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UK/G8/USA/EU

G8 pushing for "preparatory" terrorist offences, secret trials and secret evidence

Blunkett's "authoritarian" proposals emanated from discussions in secret fora

It has emerged that proposals by the UK Home Secretary, David Blunkett, to introduce sweeping changes to the way that "suspected" terrorists are treated originated not in the Home Office but in G8 - the intergovernmental group comprised of the USA, Canada, UK, France, Germany, Italy, Japan and Russia. Blunkett sidelined the proposals after admitting that he was "surprised by the ferocity of the response" (26.2.04). However in G8 the ideas are well advanced.

Blunkett announced the proposals on 1 February while in India. He said that where "suspected" terrorists were concerned the government wanted to take pre-emptive action by lowering the standard of proof so that suspects could be charged before mounting an attack and tried in secret (*in camera*) by a vetted judge. Evidence would be kept secret from the defendants so as to protect the sources of MI5, MI6 and GCHQ or from a third state like the USA - this would also entail "special advocates", state-vetted defence lawyers who could be trusted not to pass on intelligence information.

As the evidence presented would come from intelligence and security sources he said that:

> *It needs to be presented in a way that does not allow disclosure by any of the parties involved, which would destroy your security services. It is about the threshold of evidence and the nature of those involved being accredited and trusted not to reveal sources*

So the government wanted to look at the "evidential base and the threshold of evidence". The level of proof he argued could be lowered from "beyond reasonable doubt" to the "balance of probabilities". He said he intended to publish his proposals in an options paper on anti-terrorist laws.

The reaction to the proposals was immediate. Baroness Helena Kennedy QC said they were "an affront to the rule of law" and that "he really is a shameless authoritarian". Louise Christian, a lawyer representing a number of those held in Guantanamo Bay, said: "I don't think he is fit to be Home Secretary". Newspaper editorials weighed in against Blunkett's proposals, a *Guardian* editorial called it "Affront to the rule of law" and ended by saying that by refusing to "seek a balance between public safety and the rule of law, he loses all sympathy".

On 7 February six of the leading lawyers in the country – Nick Blake QC, Andrew Nicol QC, Manjit Singh QC, Ian Macdonald QC, Rick Scannell and Tom de la Mare – wrote an "open letter" condemning the proposals which:

> *would contradict three cardinal principles of criminal justice: a public trial by an impartial judge and jury of one's peers, proof of guilt beyond reasonable doubt, and a right to know, comment on and respond to the case being made against the accused*

Top legal figures added their views, on 10 February the Director of Public Prosecutions, Ken Macdonald QC, cast doubt on the idea of lowering the standard of proof.

On the same day the Prime Minister, Tony Blair, hinted that the standard of proof might also be lowered to confiscate assets of organised criminals.

Professor Graham Zellick, Chairman of the Criminal Cases Review Commission (CCRC) said:

> *It would involve throwing out centuries of principle, not just tradition. Just cast your minds back a few years to the wrongful convictions and miscarriages of justice that led to the CCRC being created. And they were convictions secured with the requirement of proof beyond reasonable doubt (16.2.04)*

In the event the promised "options paper" did not include any of these proposals and the whole episode was put down to "kite-flying" by the Home Secretary to see how the ideas would be received.

However, it appears that the origin of these proposals come from a much higher source, the working parties of G8 where Home Office, MI5 and MI6 officials are key players (alongside the USA) in its working groups. Blunkett would have been briefed on the "state of play" on current discussion (*see page 2*)

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On 23 February this year there was a EU-US high-level officials meeting on justice and home affairs under the "New Transatlantic Agenda" held in Dublin. The Irish Presidency Chair of the Article 36 Committee, assisted by officials met with their US counterparts. The meeting was: "EU-US Troika JHA Informal/SCIFA Informal" – "Troika" (Troika refers to past, present and next EU presidency). The report on the meeting is peppered with references to on-going work in G8 (of which neither Ireland nor the next EU Presidency, Netherlands, are members).

At the meeting the US took the lead on the topic of: "Terrorism prevention measures" and *"expressed three concerns regarding [EU Member] States' abilities to fight terrorism"*. The first and third "concerns" are directly related to Blunkett's proposals:

> *The first concern was that states' legal systems should allow their law enforcement authorities to take action against preparatory acts for terrorism at a stage where no terrorist acts had been committed.*

This is exactly what Blunkett was proposing – with all the consequent changes to due process, for example, lowering standards of proof.

