo/index_en.htm)

## LAW

### ITALY

## Anti-terrorist law amendments - exceptional but permanent

The attacks on the London transport system on 7 July 2005 produced a knee-jerk reaction by the Italian authorities, because the country seemed a likely target for terrorist attack in view of its ongoing support for the war on Iraq. This led to hundreds of searches and the expulsion of Muslims suspected of involvement

in "radical activities" or of immigration offenses. The anti-terrorist law was also amended, introducing stringent measures on a permanent basis within a month.

On 1 August 2005, the new measures came into force only five days after the government had presented the decree that the Council of Ministers (the Italian cabinet) approved on 22 July 2005. Guiseppe Pisanu, the interior minister, explained that measures in the decree's 19 articles were not "exceptional" but rather, an:

*intervention to make existing norms sharper and more incisive in the fight against terrorism*

The claim sought to reduce concern over the measures that were to be adopted, but a closer reading suggests that it features the adoption of "exceptional" measures on a permanent basis. One measure that is time-tied will make data retention compulsory until 31 December 2007.

Significant amendments include the limiting of judicial oversight (which is often replaced by ministerial oversight) over expulsions and investigative activities; powers given to the army to search and detain terrorist suspects; the sanctioning of a departure from ordinary procedure for practices such as detention, searches, surveillance or the adoption of restrictive measures in cases involving terrorist offenses; the expansion of the definition of terrorist conduct in line with the definition adopted at an EU level (including "apología" or justification), and increased punishment for individuals contravening restrictive measures imposed upon them.

The measures apply to internal terrorism, or terrorist activity against other countries or international organisations (the last two were first introduced in Italy following the 11 September attacks in the USA, see *Statewatch* Vol. 11 no 5). In the first place, they limit judicial oversight and remove some guarantees for suspects (extending the period of initial incommunicado questioning from 12 to 24 hours) and remove legal restrictions applying to the expulsion of foreigners whose presence in the country is deemed to benefit terrorism "in any way" (potentially on the basis of secret evidence). The Interior Minister or *prefetto* (in charge of security in a given city) will be able to order expulsions, and the adopted text expressly states that appeals will not result in a suspension of the expulsion. The possibility of obtaining long term residence permits is introduced for "illegal" migrants who cooperate with authorities by providing information to combat terrorist activities, and a special license is required for any kind of establishment where telephones or computer terminals are made available for use by the public, customers or members (except for public payphones, but applicable to call centres). This involves a regime whereby, for example, people using a computer terminal in an Internet café will have to identify themselves before logging on.

Other measures that were introduced include the extension of powers to intercept communications for the secret services and increased sanctions against people "taking part in public demonstrations...in public spaces...using helmets or with the face partially or completely covered" (from prison terms of one to six months and fines of between 25 and 100 Euros - to one to two years imprisonment and fines of between 1,000 and 2,000 Euros). Criminal offenses such as forging documents or assisting illegal immigration are linked more closely to terrorism in the amendments, and are likely to result in higher sentences. They will be investigated using the new powers that have been introduced to combat terrorism to see if any kind of link, however remote, can be established with terrorist suspects. (An in-depth analysis of the amendments is available on *Statewatch news online*).

### Large-scale raids, searches and expulsions

Large-scale raids and searches of migrants by police in several Italian cities were taking place before last July's explosions in

London. For example, in April 2004 in Cuneo, Brescia, Milan, Pistoia and Rome, "anti-terrorist" police raids targeted 161 migrants and resulted in the expulsion of 15 people and three arrests, all of which were unrelated to terrorism (for further figures, see: "Italy: Worrying trends detailed in interior ministry report on security", *Statewatch* Vol. 15 no 5).

These practices intensified in the wake of the London bombs with 201 nationwide searches on 8 July 2005 that targeted 401 people and led to 174 people being "subjected to further controls" (many for criminal activities rather than terrorism) in what was described as a "pre-emptive" operation, ostensibly aimed at the "usual suspects" as many had already had their homes searched in the past. Further nationwide searches occurred on 13 July and, on 20 July that targeted Islamic centres and a number of Imams in provinces including Rome, Milan, Latina, Ancona and Genoa.

The *prefetto* and interior minister were using powers to order expulsions without judicial oversight and the right of appeal, against foreigners whose presence in Italy is deemed to benefit terrorists "in any way" under the anti-terrorist law that came into force on 1 August 2005. The provision has already been used to expel Bouriqi Bouchta, responsible for a Turin mosque, to Morocco on 6 September 2005, and an Algerian youth suspected of GIA membership to Algeria. It was also used to carry out a removal on 10 December 2005, when the interior minister, Guiseppe Pisanu, ordered the expulsion to Morocco of Mohammed Daki, whose acquittal in relation to charges of terrorism (see below) in Milan in January 2005 was confirmed by a Court of Appeal on 28 November 2005.

On 12 July, in Brescia, the first two suspects charged with "international terrorism" were found guilty, receiving sentences of four years and eight months and three years and four months. Episodes targeting Muslims have included the closing of an Arabic school in Milan in September, and of a mosque in Gallarate (Varese) on 13 July 2005, both for health/hygiene reasons. In reference to the first incident, however, the interior minister noted that "Islamic children must go to state schools and learn Italian" to avoid the creation of ghettos.

*Il manifesto* 13.7.05; *Repubblica*, 26.7, 21.8.05; *Searchlight*, October 2005; *Statewatch news online*, August 2005 "Italy: tough new anti-terrorist law adopted".

## GERMANY

### Expected ECHR ruling on forced use of emetics

In recent years, Germany has come under increased criticism, particularly by *Amnesty International*, for police brutality especially against migrants and black people (see *Statewatch* Vol. 15 nos 1 & 2). The forcible use of emetics on people suspected of having swallowed drugs, which has led to the death of two African citizens so far, is now being challenged in court. On 9 December 2001, 19-year-old Cameroonian Achidi John died in Hamburg after a public prosecutor ordered police to force-feed him an emetic to make him vomit (*Statewatch* Vol. 11 no 6). On 27 December 2004, Sierra Leonean citizen Laye Kondé died in Bremen after being force-fed emetics (*Statewatch* Vol. 15 no 1). After the death of Achidi John, the Berlin State banned the practice, but authorities in Bremen - which in 1991 was the first state in the Federal Republic to use emetics against presumed drug dealers and makes the most frequent use of the method in Germany - and in Hamburg continue to forcefully administer the substance.

On 23 November this year, a hearing started with the ECHR on the case of Abu Bakah Jalloh, a Sierra Leonean citizen resident in Cologne (Germany), who was force-fed emetics upon which he regurgitated a small bag of 0.2182 gr of cocaine. He

subsequently received a one-year suspended prison sentence for drug trafficking in 1993. Jalloh's lawyer lodged a complaint on the grounds that the evidence against his client had been obtained illegally and so could not be used in the criminal proceedings. He argued that the police officers and the doctor who had participated in the operation were guilty of having caused bodily harm in the exercise of official duties (*Körperverletzung im Amt*).

The appeal was lodged on grounds of Section 136a of the Code of Criminal Procedure (*Strafprozeßordnung*), which prohibits the administration of toxic substances as well as on grounds of disproportionality under Section 81a of the Code of Criminal Procedure (as it would have been possible to obtain the same result by waiting until the bag had been excreted naturally). Because all appeals in German courts were unsuccessful, the defence lodged an application before the European Court of Human Rights on 30 January 2000, which was declared partly admissible on 26 October 2004. The outcome of the hearing is expected next year.

*Background information on racist police practice and the use of emetics in Bremen by the Anti-Racism Bureau:* <http://www.antirassismus-buero.de/polizeipraxis/index.html>;

*See also* <http://www.wsws.org/articles/2005/jan2005/brem-j20.shtml>; *Süddeutsche Zeitung* 24.11.05. ECHR Press release: <http://www.echr.coe.int/Eng/Press/2005/Nov/HearingGrandChamberJalloh vGermany231105.htm>

## UK

### ASBO credibility dented by hypocrisy

It would appear Louise Casey is not alone in displaying inappropriate behaviour for an authority figure responsible for combating anti-social behaviour (see *Statewatch* Vol. 15 no 5). In Ludlow, a man given a three-year ASBO for directing foul language towards his neighbours was sworn at by the police officer handling the investigation. He lodged a complaint arguing, "It's totally hypocritical that I get an anti-social behaviour order against me and this officer uses anti-social language and behaviour but nothing happens to him".

In Scotland, a member of North Lanarkshire Council's ASBO task force charged with investigating complaints of anti-social behaviour was found to be almost two times over the alcohol limit after she crashed her car into a lamppost. While a number of alcoholics have been imprisoned for breaching orders forbidding them from drinking in public and entering pubs, she received a one-year driving ban and a £300 fine before returning to work for the council shown by a recent Scottish Executive report to have issued more ASBOs than any other in the country.

If those who have accrued responsibility for restoring a culture of "respect" in British society are incapable of holding themselves to the behavioural standards they are increasingly willing to penalise others for failing to meet the scheme would seem to lack credibility from the off.

*Shropshire Star* 15/12/05, *Sunday Mail* 11/12/05

## UK

### Respect?

In January 2006 Tony Blair launched the "respect" action plan; the latest in a long line of government initiatives designed to combat anti-social behaviour. Its main points are:

*"Neighbours from hell" will face eviction from their homes.*

*A "national parenting academy" will be established to train social workers, and other officials working with children, to advise parents.*

Parenting orders will be used more and fixed penalty notices for disorder will be issued to under-16s.

Police and councils will have to hold "face the people" sessions where the public can demand tougher action.

Community support officers will be able to pick up truants.

Youth opportunity cards will give discounts on activities for children doing voluntary work.

Of particular concern is that police will be able to use powers, similar to those given to them under the Anti-Social Behaviour Act (2003) to shut down crack houses, to evict persistently unruly people from their homes and, if necessary, move them to council special residential unit "sin bins". Police would then be able to "close down and seal the properties" for up to three months. The government offered students who persistently play loud music as an example of who these powers might be used against. This drastic measure, enforced as a court order, will provide an easier alternative to anti-social behaviour orders which have already been used for this purpose. In such cases individuals have been specifically banned from entering their place of residence for a minimum period of two years (see *Statewatch's* ASBOWatch website). Whether community support officers, whose training and general level of competence has often been called into question by members of the Police Federation, are up to the job of escorting unruly teenagers home or back to school is also open to question (*Statewatch* Vol 14 nos 1 & 6).

Like those before it the action plan also highlights Labour's increasing abandonment of traditional criminal law. Speaking at the launch Blair claimed the legal system to be "utterly useless" at dealing with low-level nuisance behaviour, arguing Britain was fighting 21<sup>st</sup> century crime with 19<sup>th</sup> century methods. He also admitted that fixed penalty notices, which are to be raised from £80 to £100 for anti-social behavioural offences, effectively reverse the burden of proof.

*Respect Action Plan:*

[http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/10\\_01\\_06\\_respect.pdf](http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/10_01_06_respect.pdf),  
*Independent* 10/1/05, *Guardian* 10/1/05, *Times* 10/1/05

## UK/USA

### Clark approves Babar's extradition to US

Despite the detention and torture of hundreds of "suspects" at Guantanamo Bay, Cuba and the abduction and torture of unknown numbers of people by means of "extraordinary rendition", Home secretary, Charles Clarke, approved the extradition of Babar Ahmad (31) to the United States in November 2005. Babar will be extradited to the US under the UK-US Extradition Treaty (2003), which allows for his removal to the US without prime facie evidence being presented. The US alleges that he used internet sites and email to raise funds for terrorism in Chechnya and Afghanistan, a claim that he has denied. Babar's family have said that they will appeal against the ruling and his father, Ashfaq has called for any charges against him to be brought in a British court: he said that he "had more faith in British justice than American injustice".

In January a district judge ruled that Haroon Rashid Aswat can be extradited to the US. Aswat, who was brought up in west Yorkshire, is facing charges alleging that he set up a terrorist camp in Oregon to train Britons and Americans to fight in Afghanistan; it is also claimed that he had been at a training camp in Afghanistan. He denies any involvement in terrorism and fears that he is at risk of being declared an enemy combatant by the US and shipped off to Guantanamo Bay and detained

without charge or proper access to legal advice.

Letters of support for Babar to: Babar Ahmad (MX5383), HMP Woodhill, Tattenhoe Street, Milton Keynes, Buckinghamshire, MK4 4DA. The Free Babar Ahmad Campaign website: <http://www.freebabarahmad.com/media.php>; *Guardian* 16.11.05; *IRR News Service*

## Law - new material

**The War on Terror.** *Just News* (Committee on the Administration of Justice), September 2005. This article regrets that the lessons from Northern Ireland have been disregarded in discussions around the so-called "war on terror". The CAJ questions the "ahistorical claim that the current emergency and counter-terrorist measures are somehow unique and that they offer solutions to problems. The Northern Ireland experience suggests that most of these 'solutions' have been tried and tested...[in Northern Ireland] in the last 30 years, and have failed." *Just News* is available from: CAJ, 45/47 Donegall Street, Belfast BT1 2BR.