> *The third and probably most difficult issue which was raised by the US was how to share intelligence information related to terrorism for use in a criminal proceeding in another country, while ensuring that the intelligence would be protected.*
>
> *This question is two-pronged: (1) have states the legal ability to protect intelligence information, and (2) how can the (prosecutorial) authorities of a state be informed of the fact that another state holds intelligence information which is relevant to the terrorist case that is being prosecuted. The US clearly signalled that it was seeking to cooperate with the EU and its Member States on this issue. As a first step it suggested drawing up a document that would collate information from the US and the Member States, which would lay out to what extent and how states can protect intelligence information received from another country. The G8 had already started work on this by way of a questionnaire that had been sent out to and replied by all G8 members. The US suggested that the EU might consider following up on this questionnaire in relation to use of intelligence information."*

This is exactly the issue raised by Blunkett which would require vetted lawyers, denial of access to intelligence "evidence" to the defendant, and closed (*in camera* court proceedings).

Although the UK was not represented at the Dublin meeting Home Office, police, MI5 and MI6 officials were at the earlier key meetings in G8 in the Roma and Lyon groups. These officials, together with their counterparts from three other EU states (France, Germany and Italy), had by the time of the meeting on 23 February already agreed on the "concerns", sent out a questionnaire and received replies from "all G8 members" (including from the UK).

The proposals put forward by Blunkett on 1 February and withdrawn on 26 February are not going to disappear. By the time of the meeting on 23 February the plans were well advanced and the USA was lobbying the EU to back them.

Increasingly seeing major decisions on the "war on terrorism" being taken outside of democratic structures in secret international fora and then handed down to the EU and national parliaments as a done deal."

Source: EU doc no 6862/04.

NOTE:

The key G8 working groups are: the Roma Group (intelligence and internal security officials, known as the Counter Terrorism Experts Group), the Lyons Group (law enforcement officials dealing with organised crime set up in June 1996) and the judicial cooperation group (there are others on immigration etc). The next G8 meeting is on Sea Island, Georgia, USA on 8-10 June and this may be preceded by a G8 Justice and Interior Ministers meeting in May.

Europe - in brief

■ **EU: "Operation Semper Vigilia"**. The EU's Centre for Land Borders has forwarded a report on its "7th Joint Operation" to the Council (14397/03, 6.11.03). Operation "Semper Vigilia" took place on 6-31 October 2003 and was aimed at preventing "illegal entry by scheduled bus" into Germany, Italy and Austria. Seven countries were involved and checks were carried out on "11,552 vehicles and approximately 160,000 travellers". "416 persons were turned back at borders on suspicion of illegal entry into Europe; charges were brought against 308 persons". The operation was concentrated on Nickelsdorf, the border crossing between Austria and Hungary, and "most of the checks and arrests were carried out there". The report concludes that this shows Nickelsdorf is "a focal point for illegal entry into the EU from Eastern Europe". However, only 0.26 per cent of those checked (or one in 400) were refused entry and even less were charged with any offence. The EU Centre for Land Borders is part of the developing EU Border Police.

Europe - new material

In the name of Europe, Peo Hansen. *Race and Class* Volume 45 no 3 2004, pp49-62. Hansen focuses on the long running debate surrounding attempts to define Europe's cultural and geographical boundaries in the face of potential future enlargement. He argues that the cultivated view of European identity and citizenship invariably "pertains exclusively to a transnational white ethnicity". Thus, in turn, it has a twofold impact in both ostracising millions already residing within the EU, and damaging the chances of new membership applications. He points to Turkey which has suffered at the hands of both geographical and cultural border distinctions, and also to Morocco whose application was comprehensively rejected on the basis that only European states may join the EU: "the European Clause". It is in this context that Hansen highlights the glaring inconsistencies within the practical application of these two definitions. Spain still controls two North African islands (Melilla and Ceuta) situated a mere few hundred metres from a country deemed non-European (Morocco). Islands which Hansen argues are, "in some respects, more integrated into the EU than are the non-EMU members of Britain, Denmark and Sweden". Similarly there are numerous "Overseas Countries and Territories" located as far away as South America (Guyana, Falklands/Malvinas), the Caribbean (Martinique) and the Indian Ocean (Réunion) whose citizens carry European passports and enjoy the full accompanying rights. Thus can countries such as France and Britain fully comply with "the European clause"? To Hansen the limitation of European identity and the EU's corresponding disinclination to acknowledge the true extent of its territory is invariably linked to its similarly "forgotten" colonial past. For the EU to fully recognise its colonial past would also be to recognise that "crimes of genocide, slavery and exploitation were also carried out in the name of Europe and justified with reference to the racial and cultural superiority of Europeans". Hansen argues the need for further debate around this issue is "urgent" yet claims "there are no real indications of it emerging any time soon".