**John Bolton and the United States' Retreat from International Law,** Wade Mansell & Emily Haslam. *Social & Legal Studies*, Vol. 14 no 4 (December) 2005. This piece looks at the writings of the former US Under-Secretary of State for Arms Control and International Security, John Bolton, who is currently US ambassador to the United Nations. Bolton's "extreme - and rather esoteric - position" is an essential part of the neocon assault on international law. The authors' argue that "while the long-term implications of this phenomenon are not yet clear...they will be substantial and will have a profound effect both on international relations and on the methods of diplomacy."

**Powers of arrest,** Dave Parker. *Police Review*, 13/1/06. The Serious Organised Crime and Police Act 2005 introduced new powers of arrest which came into force at the start of the year. This article addresses frequently asked questions regarding their use and is geared towards helping police officers prepare for the changes. The article also contains a list of common offences that used to be arrestable but have not become indictable.

**A practitioner's guide to ASBOs in the county courts,** Jan Luba. *Legal Action*, January 2006. This article reviews the scope for anti-social behaviour order applications in the county courts. Among the thorough guidelines provided include sections on when an interim order can be made, applications to discharge, vary and appeal orders and guidance on the suitability of applying in a county court ahead of a criminal court.

## MILITARY

### POLAND

### Government planning US missile defence system?

In a government declaration of November, the new Polish Prime Minister, Kazimierz Marcinkiewicz, announced plans to allow the US to install a European base to intercept long-range missiles. According to the daily newspaper *Rzeczpospolita*, the base would be located in the Tatra Mountains in southern Poland. The BBC has reported that an unnamed Pentagon official confirmed that talks between US and Polish officials had been going on since 2002. "We have the most mature dialogue with Poland because they've expressed continuing interest in the subject," he said. "There are other countries that remain interested in the dialogue on the possible emplacement of interceptors in Europe," namely Hungary and the Czech Republic.

Marcinkiewicz confirmed that Poland has been in talks for



the past three years about the possibility of hosting such a base but said that no decisions had been made yet. "This is an important issue for Poland, related to our security and to our cooperation with an important ally," Marcinkiewicz said. US tests of the multi-billion system in the Pacific in December 2004 and February 2005 both failed, provoking a crisis of confidence that threatened long-term funding for the project. It was also reported that the Industrial Telecommunications Institute in Warsaw, which makes radar systems, confirmed that it had signed an agreement for cooperation on the project with Boeing in May 2003.

So far missiles for the US "defence" system have not been stationed outside of US territory, two bases are currently located in Alaska and California. In an interview with the press agency *PAP*, retired General Boleslaw Balcerowicz commented that it was unclear if such a base was really intended to protect Europe or Poland or to serve US foreign policy interests. The conservative US think tank *The Claremont Institute*, which has devoted its mission to "recovering a limited and accountable government that respects private property, promotes stable family life and maintains a strong defence" says on its site *MissileThreat.com* that:

*Russia continues to express concern that such Europe-based sites could negate the threat of its offensive nuclear arsenal against the USA, but the US continues to emphasize that ground-based midcourse defences such as those which could possibly be sited in Poland would be very likely useless against any Russian missile attack over the pole.*

*Süddeutsche Zeitung 18.11.05; <http://www.missilethreat.com>;  
<http://news.bbc.co.uk/2/hi/europe/4445284.stm>*

## EU

### Commission preparing less military exemptions from competition

The European Commission will clarify in 2006 how defence procurements essential to national security - and thus protected from foreign competition - should be distinguished from those deemed non essential and therefore subject to the union's cross-border public tender rules. This initiative will complement the new voluntary code of conduct by the European Defence Agency (EDA) that seeks to keep EU member states from using national security to shield their defence purchases from competition.

This code will take effect in July. The commission's clarification will come in the form of a so-called interpretative communication. This in turn can lead in 2007 to a new legislative proposal to update EU tender rules to reflect the unique needs of defence tenders, such as security clearances and technology transfers.

The code of conduct aims to restrict the use of Article 296 of the EU's founding treaty, which allows an exemption from the free market for military goods in the interest of national security. The ultimate purpose is to restrict this to arms and systems of the highest value like nuclear weapons, military satellites and encryption technology. The code obliges a national defence ministry to explain to the other 24 defence ministries, but not to the EC, its reasons for invoking 296. Specialised law firms are expecting court action in this field if the code is combined with a form of legislation.

The EDA also plans to create a website in 2006 where prior notification of all defence contracts to be competed will be centralised.

*Defense News 12.12.05 (Brooks Tigner)*

## Military - in brief

■ **UK: Troops deployed to Afghanistan:** Defence secretary, John Reid, has announced that an extra 3,300 British troops are to be deployed in Afghanistan. The figures adds to the 1,000 already in the country and 1,950 that had been announced earlier; the overall total of troops in the country will not exceed 5,700 at any one time. In May, the UK will take control of Nato forces in the country. The timing of the deployment, to Helmand province, as the Taleban begin to flex their muscles, has caused some surprise. The cost of the operation is expected to exceed £1 bn over three years. The deployment is part of a "counter-terrorism" operation designed to prevent Afghanistan "from falling into the hands of the Taleban." At the moment much of the country is in the hands of traditional warlords, selectively backed and financed by the United States, and a resurgent Taleban. President Hamid Karzai is largely confined to the capital, Kabul. *BBC News*

■ **Norway: Government puts brake on overseas intervention:** Norway's new labour/left/green government will withdraw its special forces from the US-led Operation Enduring Freedom in Afghanistan, along with all Norwegian personnel serving in Iraq except for a small group of officers deployed by NATO. The new government intends however to increase Norway's contribution to the International Security Assistance Force in Afghanistan. In the future, Norway will in preference participate in UN international operations. Norway will not withdraw the 150 personnel it has committed to the Swedish-led Nordic EU Rapid Reaction Force but will only participate in EU operations that have a clear UN mandate. Norway has also announced it will work for an international tax on weapons trading. *Jane's Defence Weekly 19.10.05 (John Berg)*

■ **UK: Court martial over illegal war.** An RAF doctor faces jail after being charged with disobeying orders after refusing to fight in the Iraq war because he believes that it is illegal. Flight Lieutenant Malcolm Kendall-Smith, who is based at RAF Kinlos in Morayshire, Scotland, is facing four charges of disobeying a lawful command. Kendall-Smith has been decorated for his role in military operations in Afghanistan and for two previous tours in Iraq. He decided that it would be wrong to return after studying the advice to the government given by the attorney general, Lord Goldsmith. A serving officer is justified in refusing to obey a command if it is illegal. Senior officers have recently expressed concern at a recruitment crisis triggered by the Iraq war. General Sir Michael Walker, the chief of defence staff said that the army's ability to recruit was suffering because people saw the armed forces as guilty by association with Tony Blair's decision to invade Iraq. *Guardian 19.10.05, Sunday Times 22.10.05*

## Military - new material

**European Defense Integration: Bridging the Gap between Strategy and Capabilities.** *Center for Strategic and International Studies, Washington 2006.*

**Green Paper on a European programme for critical infrastructure protection.** *European Commission, Brussels 17.11.05. COM(2005) 576 final*

**Europäische Sicherheits- und Verteidigungspolitik - Fortschritt auch ohne Verfassung** [European Security and Defence Policy - Progress even without a Constitution], N. Kubovcsik/M. Wiemers. *Europäische Sicherheit 11/2005 pp. 32-35*

**Das Einsatzführungskommando der Bundeswehr als strategisches Hauptquartier der EU** [Joint Operations Command of the Bundeswehr Serving as Strategic Headquarters of the EU], N. Neesen.

**Iraq: The State We're In**, Patrick Cockburn. *Independent Extra*, 14.10.05, pp8. This supplement to the *Independent* newspaper consists of an extended essay by their journalist in Baghdad, who asks searching questions about the "monumental series of blunders that plunged the [Iraqi] nation into chaos" and "explains why the conflict will be longer, bloodier and more profound in its consequences than the Vietnam war."

the issue of suicide in prisons very seriously, and in the face of population pressures, suicide prevention efforts have continued with unprecedented energy and commitment."

*BBC News 1 January 2006*

## UK

### Racism in prisons

A report by the Chief Inspector of Prisons into race relations in the prison system found that 52% of Asian inmates feel unsafe, compared with 32% of whites and 18% of blacks. Black prisoners felt they were least likely to be treated with respect by staff. One Palestinian inmate noted that officers repeatedly accused him of being a terrorist and called him "jihad." An officer was reported as describing a wing in his jail as "becoming the planet of the apes." Anne Owers said that overt racism was relatively rare and the real problem was a "subtle racism" with a lack of understanding of cultural differences, little choice over food, especially Halal meat, and a general lack of respect for religious beliefs.

The brutalisation of a black prisoner Shaun Higgins has recently been exposed. Shaun was assaulted and subjected to a mock lynching by officers at Swaleside in 1999, and beaten so badly that police called to the jail refused to accept custody of him and insisted he be transferred to hospital. He was beaten again in the notorious segregation unit at Full Sutton then charged with assault on staff. Shaun was acquitted of these charges at Hull Crown Court when the jury accepted his defence of lawful self-defence. In September 2005 he was beaten again at HMP Frankland.

*Letters of support: Shaun Higgins VA 3977, HMP Wakefield (seg unit), Love Lane, Wakefield WF2 9AG. Report of Chief Inspector of Prisons 20 December 2005; Fight Racism Fight Imperialism; Schneus*

## PRISONS

## UK

### Prison population highest in Europe

The UK prison population is the highest in western Europe, according to statistics collated by the Howard League. The UK jails 140.4 people in every 100,000, and jails more under 18s (2,742 at present) than any other European state except Ukraine. The UK prison population as a percentage of its general population is 50% higher than France. The UK has the third largest female prison population of the 32 European states surveyed, and the highest number of young adults (18-21 year olds) in jail, at 8,514. Frances Crook, for the Howard League commented that the use of incarceration was "seemingly indiscriminate. We have to end this country's obsession with custody." She went on to ask "Is this really where we want to be?" The lack of concern from government at the continuing rise in the prison population suggests that such is, indeed, where ministers want us to be.

*Howard League 18.1.06*

## UK

### Bullying and intimidation claims at "squalid" prison

An inspection of HMP Leeds by the Chief Inspector of Prisons found the jail to be squalid and overcrowded with inmates claiming to be bullied and intimidated by staff. The surprise inspection in August found that relationships between staff and prisoners had deteriorated since 2003, with inspectors commenting on the fact that staff referred to prisoners as "bodies" or "cons". The segregation unit was run on "militaristic lines" and was holding 50% more inmates than its certified normal accommodation. Prisoners have to apply to shower, and inspectors roundly condemned the over-use of formal control and restraint removals and the use of the unfurnished "special cell." Chief Inspector Anne Owers condemned B wing as unfit for habitation, poorly ventilated and with reports of rat infestation. Inmates complained of brutality and intimidation and Ms Owers noted that use of force was common and that inspectors were not satisfied force was used as a last resort.

*Report of an Inspection at HMP Leeds 17 January 2006.*

## UK

### Prison suicides

There were 78 suicides in England and Wales, in 2005, down 18% on the previous year's figure of 95. A further 131 inmates were resuscitated following self-harm incidents. Four of those who died were women. Baroness Scotland, minister for criminal justice and offender management, said "The Government takes

## Prisons - new material

**Recent Developments in Prison Law - Part 1**, Hamish Arnott, Simon Creighton & Nancy Collins. Legal Action January 2006, pp. 21-24. Latest in a series of updates on the law relating to prisoners and their rights. The article considers life sentences, recall of determinate sentence prisoners and the CJA 2003.

**"Mujeres, Integración y Prisión"** [Women, Integration and Prison], edited by SURT (Marta Cruells and Noelia Igeda), Aurea, Barcelona, June 2005, pp.270. This book is the product of an international research project funded by the European Commission to examine the situation of women in prison in European countries. It includes country reports by the partner organisations (on Spain, England and Wales, Hungary, France, Italy and Germany) as well as examining trends at a European level. It also considers the sociological profiles of imprisoned women and the reasons for their imprisonment, providing a comparative study of findings in the different countries and drawing a relationship between social exclusion and presence in prisons, as well as expressing concern over the difficulties of reintegration into society for women following their release from prison. A chapter written by the Italian association *Antigone* includes proposals to improve the situation of female prisoners in EU member states through the adoption of positive steps at a European level as EU institutions begin to produce legislation in this field. Statistics are also provided for the different countries, showing that England and Wales have the highest number of female inmates (4,394, based on data for 2002) and have experienced the highest increase in the number of female detainees over a ten-year period, with the percentage of the overall prison population rising from 3.5% to 6.2% over the same period. Spain was the country where the percentage of female detainees in the overall prison population was highest (8%) although it had fallen from 9.5% over a ten-year period. Spain had the second highest number of female detainees (4,109). Available from: *Aurea Editores, S.L., c/Perú, 160, 08020 Barcelona.*

## UK/SPAIN

### RVF leaders jailed

Key members of the neo-nazi Racial Volunteer Force (RVF) were jailed in November after pleading guilty at the Old Bailey to producing and distributing race-hate material. The material was published on the organisation's website and in their magazine, *The Stormer*, which Judge Jeremy Roberts said was designed to "encourage readers to resort to violence against people with non-white backgrounds". It also included detailed instructions on making nail and petrol bombs. Other charges related to the distribution of racist music DVDs, particularly, Skrewdriver's *Live in Germany*. Those jailed were Mark Atkinson (38) from Surrey, Nigel Piggins (39) from Hull, Michael Denis (30) from Tooting, south London, and Jonathan Hill (33) and Steven Bostock (27) from Greater Manchester. A sixth defendant, Kevin Quinn (40) from Bedford, pleaded guilty to possessing racist material; the prosecution dropped charges of inciting racial hatred against Atkinson's partner, Elizabeth Hunt (36).