Recent developments in European Convention law, Philip Leach. *Legal Action* January 2004, pp23-28. Summary of cases heard at the European Court of Human Rights, between May and November 2003, which have particular relevance to the UK. Two such cases are those of Pat Finucane, shot dead in Belfast by masked men in 1989, and Michael Menson who was killed in a racially motivated attack in 1997.

New EC discrimination regulations reviewed, Gay Moon. *Legal Action* December 2003, pp26-29. Discusses the Race Directive 2000/43/EC and the Employment Directive 2000/78/EC, and their implementation. Moon argues that they have served only to further complicate and decrease the accessibility of the law.

Statewatch European Monitor, March 2004
see: www.statewatch.org/monitor/monitor.html

CIVIL LIBERTIES

GERMANY

Terrorist trial targets the left, again

On 16 December 2003, two left-wing activists were sentenced to two and a half and two years imprisonment by the regional high court of Naumburg for four instances of arson, (two of them attempted). A third defendant was acquitted. Two of the accused were arrested in Magdeburg in November 2002 and spent almost one year and 8 months respectively in prison on remand. The police had claimed that the mens' local autonomous network (AZ) was part of was a hotbed of terrorist activity.

Whilst the Magdeburg "terrorist trial" under paragraph 129a of the German criminal code only lasted a few months, the prosecution under the same paragraph of six people in Berlin for membership of the Revolutionary Cells organisation is still going on after more than two years of proceedings (see *Statewatch* vol 10 no 1). The anti-terrorist legislation allows for far-reaching interception powers, extendable remand imprisonment (in some cases for up to two years) and curtails defence rights. Paragraph 129a further allows for high sentences without the prosecution having to prove participation in criminal acts - being a "member" of an organisation deemed terrorist is sufficient.

On 27 November 2002, two activists from Magdeburg (Daniel W. and Marco H.) were arrested and accused of membership of an alleged terrorist organisation, *Kommando Freilassung aller politischen Gefangenen* (Free all Political Prisoners Commando). It was claimed that they had carried out arson attacks under different names on vehicles belonging to Daimler-Chrysler and Telecom, the regional crime police office (BKA) and the Federal Border Guard between August 2001 and March 2002. As it requires at least three people to form a terrorist organisation that would enable the public prosecutor to initiate legal proceedings on grounds of 129a StGB (Criminal Code), activists were predicting another arrest. This followed on 16 April 2003 when Carsten S, a prominent figure in the left-wing scene in Magdeburg, was detained. Charges of membership of a terrorist organisation were later dropped and he was acquitted of all charges because of a lack of evidence. Six more people had their homes raided but no charges were brought against them.

As with the majority of 129a proceedings the trial was characterised by a lack of evidence, (see *Statewatch* Vol 9 no 5). The evidence for the arson attacks consisted of underlined books found in flats, open political statements, handwriting comparisons, bicycle lamps and batteries. The strongest piece of evidence was a fingerprint of one of the accused allegedly found on a box containing a device placed under a BKA van, which did not explode. Other fingerprints could not be identified. In November 2003, after eight days of cross-examination the court admitted that the evidence was meagre and dropped the charges of leadership and membership of a terrorist organisation. The court then accepted the defence lawyers' request to release their clients from remand imprisonment. One month later, however, the judge did see enough evidence to convict Daniel and Marco of arson.

In line with the claim put forward by civil liberties groups and activists that paragraph 129a is used to "spy on" the left-wing movement, police raided a large number of homes, workplaces and cultural centres during the course of the investigation, confiscating computers and personal material. Arrests were carried out with the use of force on the street and the left scene in the Magdeburg area was subjected to surveillance and intimidatory tactics, in particular towards those unwilling to talk to the police.

According to the legal support organisation *Rote Hilfe e.V.*, these measures were applied systematically to criminalise and to impede legal political activities with the aim of undermining the left. It also criticises the use of intimidatory tactics against witnesses who made use of their right to silence under paragraph 55 of the criminal code. Daniel W's lawyer, Martin Poell, said that his client was put under severe psychological pressure by police to give evidence: in one instance the police took him from his cell to go "on an outing", ending up in a cafe where they tried to persuade him to admit the charges. The prosecution's attempts to construct a terrorist organisation operating at a national level, however, failed.