The RVF split from Combat 18 (C18) in 2002 when members, disillusioned by years of internal feuding following the imprisonment of their leader and police informer Charlie Sargent, complained about C18's inability to mobilise following the Oldham riots in 2001. Atkinson who was a founder member of C18 as well as being in the British chapter of the Ku Klux Klan, but never arrested for this., despite being identified participating in numerous violent C18 attacks. He had also been linked to a letter bomb campaign, organised in Denmark and targeting anti-racist campaigners in the UK; Danish fascist Tomas Nakaba and two colleagues were jailed for their role in sending the letterbombs (*Statewatch* Vol. 7 nos 4/5).

Atkinson played a key role in setting up the RVF and he has a previous conviction for producing *The Stormer*. When he became aware that he faced another prosecution over it he fled to Spain where he was safe-housed by members of Blood & Honour/C18, until his arrest in April 2005, (*Statewatch* Vol. 15 no 2). Another of those convicted, Michael Dennis, had been involved in arranging for *The Stormer* to be printed in Poland. The five RVF racists were jailed for a total of 15 years, with Atkinson receiving a five year sentence; Hill received a four-year sentence, Bostock and Piggins were jailed for 2 years and 3 months and Michael Denis was jailed for one year.

*BBC News* 4.10.05, 4.11.05; *Searchlight* December 2005

## ITALY

### "Islamophobic" discourse becoming the norm

Overtly racist comments by Italian politicians, mainly but not exclusively those from the *Lega Nord*, have been commonplace for some time (cf. comments made by Gaetano Pecorella of *Forza Italia* in relation to the discovery of an illegal anti-terrorist information service targeting Muslims, *Statewatch*, Vol. 11 nos 3/4). However, they are now emanating with worrying consistency from senior politicians and even the political institutions themselves.

After playing a key role in the failure to introduce an EU Directive against racism and xenophobia - which was recently withdrawn by Commissioner Franco Frattini following the Italian government's long-standing and solitary opposition to the

measure in the Council - Justice Minister, Roberto Castelli, (*Lega Nord*) boasted that it was a victory for freedom of speech.

He also referred to the case of Oriana Fallaci, an Italian author who was on trial in France for "inciting racial hatred" against Muslims through her book *The Rage and the Fury*. Following the London bomb attacks in July 2005, the Justice Ministry briefly posted extracts from Fallaci's book on the official Justice Ministry website.

Other instances that merit attention include statements by Marcello Pera, the president of the Senate (a member of *Forza Italia* and the second highest institutional figure in Italy after the president), at a meeting of the Catholic Youth organisation, *Comunione Liberazione*, on 21 August 2005 in Rimini. He lamented the "moral crisis" that the West is experiencing, with immigration resulting in "*meticciato*" (literally, cross-breeding; *meticci* is the term used under Mussolini's racial laws forbidding mixed marriages to preserve racial purity); multiculturalism causing "apartheid, resentment and second-generation terrorists", and "relativism" and the notion that "all cultures have the same ethical dignity". He presented these as a danger whose consequences include the Buttiglione case and the gay marriage law in Spain.

Another statement by *Lega Nord* MP Roberto Calderoli (minister for institutional reforms and devolution) claimed that "Islam is not a civilisation" and presenting the conflict between the West and Islam as being between "a culture and a non-culture"; the deputy mayor of Treviso, Giancarlo Gentilini, responding to amendments to the anti-terrorist law by arguing that "Muslims should go around in jacket and trousers so as to avoid there being any covered body parts, otherwise there could be a terrorist under every robe".

Moreover, Clementina Forleo, a Milan judge, suffered a campaign of vilification after acquitting five terrorist suspects in January 2005 by ruling that the Iraqi insurgents were guerrillas rather than terrorists. She was investigated by the Justice Ministry after reporting policemen who had violently detained a migrant for the minor offence of travelling on a bus without a ticket. She said: "I saw him being chased by men from four patrols, caught, thrown to the floor and taken away...I felt the need, as a citizen, to intervene due to methods that I found disproportionate and violent".

*Il manifesto*, 4.4.04; 13.7, 21.7, 7-8.9.05; *Repubblica* 24.1, 9.7, 13.7, 8.9, 12.12.05.

## UK/AUSTRIA

### "Holocaust denier" arrested

The right-wing revisionist "historian", David Irving, was arrested in Vienna during November on an outstanding arrest warrant dating back to 1989 that accused him of denying the Holocaust. He is being detained in a Josefstadt prison to prevent his fleeing the country before a court hearing is possible. The Austrian Justice minister has said that he will remain there until his case comes to court. He has already been refused bail and is remanded for four weeks pending trial. Irving has always claimed to be a serious historian but his *oeuvre* is dismissed by genuine historians who point to his associations with neo-nazi organisations across Europe - he was scheduled to make a speech to a far-right student organisation when he was arrested. Denying the Holocaust in Austria carries a maximum sentence of 20 years in prison.

In the UK Irving has faced repeated claims of anti-Semitism and disseminating racist propaganda because of his association with neo-nazi organisations such as the British National Party. Aside from the outstanding Austrian warrant, Irving was fined by a German court for publicly denying the existence of the gas chambers in 1992; he is banned from public speaking in that country. In 2000 he was made bankrupt when he lost a libel case

he brought against Professor Deborah Lipdstast in London, whom he had accused of denigrating his views. At the London trial the historian Richard J. Evans described Irving work thus: "Not one of his books, speeches or articles, not one paragraph, not one sentence in any of them can be taken on trust as an accurate representation of its historical subject. All of them are completely worthless as history, because Irving cannot be trusted anywhere, in any of them, to give a reliable account of what he is talking or writing about." The judge at the same trial said that Irving had falsified history and could accurately be described as a "Holocaust denier". He described him as "an active Holocaust denier" who was "an anti-Semitic racist who associated with right-wing extremists who promote neo-Nazism".

*Times* 18.11.05, *Independent* 18.11.05.

## Racism & fascism - new material

**Annual Report 2005.** *European Monitoring Centre on Racism and Xenophobia*, pp158. This report represents the first comprehensive overview of racist, xenophobic, anti-Semitic and anti-Muslim discrimination, and responses to it, to cover all 25 EU Member States: "It looks at evidence of discrimination in employment, housing and education, as well as racist crime data, and at measures being taken to combat this. The Roma emerge as the group most vulnerable to racism in the EU. They face discrimination in employment, housing and education - as well as being regular victims of racial violence. Other groups facing high levels of discrimination in many Member States are migrant workers from Africa, the Middle East, Asia, and Latin America. Muslim groups face particularly challenging conditions in many Member States. Also recent migrants from Russia or the Ukraine may be subject to discrimination in some Member States." The full report can be downloaded under [http://www.eumc.eu.int/eumc/index.php?fuseaction=content.dsp\\_cat\\_content&catid=3fb38ad3e22bb&contentid=42b943c7300a2](http://www.eumc.eu.int/eumc/index.php?fuseaction=content.dsp_cat_content&catid=3fb38ad3e22bb&contentid=42b943c7300a2).

**Southwest BNP exposed**, Nick Lowles. *Searchlight* December 2005, pp16-19. Article on the British National Party in southwest England that includes a "Who's Who in South West BNP".

**ZAG - Anti-rassistische Zeitschrift.** Issue 10, no. 47, Fall 2005, pp 66, EUR 3.50. This issue includes articles on the collective EU charter deportation flights that started in July 2005 and the actions organised against them, the impact of the World Cup 2006 on security and repression and various background articles on post-colonial concepts of Diaspora, Orientalism, subaltern studies and Whiteness. Available from [redaktion@zag-berlin.de](mailto:redaktion@zag-berlin.de)

**Fighting fascism, preserving democracy**, Liz Fekete. *European Race Bulletin* no 35 (Winter) 2005, pp40. This issue has a feature article on Fighting Fascism across Europe as well as pieces on "Protecting Ethnic Minorities" and "Eliminating Electoral Racism" and an appendix on "Measures Targeting Religious Clothing".

**Unions and Communities Unite to Stop the BNP**, Jon Cruddas & Billy Hayes. *Labour Research* January 2006, pp9-11, 2006. With the British National Party threatening to stand 600 candidates in the 2006 local elections this article reminds us that the last TUC Congress committed itself to making anti-fascist and anti-racist activity a "central political focus". The article stresses that "the labour movement has a special responsibility to re-energise itself in our communities where the fascists have made headway."

**"Informe anual 2005. Discriminación y Comunidad Gitana"** [Annual Report 2005. Discrimination and the Gypsy Community], *Fundación Secretariado Gitano, Colección Cuadernos Técnicos, n.34, Madrid 2005, pp.46, ISBN-84-95068-34-6*. This annual report compiles cases of discrimination experienced by members of the Gypsy [\*] community in Spain. It covers the fields of employment, housing, education, health services, general services and goods (such as the refusal, often disguised behind a different explanation, of access to certain bars or restaurants, or in "unequal, humiliating and vexatious treatment" in a given establishment), the justice system and forces of public order, and in the media. The conclusions highlight that - despite

legislative improvements - there is "an important gap between anti-discrimination norms and an institutional practice that allows ethnic minorities to continue suffering discriminatory practices in numerous social milieux", that the Gypsy community suffers an "historic discrimination in fundamental areas", that "serious instances of direct discrimination persist" and that indirect discrimination also places them at a disadvantage. The report found that Gypsies can come to accept these practices as inevitable, and their lack of confidence in institutions and of knowledge of the legal means that are open to them to defend their right to equal treatment are factors that stop many of them from filing complaints. This is hardly surprising as "a large number of discrimination cases are not resolved positively, especially when victims present their claims before a court". [\* The term "Gypsy" is used here as it is the translation of *gitano*; the Spanish Roma have adopted and attempted to improve the connotations of this term that is sometimes used pejoratively, by attaching the positive aspects and achievements of gypsy culture to it.] Available from: *Fundación Secretariado Gitano, Antolina Merino, 10 28025 Madrid*.

## POLICING

### ITALY

## Criminalisation of train protesters in Valsusa

Ongoing protests against the construction of a tunnel through the Alps for a high-speed train (TAV) linking Turin and Lyon (France) in Val di Susa in the northern Piedmont region were the scene of a night-time police raid in Venaus to remove protesters from the site at 3 am on 6 December 2005. The violent removal took place several days after the Interior Minister, Giuseppe Pisanu, had warned that the protest was liable to be infiltrated by extremists and subversives. On 2 December, he had speculated that there was "an explosive mix between legitimate popular protest, political speculation and subversive infiltration that threatens to explode one of these days". His prediction failed to materialise. The citizens of Val di Susa (including the mayors of all the valley's villages) had ensured that the occupation of the site was peaceful, and were articulately explaining their reasons to the media. During the police raid the elderly, women and peaceful protesters, were beaten with truncheons and evicted. On 15 December 2005, Pisanu offered an unusual apology to parliament: "I have no difficulty in apologising to the peaceful citizens of the Val di Susa who have suffered physical harm during the clearing of the Venaus construction site".

On 8 December, in reaction to the violent eviction, tens of thousands marched to re-occupy the site. They succeeded in passing through the police lines which had blocked off the area during an afternoon in which there were minor skirmishes with objects being thrown at the police; the police reaction included firing teargas. The Interior Minister, using a familiar argument, claimed that "the serious incidents were exclusively caused by around one thousand people belonging to far-left, anti-establishment and anarchist-insurrectionalist groups, who arrived from several cities with the deliberate intention of causing disturbances, attacking the police forces and illegally occupying the areas that have been expropriated to be used as construction sites". This reading of events is consistent with previous efforts by Pisanu to promote the criminalisation of left-wing protest movements by linking them to terrorism, (see *Statewatch* Vol. 15 no. 5 and *Statewatch news online*, February 2005).

Pisanu's rhetoric was strengthened on 18 December when, after an anti-TAV demonstration, a *Lega Nord* MEP, Mario Borghezio, was beaten up (suffering a broken nose) on a train in

which he travelled with a police escort and protestors returning home from the demonstration in Turin. Borghezio had been advised by the police not to board the train. A member of the European Parliament's Committee on Civil Liberties, Borghezio has distinguished himself in the past through racist initiatives such as the disinfecting of trains used by migrants (whom he presumed to be prostitutes), organising anti-immigrant Masses and speaking at a rally of the far-right *Forza Nuova* in 2002 about "the global attempt to corrupt and bastardise our blood" (see *Stawatch*, Vol. 9 nos. 1 & 2, Vol. 13 no. 1). Fifty-four possible participants in the attack were identified by the police

On 22 December Pisanu appeared in parliament, arguing that: "for a long time...I have been reporting to parliament about the risk of a growing situation of conflict in which increasingly serious forms of widespread illegality and political violence are being established. But I have not been listened to closely enough." He called on all political and social forces to "isolate and report the violent [elements], especially those who defend their legitimate right to demonstrate", adding that "after a demonstration that took place regularly...there was this sting in the tail that confirms...the existence of an extremist and subversive threat that may pollute peaceful demonstrations".

Pisanu continued to issue a blanket attack on social centres (as members of some social centres were considered responsible for the attack on Borghezio): "we cannot hide the fact that many social centres are born from criminal acts [ie: "squatting"] and that social centres host persons that are in the midst of serious disorders and numerous peaceful demonstrations with striking regularity". Luciano Muhlbauer, a *Rifondazione Comunista* councillor in the region of Lombardy who was on the train, offered a different reading: "Obviously, someone was unhappy about the march so they had to invent something to give back credibility to the theory of infiltration by 'violent, autonomous and insurrectionalist anarchist' elements". He explained that 500 demonstrators caught the train and referred to Borghezio's presence with a plainclothes police escort as "incredible", adding that "It is troubling that the police forces decided to second Borghezio's blatant provocation, going so far as to putting two officers at his disposal".

There were interesting developments in relation to the planned tunnel. Construction work was temporarily halted, and dialogue re-established. One side (including the government and the centre-left regional government) pointed to the need for Italy not to become isolated from Europe, for development not to be stopped and to the environmental advantages of merchandising rail travel rather than motorways. The other side claims that the goal of the project is purely speculative, that the benefits of the tunnel have been highly overestimated, that the mountain through which the planned tunnel would run contains asbestos, that this narrow valley is already clogged up by a motorway and another train track that is under-used. There is also concern that the building work would last for up to twenty years.

The halting of the work has been welcomed by some protestors as a victory for popular mobilisation, whereas others fear that dialogue will only continue until the end of Turin's winter Olympics in February 2005. that are set to be held in Turin in February 2006. The protestors had threatened a boycott, which has now been called off.

Protests against the TAV project have been continuing for over five years. In March 1998, three anarchists were arrested in relation to attacks using explosives against construction equipment and telephone arials and were accused of membership of a subversive association with terrorist aims. The three declared their innocence, but two of them were later found hanged, Edoardo Massari in March in Le Vallette prison in Turin and Soledad Rosas (an Argentinean woman) in July in a community where she was under house arrest. Silvano Pelissero, the third accused, was sentenced in January 2001 to six years and

10 months in prison, before the charges of terrorism were quashed by the Court of Cassation (Italy's highest appeal court) in Rome on 21 November 2001. The arrests opened the way to the criminalisation of squatter groups in Turin.

*Further information is available at <http://www.notav.it>; *Informativa urgente alla Camera dei Deputati del Ministro dell'Interno Giuseppe Pisanu sull'aggressione subita dall'On. Mario Borghezio*, 22.12.05, [www.interno.it](http://www.interno.it); *Corriere della Sera* 9, 19.12.05; *Repubblica* 2.9.05; *La Stampa* 9.12.05; *La Voce della Valsusa* / 10, 16.12.05 [http://www.beppegrillo.it/2005/12/la\\_voce\\_della\\_v\\_9.html](http://www.beppegrillo.it/2005/12/la_voce_della_v_9.html); *ADN Kronos* 2, 18.12.05; *il manifesto*, 1.11.05. *Umanità Nova*, n.9, 14.3.04, <http://www.ecn.org/uenne/archivio/archivio2004/un09/art3151.html>*

## UK

### No charges against officers who killed Harry Stanley

In October the Crown Prosecution Service announced that it had advised Surrey Police that there is insufficient evidence to bring criminal charges against the two police officers responsible for the fatal shooting of Harry Stanley in London in September 1999. Harry was shot dead by Inspector Neil Sharman and PC Kevin Fagan, of the Metropolitan police firearms unit (SO19), a few minutes after a caller told the police that an Irishman had left a public house in Hackney, carrying a sawn-off shotgun in a plastic bag. In fact, the 46-year old Scottish painter and decorator was carrying a table leg that had been repaired, (see *Stawatch* Vol. 10 no 2 & 6, Vol. 11 nos 3/4, Vol. 12 no. 5, Vol 13 no 3, Vol. 15 no 2)).

The CPS's decision, which was greeted with shock by Harry's family, follows on from an inquest jury's verdict that he was unlawfully killed. The CPS's review of the incident concluded that "the evidence relating to the fatal shot could reasonably permit interpretations consistent with the officers' belief that they were acting in self-defence." The charges that the CPS rejected were: murder (the CPS found that the officers acted in the honest belief that they were under immanent threat) and gross negligence manslaughter (the CPS did not believe that the officers had breached their duty of care to Mr Stanley). The CPS did concede that it is "arguable that the officers' haste and lack of planning led them to breach their duty of care to Mr Stanley", but concluded that there was insufficient evidence for a jury to "be sure that the degree of negligence was gross".

Moving from the killing of Harry Stanley, the CPS also found that perjury and attempting to pervert the course of justice charges against the officers were unlikely to meet the criminal standards required. Even for the relatively minor offence of misconduct in public office "there is insufficient evidence for a realistic prospect of conviction."

In the past 12 years not a single police officer has been successfully prosecuted for shooting dead a member of the public. The *Independent* newspaper (21.10.05) recently collated 30 controversial instances where members of the public were killed by police officers. One of the most recent examples was that of Jean Charles de Menezes who was shot dead, receiving seven "dum dum" bullets to the head from close range, while travelling to work on public transport.

Speaking of the events surrounding the killing of Harry Stanley, his wife said:

*What happened today was an injustice. I am devastated by it, 'though I half expected it. I am going to keep fighting but I can't say more until I receive legal advice. I am also disgusted that I first heard of the CPS decision at 7.30am because of a leak to a tabloid [newspaper]*

*Inquest press release 20.10.05; CPS "CPS Decision in Henry (Harry) Stanley Case" 20.10.05*

## UK

### Menezes shoot-to-kill file goes to CPS

The Independent Police Complaints Commission (IPCC) handed its investigation file on the police shooting of Jean Charles de Menezes to the Crown Prosecution Service (CPS) in January. The file is thought to name between ten and fifteen police officers who could face criminal charges for their involvement in the shoot-to-kill operation which saw seven "dum-dum" bullets pumped into the Brazilian's head as he sat on an underground train at Stockwell station on 23 July 2005. It was the day after a series of bomb scares on the London transport network and the killing occurred as part of the broader Operation Kratos, which was formulated after the 11 September attacks in the USA, in the event of a terrorist attack in the UK.

The decision by the IPCC to send a file on the killing of Jean Charles to the CPS implies that they believe there is evidence that a crime has been committed.

Leaked documents from the IPCC investigation have provided a framework within which to place the shooting of Jean Charles de Menezes. Initially, a police surveillance team outside a block of flats in Stockwell identified the wrong man as a suspect after one of the team left to relieve himself. Further miscommunications meant that a firearms unit failed to arrive in time to intercept the suspect before he reached the underground station; firearms officers had to rush into the station to locate Jean Charles. When they eventually discovered him on board a train he was shot dead in front of about 30 witnesses. In response to the shooting Scotland Yard initially linked their victim to the earlier bomb scares, before acknowledging that the Brazilian citizen had no connection to them. Scotland Yard then attempted to maintain control of the investigation into the shooting, arguing that because the incident was "terrorist-related" it should remain "in house". Although unsuccessful in this ploy it did succeed in delaying the IPCC from beginning its investigation for five days, preventing the complaints body from securing the crime scene. The Metropolitan Police Commissioner, Sir Ian Blair, has denied that this was an attempt at a cover up.

The leaked documents also suggest that Jean Charles did nothing to arouse suspicion. Stories that were leaked to the press, suggesting that the victim was wearing a "suspicious" heavy winter coat or that he had vaulted the ticket barrier, were fictions; rather than leaping the ticket barrier Jean Charles actually bought a newspaper as he strolled to the train. All of these rumours have had the effect of diverting attention from the real issues that arise from the adoption of a police shoot-to-kill under Operation Kratos, the slaying of an innocent man, the lack of police accountability and the secret decision to adopt "dum-dum", or hollow-point ammunition, which expands and then splinters on impact. Hollow-point ammunition is banned in warfare under international convention.

*"IPCC submits Jean Charles de Menezes Investigation File to CPS" IPCC press release 19.1.06*

## GERMANY

### PPP - Police-private partnership?

The German Federal Crime Police Authority (*Bundeskriminalamt* - BKA) is seeking more collaboration with internationally operating business to fight terrorism and organised crime, according to BKA president Jörg Ziercke. At the BKA's Autumn Conference in Wiesbaden on 3 November, Ziercke announced that the force was creating "new alliances" to fight crime, where companies operating abroad would help

police collect intelligence, or even collaborate in locating "heroin smugglers at high sea". The plans are supported by business representatives, armed forces and the security service. Internet crime, Ziercke said, could only be fought with the help of providers, and he demanded that data be retained for one year. The federally organised BKA, he opined, should also receive more powers, which are currently located with regional states.

Internationally operating German businesses such as Siemens or the BASF have a long-standing working relationship with the BKA, particularly concerning ransom demands in cases of kidnapped employees in regions such as the Middle East or South America.

According to Ziercke, the police want to create long-term "security partnerships" and use the "knowledge" that businesses have gained through these experiences, particularly with their security departments and their "threat analyses".

The BKA has already started talks with firms such as VW, BASF and Daimler-Chrysler. Cooperation will not only intensify with private businesses but also with secret services, the armed forces and customs and excise.

*Süddeutsche Zeitung 4.11.05; hr-online.de 3.11.05*

## Policing - new material

**"La partita di Paolo"**, by Giuliano Santoro, *Carta*, n.43, 28.11-4.12.05, pp.10-11. This is the story of Paolo, a member of a Brescia football team's supporters club, who has been in a coma since travelling to an away match against Verona where his group, *Brescia 1911*, was among travelling fans who suffered an unprovoked police charge using truncheons after the match as they awaited the train back home in Verona train station. A witness claims that Paolo was taken aside and "was sprayed in the face with something" by police officers who held their truncheons the wrong way round as they subsequently beat him, including blows to the head. Once he had made his way back to the Brescia fans, "he threw up green stuff" and the police called an ambulance which took him to hospital, where he was subsequently operated for damage resulting from a blow to the head. The attack on the Brescia fans continued for almost an hour, leading them to write a letter to interior minister Giuseppe Pisanu, in which they claimed that the officer in charge shouted "Massacre them until I tell you to stop", and other officers goaded them by saying "Remember Modena" (where the Brescia fans were heavily charged a couple of years ago). When official information was made available, it reported that Paolo was "found" near the station, after being injured during "clashes with Verona fans". The article also highlights the problems that a raft of measures introduced at the start of the football season to counter violence is causing fans, including the requirement to buy tickets in advance of games (they are no longer available on the door) and to produce ID cards in order to obtain tickets. Available from: <http://www.carta.org>

**Shot dead by police 30, Officers convicted 0**, Robert Verkaik. *Independent* 21.10.05, pp 1-2. Article on police immunity in gun death cases, that was stimulated by the death of Harry Stanley. The Justice for Harry Stanley Campaign told Verkaik "The CPS and the Attorney General have illustrated very clearly that the police not only have the right to shoot to kill, but they will be afforded total immunity from prosecution". Daniel Machover, the solicitor representing the Stanley family, said the "evidential bar had been set too high" when it came to considering charges against police officers.

**Policing to defend the state**, Dr Tom Williamson. *Police Review*, 4.11.05, p. 15. Article on the paradigm shift from "policing by consent" to "zero-tolerance policing" which considers the Police Service of Northern Ireland (PSNI) and the Serious Organised Crime Agency (SOCA). On the future of the PSNI Williamson writes: "...the force, like its predecessors, may be destined to remain a paramilitary agency whose primary commitment is to defend the state against the locals rather than police by any notion of local consent." SOCA is seen as another example of how the "consent" model is breaking down: "There is little opportunity for local involvement in the regulation and governance of the new agency, which will be centrally controlled, in

this respect." He notes that with Europol, the coordination of crime and justice arrangements across European Union member countries and the European Arrest Warrant "a pan-European paradigm of policing may be emerging."

Germany/USA:

## Court upholds Guantanamo prisoner's residency rights

Murat Kurnaz, a Turkish citizen born and brought up in Germany, was seized in Pakistan in 2001 and taken to the US military prison at Guantanamo where he has been held since without being charged or receiving adequate legal support. In August 2004, the Bremen authorities abruptly revoked Kurnaz's indefinite residency permit because he had been out of Germany for over six months and had not reapplied. Thomas Röwekamp, the Senator for Interior Affairs in Bremen said that:

*if [Kurnaz] were to arrive now at a German airport with his passport and ask for permission to enter, he wouldn't be allowed to enter the country.*

On 30 November 2005, however, the regional administrative court in Bremen overturned this decision by the Aliens Office. Kurnaz has a German and a US lawyer fighting for his release from illegal US imprisonment and for the right to return to Germany, but he has received no support from the German authorities.