Both the prosecution and the defence are thought likely to appeal the sentence. Following the solidarity campaign of the ongoing Berlin trial (http://www.freilassung.de), the Magdeburg Solidarity Campaign has launched a website with background information on paragraph 129a StGB:http://www.soligruppe.de, transcripts of the trial, defence applications and the prosecution's case as well as campaign press releases:

http://www.linkeseite.de/sonderseiten/magdeburg129a.htm

GERMANY

Thuringia's interior minister under attack in CCTV dispute

Andreas Trautvetter (*Christlich Demokratische Union, CDU*), regional interior minister of the German state of Thuringia, has come under renewed attack over a CCTV project that indiscriminately stores car number plates without a legal basis. The project has now been cancelled, together with an earlier post-11 September "security programme" launched in the East German town of Weimar, which installed CCTV surveillance cameras in the city centre. This pilot project was intended to assess the effectiveness of camera surveillance over a period of one and a half years. The Weimar camera project was cancelled after its installation in October last year after protests by journalists from local newspapers, local Green and Labour party politicians and lawyers, who found themselves and their offices in view of the cameras.

Last December, the press reported that CCTV surveillance cameras were to be installed in front of a tunnel on the A71 motorway, a practice that lacks a legal basis according to Thuringia's data protection officer, Silvia Liebaug. A day after the reports, Trautvetter defended the project in parliament, arguing that a car number plate recognition system was not planned and was not supported by him. However, it was soon revealed that the cameras had already been installed, which, opposition and journalists argue, could not have gone unnoticed by the Interior Minister, if only because it took 150,000 Euro out of his budget. By September 2003, press reports said 659 database entries had been stored by police in Suhl. The socialist *Partei des Demokratischen Sozialismus* (PDS) ordered a special parliamentary meeting and demanded the minister's resignation for lying to parliament, which was rejected by a parliamentary vote.

Criticisms of Trautvetter's "data collection mania" (*taz*) was voiced in October last year by lawyers and journalists against the 125,000 Euro project in Weimar. There, Trautvetter had ordered the installation of video cameras on the *Goetheplatz*, which overlooked the offices of the Thuringian regional *Landeszeitung* and the *Thüringer Allgemeinen*, one lawyer's office and *council* offices of the Green and Social Democratic parties. This violated the right to privacy of clients and informants and the freedom of the press, at the same time. Trautvetter defended the decision in a regional TV broadcast: "The more data I collect, the better I can target crime fighting". The controversy led to parliamentary

leader Dieter Althaus stopping the project, with the promise that a future project would exclude offices from the camera's view. Cameras would only focus on places "where criminal energy is concentrated", which in Weimar, according to the German daily paper *taz*, are the press offices, the House of Democracy and the National Theatre. Research carried out in Holland has found that local council CCTV projects are often recommended by the same private companies which later install them on their own expert advice.

MDR.de 22.12.03, taz 24.10.03 & 27.12.03, Süddeutsche Zeitung 18.12.03

FRANCE

Prisoners' DNA samples entered into database

The DNA profiles of 730 prisoners from three penal establishments in France were integrated into the *Fichier national automatisédes empreintes génétiques* (FNAEG, the French national DNA database) in February. The database is managed by the scientific and technical police division that is based in Ecully, near Lyon in the Rhône region. Between 19 and 26 February 2003, the police and *gendarmerie* collected saliva samples from prisoners at Oermingen (Bas-Rhin) and Montmedy (Meuse), as well as the penitentiary at Draguignan (Var). A similar operation took place in October 2003 at four penal establishments, when 1,300 detainees in the prisons of Loos-Lés-Lille (Nord), Bordeaux-Gradignan (Gironde), Neuvec and Munet (Dordogne) had samples taken. After the first DNA samples were taken, Evelyne Sire-Marin, the president of the *Syndicate de la Magistrature* (Magistrates Union), said:

> *this measure is imposed on people who are in prison, who find it impossible to refuse anything, under the threat of additional punishment. To fulfil [Interior minister] Sarkozy's goal of registering 400,000 people into the database, they are taking advantage of the situation in which some people find themselves.*

Sire-Marin was also critical of the negative effects this may have on the rehabilitation of offenders, and on those convicted of petty crimes, arguing that: "The fact of having been suspected of stealing a mobile phone when someone was 17, may follow them throughout their life, possibly preventing them from finding work or employment". She added that former offenders may be sought out and investigated whenever a "crime is committed near to their workplace".