### Background: detained without evidence

Murat Kurnaz's case became public in late 2004, when he challenged his classification by the Bush administration as an "unlawful combatant" in a Washington DC court; this challenge was in response to a Supreme Court ruling of June 2004 that said that Guantanamo Bay fell under US federal law and thereby allowed Guantanamo detainees to challenge their imprisonment. Following this ruling the military began holding new review tribunals.

The US citizens' rights organisation *The Center for Constitutional Rights* has demanded an examination of the Kurnaz case, upon which Kurnaz's lawyer Baher Azmy was for the first time allowed to speak with his client. In Kurnaz's case, a tribunal panel made up of three unnamed officers, an Air Force colonel, a lieutenant colonel and a Navy lieutenant commander, concluded that he was an al Qaeda member whom the government could detain indefinitely. In March 2005, allegedly through an administrative slip-up, the evidence against Kurnaz was declassified and it became public that in their decision, the military tribunal had deliberately ignored US military intelligence and German law enforcement information admitting that there was no proven link between Kurnaz and al Qaeda structures or any involvement in terrorist activities.

In a Court ruling of January 2005, Federal Judge, Joyce Hens Green, criticised the military panel for ignoring this exculpatory information and for relying instead on a short and unsupported memo filed by an unidentified government official shortly before Kurnaz's hearing. Green ruled that Kurnaz' detention violated the US constitution and the Geneva Convention. The *Washington Post*, which gained access to the declassified evidence, reported that the Command Intelligence Task Force (CITF), the investigative arm of the US Southern Command that oversees the Guantanamo Bay facility:

*repeatedly suggested that it may have been a mistake to take Kurnaz off a bus of Islamic missionaries travelling through Pakistan in October 2001.*

One document says that:

*CITF has no definite link/evidence of detainee having an association with Al Qaeda or making any specific threat against the US*

and that:

*CITF is not aware of evidence that Kurnaz was or is a member of Al Qaeda.*

The statement: "We could not find anything which would incriminate Mr Kurnaz" by Bremen criminal prosecutor Uwe Picard has been widely reported. The Bremen authorities had started preliminary investigations into Kurnaz's alleged terrorist links after his arrest in Pakistan. On its web-site on Guantanamo Bay prisoners, Amnesty International says that:

*German investigators have cast doubt on whether Murat Kurnaz was involved in any illegal activity. They have stated that in all likelihood he had never been in Afghanistan, much less that he had become involved in the international conflict there. His German lawyer, Bernhard Docke, has stressed that Murat Kurnaz spoke no Arabic, very little English, and had no weapons or military training. German investigators familiar with Murat Kurnaz's case have said that there is no evidence that he had any contact at all with Islamist opposition groups while in Pakistan.*

The Kurnaz case is the first in which classified material considered by a combatant status review tribunal became public and the first to disclose that a panel disregarded the recommendations of US intelligence agencies and information supplied by its allies. Baher Azmy, Kurnaz's lawyers based in the US commented that:

*the US government has known for almost two years that he's innocent of these charges. That begs a lot of questions about what the purpose of Guantanamo really is. He can't be useful to them. He has no intelligence for them. Why in the world is he still there?*

### German authorities interrogate in Guantanamo

The German government and intelligence service are increasingly coming under attack for their involvement in unlawful interrogation and allegations of the torture of German citizens in Guantanamo and Syria, as well as their silent toleration of the unlawful detention of German citizens who have become victims of CIA rendition in the global "fight against terrorism".

On 14 December 2005 Interior Minister, Wolfgang Schäuble, reported to German parliament that officials of the German foreign and domestic intelligence agencies (*Bundesnachrichtendienst* and *Bundesamt für Verfassungsschutz*) had participated in the interrogation of Kurnaz at least once during a stay at the Guantanamo Bay camps in September 2002. Kurnaz's US lawyer says that his client was subject to US interrogation techniques that included suffocation by drowning, sexual humiliation and the desecration of his religion. Schäuble also reported that German authorities had interrogated the German citizen of Syrian descent, Mohammed Haidar Zamar, in Damascus (see *Statewatch* Vol. 15 nos 3/4).

Kurnaz's German lawyer, Bernhard Docke, says that despite repeated pleas to the federal German authorities to help his client, they were not acted upon and the authorities refuse to pass on information about the case. It was reported, however, that in June 2003, the Bremen public prosecution, which initiated a preliminary investigation against Kurnaz, refused to pass on their files to the US army's Criminal Investigation Command. They demanded to know the precise charges against Kurnaz, if he was

represented by a lawyer and when proceedings against him could be expected to start. Nonetheless, the Interior Ministry still refuses to provide Docke with information on the results of Kurnaz's interrogation by German officials. He only heard from his US colleague, who has been allowed to visit his client on three occasions so far, that the German officials told Kurnaz that his fate was not decided by them and that they were only there to hand over the information from the interrogation to the US authorities.

*Washington Post*, 27.3.05. "Panel Ignored Evidence on Detainee. U.S. Military Intelligence. German Authorities Found No Ties to Terrorists" by Carol D. Leonnig. Available from <http://www.washingtonpost.com/wp-dyn/articles/A3868-2005Mar26.html?referrer=emailarticlepg>

*Amnesty International*, "Who are the Guantánamo detainees?", Case Sheet 6, Turkish/German detainee: Murat Kurnaz" Available from <http://web.amnesty.org/library/Index/ENGAMR511512004?open&of=ENG-DEU>; *Süddeutsche Zeitung* 20.11.05, 1.12.05, 16.12.05

## How Germany benefits from torture abroad CIA "renditions" and known cases

The German government has come under attack about its initial denial, before it confirmed knowledge of CIA "rendition" flights through German territory. An insider, in this case a former CIA agent, is now blowing the whistle, or rather, confirming already known facts about rendition and European collaboration in the practice. There is also increasing evidence of police collaboration in the rendition and interrogation of German citizens or residents held in prisons in Beirut (Lebanon), Damascus (Syria) and Guantanamo (Cuba).

In all cases, the prisoners allege that they have been tortured by the local police or secret services. German prosecutors and law enforcement agencies are said to have used statements in their national investigations extracted through the use of torture abroad. A Parliamentary Investigations Committee (*Untersuchungsausschuss*) is to investigate possible cross-border police cooperation in the kidnapping of German citizens and the failure of government officials to act on hearing about these cases. The investigations committee will also look into claims of the BND's collaboration with the US in Iraq.

### CIA renditions always had European support

Although Council of Europe investigator Dick Marty, who on 9 November last year was asked to investigate the CIA flights through European jurisdiction, has already confirmed that his preliminary investigations support claims that the CIA organises flights and that at least two European secret service agencies knew of them (*Süddeutsche Zeitung* 19.12.05), sources from within the secret services are starting to spill the beans on unlawful operations carried out with European collaboration in the global "fight against terrorism", with the aim of destroying al Qaeda.

Former CIA agent Michael Scheuer revealed in an interview with the German weekly Newspaper *Die Zeit* (1.7.06), that Germany has engaged in close cooperation with CIA flights since at least 11 September 2001. He traces the history of the CIA's rendition programme as follows:

*President Clinton, his security counsellor Sandy Berger and his terrorism counsellor Richard Clarke instructed the CIA in autumn 1995 to destroy Al-Qaida. We asked the president what we should do with the arrested persons? Clinton replied that this was our problem. The CIA indicated that they are not jailors. It was then suggested we find any solution whatsoever to this problem. And this is what we did, we established a procedure and I myself was part of this working group. We concentrated on those members of Al-Qaida who were wanted by the police in their respective countries of origin or those who had already been convicted during their absence."*

Scheuer also accuses European governments of hypocrisy in their recent denial of knowledge of these CIA operations:

*Die Zeit: Your partner countries thus wanted to pass on the work to the CIA?*

*Michael Scheuer: Yes, but they did not want the persons to remain on their territory. The CIA did not arrest or imprison anybody*

*themselves.*

*Die Zeit: I beg your pardon?*

*Michael Scheuer: The local police or the local secret services took care of that. We always stayed in the background. The American government is full of cowards. They do not permit the CIA to work independently.*

*Die Zeit: Did the interrogations take place in the target country?*

*Michael Scheuer: We always submitted our questions in writing.*

*Die Zeit: The CIA never really took part in the interrogations?*

*Michael Scheuer: I have never heard of anything like that. The lawyers enjoined us from doing so.*

And further:

*I believe it to be dishonest on the part of the Europeans to criticize this operation that intensely because we have transmitted all information obtained concerning them during the interrogations to the Spanish, Italian, German, French and English services. And if you asked these services, they would reply: The information obtained thanks to the "extraordinary renditions" program of the CIA has been very useful.*

But it is not lack of cooperation that the US bemoans in their dealings with the EU:

*The principal problem in Europe is more essential: The immigration legislation and asylum rights have helped to establish a hard-core of terrorists, convicted elsewhere, and who have now become European citizens. Additionally, nobody can be deported to a country applying the death penalty.*

This information contradicts claims by former Interior Minister, Otto Schily, and former Foreign Minister, Joschka Fischer, who denied any knowledge of CIA flights through Europe and cases of rendition of German citizens when they first became public in early 2005.

EU-CIA collaboration, however, apparently went much further than giving a green light to a Boeing. Evidence from police sources points to cross-border police cooperation preparing such renditions in an Anti-Terror Centre in Paris, involving US, German, French, British, Canadian and Australian secret and law enforcement services (*Süddeutsche Zeitung* 10.1.06).

### The known cases: Afghanistan, Damascus, Beirut and Guantanamo

The recent discoveries were triggered by several witness statements and a BKA whistle blower. Firstly, there were the rendition cases of Khaled el-Masri, a German citizen of Lebanese decent and Mohammed Haydar Zammar, a German national of Syrian decent.

Mr el-Masri was seized at the Macedonian border by Macedonian police in December 2003 and brought to Afghanistan by the CIA in January 2004, where he was also



interrogated by an unidentified German official. In June 2004, he was flown back to Europe and dumped at the Albanian border, from where he travelled back to Germany and told the press of his ordeal (see *Statewatch* Vol. 15 nos 3/4). The government denied any knowledge of his kidnapping at the time, it later appeared that Schily had been informed about el-Masri by US ambassador Daniel Coats at the latest on 31 May 2005.

Mohammed Haydar Zammar was arrested in Morocco in December 2001 and it has since been confirmed that Zammar was brought to the Far' Falastin military prison in Damascus, Syria, where he was tortured. His German lawyer, Gül Pinar, says she repeatedly asked the German Foreign Office for help, which claimed in April 2005 it had no knowledge of Zammar's case and had unsuccessfully asked the Syrian authorities since early 2002 "for information on the whereabouts and the legal situation and for consular access to this German citizen" (see *Statewatch* Vol 15 nos 3/4). However, interior minister Wolfgang Schäuble admitted to parliament on 14 December 2005 that German officials had interrogated Zammar in Damascus in late 2002, showing that the Foreign Office had lied or was ignorant of BKA activity in Syria - the latter is unlikely according to Pinar.

More evidence is now emerging concerning a case in Beirut. A former BKA officer is claiming that Germany collaborated with the Lebanese secret services in the arrest of Mohamed Ramez Sultan and friends (one of whom was a German resident), who had been under investigation in Germany for membership of a terrorist organisation since mid-2002. According to Ralf Trede, he was part of a BKA observation team that followed the suspects on a trip to the Lebanon, where local "specialists" arrested and imprisoned them on a German request. When Trede expressed surprise at how quickly the suspects admitted their guilt, a Lebanese security service liaison officer informed the BKA team that they had applied electric shocks to the men's testicles. According to the investigative television programme *Kontraste*, the federal prosecutor's office was informed about the torture, but the BKA continued to send questions to the Lebanese to ask the prisoners. An internal BKA document quoted by *Kontraste* warns that the "the information gathered by the [Lebanese] military secret service should enter the preliminary investigation of the [German] chief public prosecutor as a non-paper", (ie. no written material should point to the way the information was obtained, yet it should be used for prosecution in Germany).

Trede says that information gained by means of torture formed the basis for a large-scale police raid of Muslim organisations in Germany in February 2003. It did not lead to any convictions. Trede also says that at the time he informed a higher official visiting Beirut of these torture methods as well as informing BKA president Jörg Zierke in October 2004. In late 2005, Trede was questioned about his allegations by the federal public prosecutors office in Karlsruhe, but their press office says that his allegations were inconclusive and they did not demand further investigation. The BKA has since initiated a disciplinary procedure against Trede for conducting too many private phone calls while in Beirut.

Finally, there is the case of Murat Kurnaz, a Turkish citizen born and brought up in Germany, who is unlawfully held in Guantanamo where he was interrogated by German secret service officers in September 2002, as interior minister Schäuble has admitted (see below). On hearing this, the Left Party MP Gesine Lösch (*Die Linke*) accused the previous government of deliberately making false statements to parliament on Guantanamo. In June 2003, she had lodged a parliamentary question as to whether the government had any knowledge about the situation of Guantanamo prisoners. The government's written answer stated that:

*Because there are no German citizens interned in Guantanamo and*

*therefore German representatives have no right to enter Guantanamo, the German government has no information on the treatment of the prisoners.*

The three secret service agents questioning Murat Kurnaz in Guantanamo in 2002, however, even wrote a report detailing that Kurnaz had been brought into the interrogation room with his feet shackled and that a GI had violently pulled back his head so he could not move. Lösch has now submitted a written request to the new government, asking why the parliament was told an "untruth".

It remains to be seen what kind of information the newly established parliamentary investigation committee can extract from the secret services, former government members and BKA officials about these allegations. Considering that Council of Europe investigator Dick Marty has still not received the requested satellite images and flight recordings necessary to investigate the CIA's abduction flights across Europe, particularly those to the alleged CIA detention centres in eastern Europe, it appears there is a lack of political will to investigate the allegations. Threats by EU commissioner Franco Frattini, that Member States could expect sanctions, or even lose their voting rights, if they did not cooperate with the investigation, did not seem to impress EU governments. As one newspaper commented, the Council of Europe questionnaire to their 46 Member States on any possible collaboration with the CIA rendition programme is more of a formal exercise for the governments: "Germany will not solve the case. If, and if so, to what extent German security services knew of the renditions to the alleged CIA prisons remains pure speculation. Up to now, the foreign security service (BND) has not provided the parliamentary control commission with any information on the subject..." (*Süddeutsche Zeitung* 10.1.06).

The question is what will happen to the practice of rendition and the "legitimate" torture debate in Europe. Former CIA agent Michael Scheuer thinks that rendition is a very successful method that will, however, no longer work properly with all this public attention. He says: "90% of this operation was successful and only 10% could be considered as disastrous"

*Die Zeit: Which part was the disaster?*

*Michael Scheuer: The fact that everything was made public. From now on the Europeans will diminish their assistance because they fear reading about it in the Washington Post. And then there is this troublemaker in the Senate, Senator John McCain, who virtually confessed, wrongly of course, that the CIA uses torture. And that is how the program will be destroyed.*

*English translation of the interview with former CIA agent Michael Scheuer available at: [http://www.warcrimeswatch.org/news\\_details.cfm?artid=344](http://www.warcrimeswatch.org/news_details.cfm?artid=344)*

*Investigative TV programme Kontraste revealing German police involvement in Libya: [http://www.rbb-online.de/\\_kontraste/beitrag\\_jsp/key=rbb\\_beitrag\\_3535351.html](http://www.rbb-online.de/_kontraste/beitrag_jsp/key=rbb_beitrag_3535351.html);*

*Süddeutsche Zeitung 16,17/18,19,21,23,31.12.05; 10.1.06; Die Zeit 7/8.1.06*

*More background information about German-Syrian and German-Lebanese police cooperation: <http://www.german-foreign->*

## **ASBOWatch**

**[www.statewatch.org/asbo/ASBOWatch.html](http://www.statewatch.org/asbo/ASBOWatch.html)**

**"Terrorist" lists: proscription, designation and asset-freezing**

**<http://www.statewatch.org/terrorlists/terrorlists.html>**

## Our “freedom”, their labour: a “tradesman’s entrance” for Fortress Europe

by Ben Hayes

The new European Commission “Policy Plan on Legal Migration” will introduce fast-track migration with settlement rights for skilled workers and temporary admission with no rights for unskilled workers.

### “Strengthening freedom” (from “illegal” immigrants)

It is getting difficult to remember what to call EU Justice and Home Affairs (JHA) policy. Having started life in 1991 as the rather ominous sounding “Third Pillar” of EU cooperation, JHA was renamed the “Area of freedom, security and justice” in the 1997 Amsterdam Treaty. With increasing criticism of the overemphasis on “security” it was recently renamed the “Area of freedom, justice and security”. But despite the spin, JHA policy remains predominantly about “security”.

This is problematic for the EU because it is still ostensibly committed under the Treaties to strengthening “freedom” and “justice” as well. It is therefore always interesting to see how the EU purports to do this – having recently introduced the mandatory fingerprinting for EU all passport holders, the mandatory retention of all EU telecommunications traffic data and the mandatory surveillance of all air travellers, the EU can hardly start defining “freedom” in terms of civil liberties.

Under the heading “strengthening freedom”, the latest EU “operational programme” reads:

*In 2006 work will continue under this part of the Action Plan on promoting the right of all EU citizens to move and reside freely in the territory of the Member States. This calls for a focus on the associated question of further developing policy on asylum, migration and border controls (16065/05).*

There is no mention of any other value, principle or policy. “Freedom” for EU citizens simply means being able to live and travel in “Fortress Europe”, which means increasingly repressive measures against refugees and undocumented economic migrants (and never mind if citizens’ residence and movement is less and less “free”). In 2006 the EU will thus continue work on restricting refugees’ access to Geneva Convention protection, preventing illegal immigration and trafficking into the EU, strengthening border controls, developing law enforcement databases such as SIS II and the Visa Information System, and the increased vetting and surveillance of visa applicants and holders. All of this is listed in the operational programme, together with further external action on “global migration management”.

In spite of these restrictive policies and this particular vision of “freedom” the EU is increasingly dependent upon migrant labour. On the one hand it requires highly skilled labour to maintain the competitive advantage of European economies and on the other it requires “casual” labour to maintain production and do the jobs EU citizens are unwilling to do. Until now, the member states have been unwilling to address this issue at the EU level.

### Towards an EU policy on “legal migration”

In January 2005 the European Commission produced a “Green Paper” calling for a “broad discussion” on an “EU approach to managing economic migration”. It began by recognising that falling birth rates and ageing populations in the EU make the admission of economic migrants a political imperative. It also noted that the “main world regions are already competing to

attract migrants to meet the needs of their economies”.

In response to the consultation the Commission received “approximately 130 responses”, 40 of which came from civil society groups and NGOs calling unanimously for a more liberal EU approach to immigration and migrants’ rights (1). Unfortunately, the writing was already on the wall. First, the EU member states had already shown no interest in adopting the relatively liberal Commission proposal on economic migration of 2001 (2). Second, the scope for EU policy would be limited significantly because of agreement in the draft EU constitution that it would be up to individual member states to decide on the volumes of economic migrants they admitted from third countries (3). Third, the Commission Green Paper itself offered a very narrow basis for discussion of economic “migration management”.

In December 2005, the Commission produced a “Policy Plan on Legal Migration” (4). “The public consultation”, it suggested, “drew the attention to possible advantages of a horizontal framework covering conditions of admission for all third-country nationals seeking entry into the labour markets of the Member States” but – entirely predictably – “the Member States themselves did not show sufficient support for such an approach”.

### A class-based system

The EU is already committed to the “Community preference principle”, meaning that non-EU nationals should only be admitted for employment purposes if the vacancies cannot be filled by “national or Community manpower” – men or women from EU member states. However, this principle only really affects low-skilled migrants since most member states exempt highly skilled workers and corporate employees. In the light of the Community preference principle, the admission of ten new member states significantly reduces the need for labour from outside the EU, particularly from Asia and Africa where many current “economic migrants” originate. Put crudely, it is a preference for white European labour over black Third World labour.

This hierarchy is reflected in the status and rights accorded to different groups of people in the EU. Human rights are supposed to be universal, but in practise non-EU citizens do not enjoy the same rights as citizens. There is further distinction between a host of categories including long-term resident third-country nationals, short-term residents, refugees, temporary entrants, asylum applicants and illegal migrants – each group enjoying fewer rights the last, down to the “illegal alien”.

In its “policy paper” the Commission says it intends to introduce a general framework directive to guarantee “rights to all third-country nationals in legal employment already admitted in a Member State, but not yet entitled to the long-term residence status”. What this actually means is:

*A single application for a joint work/residence permit – held by the worker and containing the most advanced biometric identifiers – could be proposed. While not significantly affecting national internal procedures, it would simplify procedures for immigrants and employers. In order to limit abuses and to fight against illegal employment, the financial responsibility of the employer could be engaged, as in the researchers directive. The validity of such a document should be inextricably linked to the existence of a legal work contract; exceptions to this principle could be foreseen under*

*specific conditions of nationals [sic] labour markets, and will be addressed in the specific directives.*

There is no further mention of how the economic, social and political rights of the “worker” are to be guaranteed. Will they be able to change job or move country, for example? The status quo, coupled with the proposal that the employer could be “financially responsible”, suggest that this is very unlikely. At present, few member states link residence and employment so explicitly (Spain and Germany are best known for doing this through their quota and ‘gastarbeiter’ (guest-worker) schemes).

### **The “highly skilled”**

The “exceptions” to this general framework are to be set out in four further directives. The Commission says its intention is to “strike a balance between the interests of certain Member States – more inclined to attract highly skilled workers – and of those needing mainly seasonal workers”. What this means is that different classes of economic migrants will be admitted under different conditions.

First, the global competition for highly skilled workers means that the EU is to offer them “attractive conditions”:

*The vast majority of Member States need these workers, because of shortfalls in the labour markets pool of highly qualified workers. Furthermore, recent studies highlight for example that 54% of Med-MENA [presumably Mediterranean Middle Eastern and North African] first-generation immigrants with a university degree reside in Canada and the USA, while 87% of those having a lower than primary, a primary or a secondary level education are in Europe. In response to this situation a common special procedure to quickly select and admit such immigrants, as well as attractive conditions to encourage them to choose Europe could be devised. In this respect, it will be further evaluated whether to include intra-EU mobility or to opt for a more ambitious proposal, i.e. an EU work permit (EU green card), issued by one Member State but valid throughout the EU, on the understanding that rules regulating access to the national labour markets will be fully respected. (emphasis added)*

Another directive will cover “the entry into, the temporary stay and residence of Intra-Corporate Transferees (ICT)”. This is “in order to enable the reallocation of international companies’ key personnel and specialists within Europe”. In short, fast-track admission and full rights for the well educated, well trained and well paid.

### **The “seasonal worker”**

For the low skilled, things are rather different:

*Seasonal workers are regularly needed in certain sectors, mainly agriculture, building and tourism, where many immigrants work illegally under precarious conditions. The scheme will propose a residence/work permit allowing the third-country national to work for a certain number of months per year for 4-5 years. Entry and exit stamps should prevent abuses.*

*The aim is to provide the necessary manpower in the Member States while at the same time granting a secure legal status and a regular work prospective to the immigrants concerned, thereby protecting a particularly weak category of workers and also contributing to the development of the countries of origin. Even in presence of high unemployment, this category of immigrant workers rarely conflict with EU workers as few EU citizens and residents are willing to engage in seasonal activities.*

By basing the scheme on temporary admission and temporary employment contracts it remains to be seen how the Commission intends to provide this lowest class of migrant workers with a “secure legal status”, particularly since neither the member states nor the employers have shown themselves at all willing to improve their lot. Long-term resident status, which is dependent under EU law upon five years continuous residence, will clearly

be out of reach.

A final directive will cover “remunerated trainees”. Students, volunteers and researchers are already covered by legal migration rules, leaving what the Commission calls a “legislative gap”. “Allowing third-country nationals to acquire skills and knowledge through a period of training in Europe can be a way to encourage brain circulation, beneficial for both the sending and receiving country”. But as the Commission points out, “safeguards will be necessary to avoid abuses, i.e. trainees who are in reality underpaid temporary workers”. This is certainly the case already for many paid traineeships in the member states.

### **Human rights, economic wrongs**

The Commission’s Green paper promised to improve the lot of migrant workers. If it genuinely intended to this, why was there no mention whatsoever, in either the Green Paper or the Policy Plan, of ratifying international conventions designed for precisely this purpose (the Migrant Workers Convention being the most obvious example). The answer, as noted above, is that the member states are not interested in migrants’ rights – only migrant labour.

From this starting point (and because the admission of economic migrants is essentially a national matter) EU policy was never going to be about admitting or rearing the migrant workers on whom its economies depend, but rather about controlling and coercing them. “Fortress Europe” is generally associated with keeping migrants and refugees out of the EU but it has long had an internal dimension geared toward the surveillance and control of those already here. As Dario Melosi has pointed out in *Statewatch* (vol 13 no 5), the construction and criminalisation of the “illegal” migrant is about the: ““subjectification” of recruits into a new draft of the European working class”.

This particular form of social control is extremely costly because it requires the vast apparatus of modern policing to be employed against those fleeing poverty and persecution, people who generally have no choice but to enter illegally. In this sense, “Fortress Europe” uses violence and coercion in the same way as modern nation-states – through surveillance, policing, laws and detention. But there is an extra dimension to “Fortress Europe”: expulsion, a threat faced by migrant workers with both regular and irregular immigration statuses. This ultimate sanction is crucial because it hands additional coercive powers to employers, both legal and illegal, by institutionalising a kind of “bonded labour” in which residence is dependence upon continuous employment and good behaviour. Temporary and illegal workers in particular are vulnerable to “super-exploitation”.