The Interior Ministry stressed that to be a useful law enforcement tool, the FNAEG must be fed plenty of information. On 1 September 2003, it held 7,000 DNA profiles, drawn from three categories: DNA samples found at crime scenes; DNA samples of people who have been convicted or have been suspected of crimes; and those of people who have gone missing, subject to approval by their family. On forty occasions, the profiles allowed investigators to establish links between different events (identical samples found on the scenes of different offences), or between an event and a person. Bernard Manzoni, main commissar and attaché to the head of the laboratory service that runs the database stressed the need to ensure that police and *gendarmerie* officers get into the habit of regularly taking DNA samples from suspects and entering them in the database, for which training and information campaigns aimed at officers are underway. He also looks to "reduce the gap from the British", whose DNA database holds the profiles of 2 million people. To support its case in favour of the FNAEG, the Interior ministry mentions the case of a woman who was raped and killed in Montpellier in 1993, whose murderer was found when his DNA profile was entered into the FNAEG when he was sentenced for rape in 1999.

The FNAEG was established in 1998, as part of a law to prevent and punish sexual offences although its scope was expanded in November 2001 by the *Loi de securité quotidienne* (LSQ) to include serious crimes against people and property (such as murder and terrorism), before it was extended even further, to include almost any crime, including theft, by the *Loi sur la sécurité intérieure* (LSI, internal security law) on 18 March 2003 (*see Statewatch vol 12 no 6*). The LSI also extended the registration of DNA profiles in the FNAEG, previously for people who had been sentenced, to anyone who was suspected, or was the object of investigations in relation to a criminal offence. The DNA profiles of suspects who were acquitted or had been investigated without charges being pressed against them would previously have been destroyed after they were used during inquiries. After the LSI was passed, the police are allowed to hold suspects' DNA profiles in the FNAEG for 40 years. The LSI also punished the refusal by suspects to provide samples when investigating magistrates order them to be taken, with prison sentences of up to 1 year and a 15,000 euro fine, which rises to 2 years and a 30,000 euro fine in the case of people who have been sentenced.

French Interior ministry website, "Empreintes génétiques: prélèvements dans les prisons" & "Le fichier nationale automatisé des empreintes génétiques: une quête d'identité", 20.2.04; Thierry Dupont, 22.10.03; available on www.transfert.net/a9470.

DENMARK

A quarter million Danes may end up in DNA-register

If the Minister of Justice, Lene Espersen, gets her way the current DNA database will, in the course of a few years, experience a massive escalation. Experts estimate that more than 250,000 Danes will be included in the register, which today only contains the samples and names of 2,270 people. The Minister has put forward a proposal to parliament, to expand the category of persons who can be included in the register. Currently it contains only the DNA-profiles of people who have been charged with very serious crimes such as extreme violence, rape or killing. The new initiative will raise the DNA-register to the same level as the fingerprint database. It will contain information about both convicted and non-convicted persons.

"I don't think there is any reason to talk about a surveillance society", the minister told the daily *Politiken*. "It is obvious that DNA can help the police get a better result in clearing up crime. If we can transfer the success I think it is about time". The head of the parliamentary Legal Affairs Committee, Ms. Anne Baastrup (Socialist Peoples Party), is also positive about the proposal.

Her attitude is not shared by the legal expert, Jørn Vestergaard of the University of Copenhagen. He believes that the database should either contain information on those convicted of a crime or - his preferred option - the whole population. "There should not be reasons for major reservations, even if it is a big expansion, because safety and work practices are in order. Along the way, one might just as well establish a register for the whole population. If "ordinary" people are included too there is a greater probability of good practice involving the register", said Vestergaard.

However, even a small database, such as the current one, can be difficult to handle, as was shown recently. A man was brought in for questioning about a killing because the police had found his DNA at the crime scene. The problem was, that at the time of the crime he was already in the hands of the police (in fact being treated in a hospital). This case is now being investigated to establish how such a mistake could occur.