Such a system is both unjust and irrational. As the EU member states busy themselves trying to meet ambitious expulsion targets at phenomenal cost – tens of thousands of people every year in some member states – it might be asked why not offer these people employment where shortages exist. After all, the only crime they have committed is to come here to try to live and work, or to be with their families. Sadly, the European Commission has once again demonstrated the gulf between the rhetoric and reality of “freedom, security and justice” in the EU.

(1) See Commission website:

[http://europa.eu.int/comm/justice\\_home/news/consulting\\_public/economic\\_migration/news\\_contributions\\_economic\\_migration\\_en.htm](http://europa.eu.int/comm/justice_home/news/consulting_public/economic_migration/news_contributions_economic_migration_en.htm)

(2) COM (2001) 386

(3) Art. III-267

(4) COM(2005) 669: <http://www.statewatch.org/news/2006/jan/com-policy-plan-legal-mig-669.pdf>

# The EU's Police Chiefs Task Force (PCTF)

- a story of self-regulation and self-definition by a body with no legal or constitutional basis

A plethora of groups, agencies and centres have been set up by the EU since the entry into force of the Amsterdam Treaty. One of the first was the Police Chiefs Operational Task Force - as it was originally called - set up after the Tampere Summit in October 1999. Recommendation no 44 called for:

*the establishment of a European Police Chiefs Operational Task Force to exchange, in cooperation with Europol, experience, best practices and information on current trends in cross-border crime and contribute to the planning of operative actions*

In the event the PCTF has interpreted "contributing" to the "planning" of operations as planning operations - as the Belgian delegation observed as early as May 2000 it is "essentially geared towards the operational aspects of police work".

To say it was "set up" sums up its legal basis - it was "set up" and first met in April 2000 in Lisbon and to this day has no legal basis in the EU.<sup>1</sup>

## 2000 - PCTF launched

A "Note" from the UK Delegation to the Article 36 Committee dated 2 February 2000 summarised the intended role of the PCTF (doc no: 5858/00). The "idea" was defined as bridging the "gap" between the provision of information and intelligence "on serious organised crime" through Europol and "its translation into operational activity".<sup>2</sup> The examples cited were drug trafficking, illegal immigration and paedophile rings. The PCTF would be a "high level informal group" comprised of "top-level law enforcement officers with the "authority to commit resources and direct operations".

Although an "informal" group it was to report to the JHA Council via the Article 36 Committee while the legal basis was sorted out. The UK Note said it was "anticipated" the PCTF "would be given a formal legal basis set out in a separate legal instrument". This was necessary, it was argued, in order to give it a "proper status within the Council structure" and "should be negotiated quickly so that the Task Force can start work later this year" (ie: 2000).

The same Note said that the PCTF:

*would be serviced by the Council Secretariat*

The UK Note also posed a number of questions that needed answers, including: "How will the Task Force physically get information from Europol without it breaching data protection laws? Will there be the need to store it separately and if so how"? These questions, like its legal status, have never been answered.

The first meeting in Lisbon, 7-8 April 2000, was entitled an "Informal meeting of Chief Police Officers" - an "informal" meeting of an "informal" group. The Presidency Conclusions (doc no 7753/00) set the tone for the future - the PCTF was to define its own remit and roles to be rubber-stamped by the Article 36 Committee. The Conclusions said that it was necessary to create a "flexible, evolving and initially informal structure". Its transnational roles on organised crime now included terrorism and public order ("whenever events occur which are likely to threaten it"). December 2001 was set as the date for assessing its function - as we shall see below three events were to shape its role before then.

In May 2000 the Belgian delegation sent a Note to the Article 36 Committee (doc no: 8120/00) calling for the PCTF to: "*be made an official working party of the Council of the EU*"<sup>3</sup> drafting opinions for the JHA Council and Article 36 Committee. The second meeting of the PCTF in Paris on 14-15 September 2000 tried to flesh-out its roles. Counterfeiting of the euro, which just about to be launched and "community policing" were added.

## 2001 - new roles for the PCTF

With little substantive to discuss the third meeting of the PCTF in Stockholm, 8-9 March 2001, the group looked to define its role for itself (doc no: 7194/01). Its "Working Methods" it was decided: "*require only a minimum of regulations*". A set of "guidelines" were agreed including any law enforcement agency in any member state could "initiate the planning of joint operative actions against transnational crime" seen as an "threats of immediate concern to a group of Member States". A joint operation was planned "along the *future* external border of the EU" (emphasis added, the EU then had 15 members).

The demonstrations in Gothenburg (June 2001) and Genoa (July 2001) brought "public order" to the top of the EU's agenda and the PCTF was charged with advising on the "most appropriate operational measures for ensuring effective policing and security of European Councils and similar events" and ensuring effective "EU police cooperation in support of the Member State hosting the event". Interestingly the draft Council Conclusions said that they should consider:

*"the amendment of the Europol Convention [and] examine the possibility of entrusting this task to Europol" (doc no: 10731/01)*

The final draft deleted "Europol" and gave the lead role to the PCTF - though the "pivotal role" of the PCTF was changed to a "significant contribution".

11 September 2001 was to further shape the PCTF's roles. The Conclusions of the special meeting of the JHA Council on 20 September requested the PCTF to organise an "ad-hoc meeting of the heads of EU counter-terrorist units" (that is, specialist police units rather than security and intelligence agencies) to discuss: 1) improving operational cooperation between them and with third states; 2) coordinating measures particularly on air safety and 3) to consider the "missions" for counter-terrorism specialists "within Europol".

A follow-up meeting on 29 October 2001 between Europol, Eurojust and the PCTF resulted in a Note to the Article 36 Committee (doc no: 15389/01). This says that while Europol and Eurojust were "based on a specific legal act" (a Convention and a Framework Decision):

*the PCTF had no institutional or legal status. The place of PCTF, which was now nearly two years old, in the architecture of the EU's institutions had to be specified and its work methods clarified if coordination between the three bodies was to be effective.*

The Presidency Note further said that the job of the PCTF was to:

*"support the competent bodies of the EU... and not itself become a decision-making forum".*

The fourth meeting of the PCTF in Brussels on 30-31 October 2001 discussed a report on its role from the "Comite des sages" (Committee of "wise men")! The majority of delegations said it was "premature to discuss the role of the Task Force within the EU" (doc no: 13747/01). On terrorism the PCTF:

*expresses satisfaction with the work of the ad hoc group meeting of the heads of counter-terrorists units with a view to drawing up a list of terrorist groups in the EU and recommends that this list be confirmed by the Working Party on Terrorism*

The PCTF at this meeting threw its weight behind a number of controversial proposals which were later to come through: 1) calling for a review of Article 99 of the Schengen Agreement - which allows discrete surveillance or checks on named individuals or vehicles: "*with a view to relaxing the procedure to bring it more into line with practice*"; 2) establishing a uniform code for informants; 3) for a: "*better balance between the rules*

for data protection and adequate research possibilities, particularly in the fields of telecommunications and electronic data"; 4) harmonising the "technical aspects" of identity cards and passports and 5) "the exchange of information between police services and airline companies" - the EU's PNR scheme agreed in April 2004.

On 14 November 2001 the Council Presidency circulated at Note from the Greek delegation which called for the PCTF taking on:

*a more official character by being included in the structures of the Council, in order that their decisions be given a mandatory character (doc no: 13406/01 ADD 3).*

### **2001 - is the PCTF part of the Council or not?**

On 1 November 2000, Tony Bunyan, Statewatch editor, requested a copy of the Agenda of the PCTF meeting on 29-31 October 2000. The General Secretariat of the Council replied on 8 November that:

*The meeting in question was organised by the Belgian authorities, not by the Council, and thus there is no Council agenda of that meeting*

To which the response was: It was clear that the PCTF was agreed at the Tampere Summit (para 44) and confirmed by the UK Note and that Belgium called the meeting was unsurprising as it held the Council Presidency. Further, for a body created by the Council not to be subject to the Code of Access to documents was "unacceptable" (doc no: 13871/01). The Council's reply was, to say the least, convoluted. It was correct that the European Council agreed in Tampere to set up the body however:

*this task force has not been set up by the Council of the European Union, which is not identical with the European Council... the [PCTF] operates outside the Council's organisational framework... it must be concluded that the documents of the European Police Chiefs Operational Task Force are not held by the Council in the sense of Article 2.3 of Regulation 1049/2001 (doc no: 13873/01)*

So in terms of accountability the PCTF has no legal basis, it is not a Council body - even though it meets under the auspices of the European Council and it is serviced by the Council Secretariat - and therefore no access to documents the Council does not hold.

### **2002 - PCTF defines its own role**

The fifth meeting of the PCTF took place in Gran Canaria, 9-10 April 2002. Some information of the operations organised through the PCTF are listed: 1) "High Impact"; 2) "Rio"; 3) "Rio-II" (Italy and Spain); 4) "Twilight" (Denmark and UK); 5) "Track" (Finland and Russian Federation, stolen vehicles). The meeting also endorsed the UK proposal for a study on "data retained by telephone and Internet service providers".

Significantly, the PCTF established a "Steering Committee":

*comprising the Troika [representative from the past, present and next Council Presidencies], the General Secretariat of the Council, which will also provide secretarial support, and Europol (doc no: 8839/1/02)*

What is interesting in the composition of the "Steering Group" is the role of the General Secretariat of the Council. The UK Note from February 2000 noted that the General Secretariat would "service" the PCTF. Here, however, the General Secretariat is a full member of the "Steering Committee" (and also of the full meeting) as a "player" - the General Secretariat works for the 25 EU governments yet here it is, in its own right, sitting at the table planning and evaluating *police operations*, contrary to any notion of the "separation of powers".

The sixth meeting in Copenhagen, 22-23 July 2002, agreed "Conclusions" drafted by the Presidency and the Steering Committee on the "future functioning of the Task Force" (doc

no: 1175/02).

The Conclusions list eight areas where "significant operational matters have been considered" including, safety and security at Summit meetings. "anti-globalism problems", and "High Impact Operations". It also sets of the priority to focus:

*to a greater extent on the planning and execution of actual police operations at Union level*

### **2003 - PCTF steps up its influence and roles**

At the seventh meeting in Crete, 19-20 May 2003 a detailed discussion on combating terrorism took place with the PCTF "inviting" Europol to take further steps to enhance cooperation with Interpol. The 2004 Olympics Games and illegal immigration (Europol plan to tackle "illegal immigration" from Ukraine and trafficking of human being from Bulgaria) were discussed at length.

Now on the agenda was the EU's Police Mission in Bosnia-Herzegovina: return of refugees, organised crime and control of borders with problems of "underpayment" resulting in a "continuous problem of corruption of some police officers". A whole day was devoted to organised crime with four operational plans noted: Track (Finland), Mare (Germany, "illegal immigration by sea"), Hercule (Austria) and Twilight (Denmark). The PCTF also "invited" Europol to draw up concrete action plans on: "ethnic Albanian OC groups" (organised crime) and drug trafficking via the Balkans.

The tenor of the eighth meeting in Rome, 6-7 October 2003, shows the PCTF trying to flex its muscles, especially as regards Europol. The Task Force decided that: "the Director of Europol will" (emphasis added) "assess cooperation between law enforcement agencies and intelligence agencies, "submit to the Task Force" proposals to improve this cooperation, and:

*enhance information exchange among Member States and third countries, by eliminating the obstacles of technical, organisational or legislative nature that prevent the complete and rapid exchange of information (doc no: 13395/03)*

The idea that the PCTF could arbitrarily order Europol to "eliminate" obstacles in this way is either naive or daft.

### **2004 - 11 March (Madrid) and new remits**

The ninth meeting of the PCTF was in Dublin, 22-23 March 2004. This was just after the bombings in Madrid on 11 March and the sharing of intelligence was high on the agenda.

The PCTF was asked to see how its operational capacity could be reinforced and noted that, "The issue of intelligence is central to the fight against terrorism" and collaboration between police, security and intelligence agencies also a priority.

Like many Conclusions of these meetings the intention is clear while the practice is often different. Post 11 March 2004 there was a historical and continuing reluctance on the part of security and intelligence agencies to pass over to police agencies like Europol and the PCTF (except on the "need to know" related to surveillance and arrests).<sup>4</sup>

More practically there was an attempt to get national police forces to send through intelligence to Europol - that is "intelligence" gathered by national specialist police units. The meeting also sought to resurrect the "Atlas" project on which see below.

Cyber crime, the annual organised crime report, and Joint Investigation Teams (JITs) were discussed. On JITs "certain problems on the efficiency" of the proposal, as it then was, were voiced. It should be more flexible and the procedures "not be cumbersome" (see below).

The Austrian delegation informed the meeting on a seminar on "Sky Marshals" (US-style armed officers), and "many delegations stressed that the priority should be given to preventive action". Although the response here was luke-warm

the introduction of "Sky Marshals" is in the Prum Convention signed by Austria and Belgium, Germany, Spain, France, Luxembourg and the Netherlands on 27 May 2005.