SPAIN

The Committee against the manipulation of information

Workers from the Spanish public television broadcasting company *Televisión Española* (TVE) have set up a committee to report the pressure to which media workers are subjected. They have established the *Comité contra la manipulación informativa en TVE* (Committee against the manipulation of information in TVE) which has produced detailed reports on cases of manipulation and bad-practice in TVE news programmes since March 2003. It produced a "Catalogue of ill-practices that are customary in the TVE information programmes", with the goal of "contributing to the creation of a movement of professionals who reject such behaviour". The 24 aspects that are highlighted refer to: news that has no informational value, other than being propaganda for the government; the different treatment for the governing *Partido Popular* (PP) and opposition parties, including a disparity in airtime for current events or for replies to criticism; the stifling of information on disputes within the PP, whereas disputes within other parties are highlighted; the adoption of propagandist tones when reporting government initiatives, and of editorial content that systematically tows the government line; the silencing of issues that arouse criticism of the government from different economic political, social or cultural milieux; a partial, and positive, treatment of information on government policy; the highlighting of positive effects and ignoring or minimising their negative effects; the avoidance of possible mistakes or ill-planning by the government when unexpected events occur; ignoring corruption or mismanagement involving government or PP officials; the ordering of news items to benefit the government or PP; the misuse of images to create false associations that harm opposition parties; the confused presentation of opposition initiatives, amid suggestions of incoherence, flaws or internal disagreement; the right of reply of government representatives to criticism, contrasted with its absence by members of the opposition; the discrediting of opposition regional governments (especially in the Basque Country); and finally, in terms of international politics, the marginalisation of any views opposing the Bush government's unilateralist policies.

Alfredo Urdaci, the director of TVE's information services, was found guilty of "violating the fundamental strike and trade union rights" on 23 July 2003 by the *Audiencia Nacional*, for TVE's coverage of the general strike on 20 June 2000, after *Comisiones Obreras* (CCOO, a trade union organisation) pressed charges. Urdaci, who is also the leading TVE1 news presenter, said he would read a statement agreed with CCOO officials to inform the public about this sentence on 8 October 2003.

The problem does not seem to be limited to state-run broadcasters. The workers' committee of a private television station, *Antena 3*, issued a press release criticising the situation in the company. They argue that reports are affected by political interests and "the reporters are not allowed to have eyes or ears, but rather, just hands to type out what they are told". The committee stressed that, since 2001, it has been working on a statute for reporting to counter the manipulation of information, and to ensure the workers' independence and freedom of expression. However, the statute has not materialised and has been opposed by the channel's directors. The workers' committee claimed that *Antena 3*s recently appointed manager Carlotti has argued, "in working breakfasts with the workers, that a left-wing journalist cannot work in a right-wing media company". The response to the demand for a reporters' statute was the establishment of an editorial committee that, according to the workers, aims "to increase control over news contents even more, and to provide an apparent legitimacy to the suppression of fundamental rights like the right to information and the freedom of expression." Firing employees has been another way that the administration of *Antena 3* has sought to establish control over its workers. Two hundred and fifteen workers were fired on 9 November 2003, after the Employment Minister, Eduardo Zaplana, agreed the company's employment regulation plan. The workers have called a number of demonstrations, after they were evicted from, and refused entry to, their workplace by law enforcement officers.

Comité contra la manipulación informativa en TVE; Catálogo de malas prácticas habituales en los servicios informativos de TVE:

http://www.terra.es/personal5/no

manipulacion/documentos/malaspracticas.htm;

Madrid Sindical, newspaper of the Madrid branch of Comisiones Obreras (CCOO) trade union, February 2004; Federación de Sindicatos de Periodistas www.fesp.org; statements: 23.10, 9.11.03.

Civil Liberties - new material

Big Brother Britain, 2004, Maxine Frith. *Independent* 12.1.04, p.1, 4. The newspaper has a start of year round-up of surveillance, observing that with more than four million surveillance cameras Britain is "the most-watched nation in the world." The article continues: "The number of closed circuit television (CCTV) cameras has quadrupled in the past three years, and there is now one for every 14 people in the UK. The increase is happening at twice the predicted rate, and it is believed that Britain accounts for one-fifth of all CCTV cameras worldwide. Estimates suggest that residents of a city such as London can each expect to be captured on CCTV cameras up to 300 times a day and much of the filming breaches existing data guidelines."