An "extraordinary meeting" of the PCTF was held in Brussels on 10 May 2004 with its future role as the main topic based on a paper from the Presidency (doc no: 9453/04). The report of the meeting notes that there was broad agreement, yet again, to "bring the Task Force within Council structures", to increase the number of meetings (formal and informal) and support for the maintenance of the Steering Group. The new idea was the need for "an operational support structure" an "Operational Support Unit" for the Task Force which could either be based at Europol or in the General Secretariat of the Council - the preferred option was Europol (policy influence was already guaranteed through the participation of the General Secretariat on the Steering Committee and its general meetings<sup>5</sup>). The Support Unit would be under the direction of the Steering Committee whose meetings it would attend "in a support capacity". It would be comprised of three representatives, one from each member of the Troika.

In its fifth year of existence the PCTF - still without any legal basis - was assuming greater roles in the policing field. It was to present the Council with a Comprehensive Operational Strategy Plan (COSPOL).<sup>6</sup> Plenary meetings would be "held in Brussels at the premises of the Council Secretariat" as a "Council Committee (ie: inside the structures of the Council)" while operational meetings would take place at Europol (where the Support Unit would be based).

The Steering Group was to be given carte blanche to "approve the attendance of representatives of other bodies or organisations as appropriate".

The main role of the Council Secretariat - in addition to its active membership of the Steering Group and plenary sessions - was to ensure coherence with the work of the Council's main policy-making Committees and Working Groups (eg: Article 36 Committee and the Police Cooperation Working Party).

The "Reporting structure", a gesture to accountability, was simply ensuring that the Conclusions of the plenary sessions are "brought to the attention of the Council".<sup>7</sup>

On 25 October 2004 a meeting of EU Chiefs of Police was held in Warmsveld, Netherlands on the policing aspects of the European security and defence policy (ESDP). The resulting Declaration noted the first two ESDP police missions in Bosnia (EUPM) and Macedonia (EUPOL PROXIMA) and the commitment to provide for "non-military crisis management" 5,000 para-military police (which has yet to materialise) - which is perhaps why the meeting "welcomed the initiative to establish a European Gendarmerie Force (EGF) by France, Italy, the Netherlands, Portugal and Spain" (it was formally launched from its base in Italy in January 2006).

The Conclusions of the tenth formal meeting of the PCTF, 11-12 October 2004, were the first to be censored (ie: sections were blanked out, so-called "partial access" to the document was allowed) (doc no: 14094/04). The chair opened the meeting by noting the success of the PCTF and that:

*organised crime and terrorism are increasingly being fought jointly. The joint approach is also used increasingly and successfully at sports events and demonstrations of anti-globalists.*

One of the main items on the agenda was "COSPOL 1", the one most heavily censored. The job of COSPOL was to set targets, appointing "forerunner groups" "lead groups), managing operational performance and "empowering information sharing" at the EU level.

The "Scheme of COSPOL 1" set out six targets/teams - however, these were: 1. Terrorism (shared lead), 2. Counterfeiting of the euro (Germany), 3. East European Organised Crime (Poland), 4. West Balkan Organised Crime (Italy), 5. Cyber crime/child pornography (Sweden) and 6. Drugs: synthetic drugs and ecstasy (France). Between six and

eight member states participate in each team. For example, the West Balkans Organised Crime target/team lead by Italy has the following participants: France, Austria, Belgium, Denmark, Slovakia, Luxembourg, Norway and Europol. All the targets are mentioned in later Conclusions so why this section was deleted is not at all apparent.

Opinions "diverged as to whether the Council should be asked to validate the choice of targets or that it would be more appropriate to just inform the Council in these operational matters." A majority of representatives favoured asking the Council but: "certain delegations thought that decisions on operational matters should be left to Police Chiefs". It was decided to submit the plan and targets to the Council leaving it to "their discretion how to respond to it".

In November 2004 yet another Note appears on the "Role and positioning of the PCTF" (doc no: 14708/04). On the *operational* side "it is desirable to bring the PCTF closer to Europol" and relevant meetings should be hosted by Europol". IT is also noted that the role of the PCTF:

*is wider than the competence areas of Europol (eg: maintaining law and order and security)"*

However, on the *strategic role* of the PCTF they "should meet within Council structures" which "will ensure accountability of the European operational cooperation". How is this to be done? There were two views: a) a number of delegations supported the idea that the Police Cooperation Working Party should meet once or twice a Presidency in "a Police Chiefs" setting"; b) several delegations thought "it would be more fitting to convene their meetings at a higher level, with direct reporting to COREPER" - either through joint meetings with the Article 36 Committee or a "separate meeting forum (the Police Chiefs Committee). The Council was invited to decide. When the Note was discussed in the Article 36 Committee (11-12 November 2004, doc no: 15102/04) "concerns were expressed by some delegations on the number of subgroups created by the PCTF".

At the JHA Council on 19 November 2004 there was a discussion on the Presidency Note on the role and positioning of the PCTF (doc no: 14938/04). On its *strategic* role the Council decided:

*Because of their strategic role with regard to European police co-operation, it is desirable that the highest representatives of the police of the Member States meet within the Council structures. This will allow to discuss strategies and issues related to structural problems as well as provide a clear operational point of view in the Council's proceedings. Moreover, it will ensure the accountability of the European operational co-operation.*

*It is proposed that, pending the definite setting of the internal security committee, provided for in Article III-261 of the Constitutional Treaty and point 2.5 of the Hague Programme, each incoming Presidency convene one or two times the Police Chiefs in association with the Article 36 Committee meetings or in any other setting they find appropriate.*

Pending the Constitution and COSI coming into being meetings could be convened by the Council Presidency with the Article 36 Committee or any other "appropriate" setting, whatever that mean. Of course, the EU Constitution is in abeyance for the foreseeable future. Presidencies could "convene" meetings, but did this make the "Police Chiefs" a Council Committee? And why is the "Police Chiefs Committee" not included on the Council's List of preparatory bodies (last update 27 December 2005)?

## **2005 - PCTF, "Police Chiefs" Committee and "Atlas"**

The first overtly operational meeting of the PCTF at Europol HQ in the Hague was held on 10 February 2005. The meeting discussed the six targets under COSPOL (doc no: 6268/05).

The first meeting of the strategic meeting of Police Chiefs

was on 12 May 2005 at the Council in Brussels (doc no: 9494/05) and the agenda was available too (CM 1410/1/05). The chair said that it was hoped that its meetings could "bring the operational police point of view closer to the Council structures, both towards the Council and the Article 36 Committee" - the "appropriate setting" was apparently for its to hold a meeting on its own.

The meeting considered the Europol Work Programme for 2006 and "the Police Chiefs confirmed their endorsement of this work programme". Although:

*it would be examined how the Police Chiefs could give useful and timely input to be taken into account for the next working programme*

At this meeting on 30 May 2005 the Commission expressed concern that so far:

*only one Joint Investigation Team had been set up and wondered what the underlying reason for this was. The Commission appealed to the delegations to increase the use of this tool*

Member States it seems, although they had rushed through the Framework Decision on Joint Investigation Teams were keener on using other more flexible resources - through the PCTF and ad hoc multinational teams where accountability is more remote.

Under "Combating terrorism" the Belgian delegation presented the "Atlas strategy" (circulated by the Presidency as a "Discussion document on a normative framework for "ATLAS"", doc on: 8434/05). Following 11 September 2001 under the "umbrella" of the PCTF the "Atlas network" has:

*conducted various seminars, studies, exchange of material and common exercises"*

and has set up a "secure communications network" via Europol,

The purpose of "Atlas" is to coordinate the use of:

*special intervention units at EU level*

This appears to refer to para-military police units specialising in dealing with terrorism, sieges, hostage-taking, cross-border pursuit, public order etc.

The question is asked whether the "appropriate legislative framework existed"? And how the EU would cope "when its special units are requested to intervene in different situations taking place simultaneously"?

Under "issues to be discussed" is "What is a crisis situation", should the definition be very broad or limited in scope? The assistance required might be of equipment only or equipment with specially trained personnel or a whole unit.

It was intended only to use special intervention units inside the EU.<sup>8</sup>

In parallel, in October and November 2005 the Police Cooperation Working Party (Mixed Committee) discussed the creation of "Special Task Forces" to deal with "crisis situations" where "there is a direct threat to persons or institutions" (doc no: 13957/1/05).

The PCTF meeting on 27 October 2005 in the Hague proposed renaming the PCTF "Operational Support" to "PCTF Support Unit" (as the officers are not involved in actual operations). It also observed that Commission finance programmes are "inappropriate for operational issues" - the Commission representative promised to pass on the message that:

*a balance had to be struck between efficiency of police work and the necessary budgetary rules (doc no: 14736/05).<sup>10</sup>*

The final meeting of the year on 7 December 2005 was the second meeting of the Police Chiefs Committee at the Council.

It spent some time looking at Joint Investigation Teams (JITs) and why so few had been set up. During the discussion it was said that there was a complex procedure for setting up JITs and this may lead "authorities to choose a more pragmatic and direct way of cooperation", while other delegations observed that the complex procedures "provided the necessary legal guarantees

to ensure that the case would stand up in court".

Surprise was also expressed that:

*no JIT has so far been set up within the COSPOL framework, as these projects by definition concern trans-national investigations*

On the ground it appear the police forces prefer to organise multilaterally rather than through JITs.

## Conclusions

The PCTF is now in its seventh year, though now it is a hybrid with the PCTF meeting in the Hague on operational matters (together with a Support Unit), a Steering Group meeting regularly with no agendas or Outcomes ever published, and a Police Chiefs meeting under the auspices of the Council.

The fact that the PCTF meets at Europol offices does not give it any a constitutional or legal basis. Nor does the Council agreeing that Council Presidencies could call meetings of Police Chiefs in any "setting they find appropriate" pending the adoption of the EU Constitution (which may never happen).

It is convenient for the Council to operate in this fashion where through the active participation of the General Secretariat (JHA) it can influence both operations and strategy - but it is a wholly unaccountable arrangement which has no place in a democratic Europe.

## Footnotes

<sup>1</sup> Under the EU Constitution, currently in long-term abeyance, there have been suggestions that the PCTF might become part of the Internal Security Committee (COSI). An alternative view was that it would service COSI. Either way it would still need a legal basis.

<sup>2</sup> On 19 September 2001 Belgium, Spain and UK proposed the early implementation of Joint Investigation Teams (JIT) which are in the 2000 Mutual Assistance Convention. This was implemented on 1 January 2003 though a Commission report in 2005 said only two JITs had actually been constituted. JITs would seem to meet the perceived "gap" but the PCTF provided a more flexible, informal, mechanism.

<sup>3</sup> The Council failed to answer as to its "legal basis" in answer to a question from Marco Cappato MEP, doc no 11031/00, 3 October 2000.

<sup>4</sup> This was resolved in the summer of 2004 when internal security agencies agreed to forward intelligence to the Joint Situation Centre (SitCen), part of the EU's growing military apparatus under Mr Solana in the Council Secretariat.

<sup>5</sup> As noted in document no: 14094/04: "There is no doubt whatever that the Council Secretariat is the entrance to the Council and the Council's structures".

<sup>6</sup> Two proposals for European police cooperation were on the table: the Comprehensive Operational Strategic Plan for Police (COSPOL) from the Netherlands and the European Criminal Intelligence Model (ECIM) from the UK (doc no: 13075/04).

<sup>7</sup> A Presidency Note, 27 October 2004 suggested that maybe there should be joint meetings of the PCTF and the Police Cooperation Working Party which "will ensure the accountability of the European operational cooperation" (doc no: 13075/1/04).

<sup>8</sup> The GSF is intended to operate outside and inside the EU.

<sup>9</sup> An interesting Note from the Luxembourg Presidency raised the issue of developing a structure for police supervisory and inspection authorities at the EU level to oversee the activities of police units acting at this level or in another state (doc no: 10048/05).

<sup>10</sup> More details on the PCTF Support Unit are given in 15067/05.

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## Contributors

Statewatch, was founded in 1991, and is an independent group of journalists, researchers, lawyers, lecturers and community activists.

Statewatch's European network of contributors is drawn from 14 countries.

Editor: Tony Bunyan. News Editor: Trevor Hemmings. Reviews Editor: Nadine Finch. Lee Bridges, Paddy Hillyard, Ben Hayes, Steve Peak, Phil Scraton, Joe Sim, Mike Tomlinson, Frances Webber, Ida Koch, Catherine Weber, Dennis Töllborg, Francine Mestrum, Kees Kalkman, Christian Busold, Heiner Busch, Peio Aierbe, Mads Bruun Pedersen, Vassilis Karydis, Steve Peers, Barbara Melis, Katrin McGauran, Yasha Maccanico, Frank Duvell (Antiracism Office, Bremen), Nick Moss, Max Rowlands, Eleanor Rees, Nicos Trimikiniotis. The Centre for Studies in Crime and Social Justice (Edge Hill College, Lancashire), Liberty, the Northern European Nuclear Information Group (NENIG), CILIP (Berlin), Demos (Copenhagen), Omega Foundation, AMOK (Utrecht, Netherlands), Jansen & Janssen (Amsterdam), Kommitee Schluss mit dem Schnuffelstaat (Bern, Switzerland), Arturo Quirantes.

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Statewatch,  
PO Box 1516, London N16 0EW, UK.  
Tel: (00 44) 020 8802 1882  
Fax: (00 44) 020 8880 1727  
e-mail: [office@statewatch.org](mailto:office@statewatch.org)