My hell in Camp X-Ray. *Daily Mirror* 12.3.04, pp1-7. Interview with Jamal al-Harith, who was detained without trial or access to independent legal advice at Guantanamo Bay, Cuba for two years, after being kidnapped by the USA during their invasion of Afghanistan. Jamal is the first of five detainees, released in March, to have the opportunity to present their side of the story. Held by the USA as a Taleban terrorist, Jamal was actually imprisoned by the Taliban who thought he was a spy because of his British passport. During his two year incarceration in Camp X-Ray, Jamal claims that: US forces attempted to drug him; that punishment beatings "with fists, feet and batons" were handed out by guards known as the Extreme Reaction Group and that prisoners faced psychological torture (including taunting by naked prostitutes). Jamal says: "The whole point of Guantanamo was to get to you psychologically. The beatings were not as nearly as bad as the psychological torture - bruises heal after a week - but the other stuff stays with you."

El fundamentalismo democrático, Juan Luis Cebrián. *Taurus* 2003, pp.179. In this book, Cebrián describes as "democratic fundamentalism" the attempt to impose a political party's principles and beliefs as "certainties", against the backdrop of the *Partido Popular*'s two terms in office in Spain. The author considers that: "It is necessary to highlight the totalising, absolutist and demagogic trends of a large part of the powers that are active in the world at present, and to issue a warning about the mystification of democracy, of its conversion into a closed ideological body and its misappropriation, in order to protect the interests and obsessions of the dominant classes. Overall, this could be seen as a universal problem, but its symptoms have become evident in a particularly virulent way in Spain during the years of right-wing government."

Release our prisoners, Louise Christian. *Guardian* 21.2.04. Christian is a solicitor acting for several of the families of the victims of US justice held at Guantanamo Bay, Cuba. Here she considers the release of five of the nine detainees who are held without recourse to law; the remaining four are likely to be tried before US military tribunals, a miscarriage of justice that even this supine British government finds "a process that we would not afford British nationals." Christian accuses the Home Secretary of playing to the same gallery on terrorism and calls for his post to be filled "by someone with a strong sense of the importance of the rule of law; someone capable of using measured language and reasoning even in the face of rabid unreason and prejudice."

ITALY

Round-up of Italy's immigrant detention centres

During the last week of January 2004, the *carabinieri* (Italy's paramilitary police force) conducted a search in the *Centro di Permanenza Temporanea* (CPT, detention centre) in Bologna, which resulted in the confiscation of food and medical documents. The investigation regarded the fraudulent alteration of foodstuffs, reported by former detainees when barbiturates were found in blood tests after their release from the centre although they had not knowingly been taking any medicines. They had eaten food from unsealed packages and several of the detainees reported that they tended to feel dizzy after eating their lunch. It is not the first time that the issue of the tranquilisers that detainees ingest in CPTs has come under scrutiny. Some doctors from *Psichiatria Democratica* (Democratic Psychiatrists) carried out a visit in 2003 to the Restinco (Brindisi) CPT, noting that most of the medicines available in the centre were tranquilisers, including strong sedatives. Around 90% of the internees were using these medicines.

Reports of ill-treatment

The Bologna detention centre, which has been in operation since 2002, has also been the scene of an alleged beating suffered by ten detainees after an attempted revolt on 2 March 2003. Five police officers, one *carabiniere* and a Red Cross official, who is responsible for running the centre, are facing charges after they were identified by the victims as their aggressors. They were accused of punching and kicking the detainees.

Other incidents involving the mistreatment of detainees in CPTs include the alleged beating received by 17 citizens from Maghreb countries in the *Regina Pacis* CPT in San Foca (Lecce) after an escape attempt on 22 November 2002. On 23 January 2004, a judge in Lecce decided that 19 persons will face charges for the violence, including charges of causing bodily harm, the misuse of corrective measures, failure to prevent the mistreatment and falsehood. The accused include the priest don Cesare Lodeserto, who is responsible for running the centre, eleven *carabinieri* and seven members of the centre's staff, including two doctors. The migrants told authorities investigating the allegations that they were "kicked, punched, spat at and struck with truncheons", and that "during Ramadan we were forced to swallow pork". As part of the punishment, someone was also reportedly handcuffed and made to stand naked in the courtyard, to discourage others from trying to escape. In Trapani's *Serraino Vulpitta* CPT in Sicily, where five detainees died as a result of a fire on 28 December 2001, six men who attempted to escape were also reportedly beaten with truncheons and handcuffs, and witnesses claim that they were held by the neck with laces.

On 11 July 2003, a group of MPs from the *Democratici di Sinistra* (DS, Democratic Left), *Rifondazione Comunista* (PRC, Communist) and Green parties, decided to establish an observatory on conditions in CPTs, "because one of the problems that we face on a daily basis is the lack of detailed information on what happens inside these structures".

MSF report on detention centres

In January 2004, the humanitarian doctors' organisation *Medici Senza Frontiere* (MSF) published a report on conditions in Italy's detention centres. The report showed that between July 2002 and July 2003, 16,924 persons were detained, of whom 13,232 were men and 3,392 were women. The report is based on interviews with people working in the centres and detainees. There are currently 11 official detention centres in Italy and five "hybrid" centres for the identification of asylum seekers. The CPTs are in Turin ("Brunelleschi"), Milan ("Via Corelli"), Modena ("La Marmora") and Bologna ("Enrico Mattei") in the north, Rome ("Ponte Galeria") in the centre, and Lecce (the "Regina Pacis" in San Foca di Melendugno), Brindisi (in Restinco), Lamezia Terme ("Malgradotutto"), Caltanissetta ("Pian del Lago"), Agrigento ("Contrada S. Benedetto") and Trapani ("Serraino Vulpitta") in the south. The detention centres/identification centres are all found in the south, in Foggia (in Borgo Mezzanone), Bari (Bari-Palese), Otranto ("Don Tonino Bello"), Crotone ("S. Anna"), and on the island of Lampedusa.

The report provides a worrying portrait of conditions in detention centres, in terms of the CPTs' buildings and the services provided within them, their failure to fulfil the goals for which they were set up, the violation of the rights of detainees (especially asylum rights), insufficient medical assistance (particularly psychological assistance in cases involving self-harm) and inadequate training for staff involved in running the CPTs. Thus, the report concludes that "from both viewpoints, [the fulfilment of the objectives for which they were set up and the rights and dignity of persons] the CPTA system cannot be considered to be working".

With regards to the buildings in which CPTs have been established, the Italian section of MSF deems that "The centres in Trapani, Lamezia Terme and Turin do not possess the minimum requirements to be able to conduct their functions as CPTs", demanding their "immediate closure". In Turin, migrants are kept in "modules" (container cabins) that make life difficult, as they warm up and cool down easily, with air conditioning systems that do not function properly. In Trapani and Lamezia Terme, migrants are kept in overcrowded dormitories where they spend most of their time due to the lack of alternative spaces. Consequently, there are numerous instances of self-inflicted injuries in Trapani and Lamezia Terme, whereas in Turin acts of vandalism by detainees are more frequent. Self-harm and acts of vandalism are also common in other CPTs.

The high proportion of CPT detainees who have previously been in prison leads MSF to argue that rather than allowing the identification and making the repatriation of migrants found to be residing illegally in Italy possible, the CPT system is actually becoming an "unjustifiable" extension of prison sentences served by foreign offenders. The failure to separate detainees who have previously been in prison for criminal offences from detainees who have merely contravened immigration legislation, or are applying for asylum, is deemed to have a negative effect on the latter groups. Furthermore, while the law originally decreed that the maximum period during which detainees could be kept in the centres was 30 days (raised to 60 days by the Bossi-Fini law in 2002), there were detainees who had been in the centres for the maximum allowed period on several occasions. Thus, it seems apparent that detention in CPTs is being used as a form of punishment, whereas it was intended as a non-punitive administrative measure to make the identification of migrants possible. The treatment of asylum applicants in several centres is deemed to contravene asylum procedure, through the lack of qualified legal assistance to file asylum applications, the failure to inform detainees of the possibility to apply for asylum in the centres, and because, under Italian law, asylum applicants should be given a temporary residence permit while their application is undergoing scrutiny. The report notes that there is an excessive presence of law enforcement officers in the centres, whereas according to the CPT regulations, their activities should be limited to the maintenance of public order, security or to avoid escape attempts.

The lack of links between the CPTs and social and health

services is also criticised in the report, as are the lack of psychological assistance, particularly in instances involving the frequent instances of self-inflicted injuries, the excessive use of psychiatric drugs without a doctor's prescription, the lack of drug advisors, the lack of examinations to establish the age of detainees unless they claimed they are minors when they first enter the centre, that some centres do not have links with the health service to provide the medical assistance that undocumented migrants are guaranteed by the law, and the lack of procedures to isolate detainees who have infectious diseases.

Rapporto sui Centri di Permanenza Temporanea e Assistenza, Medici Senza Frontiere, Missione Italia, January 2004, available on:

www.msf.it/msfinforma/dossier/missione_italia/prima_pagina/24012004.shtml; Umanità Nova, n.3, 1.2.04.; il manifesto 12.7, 23.7.03, 24.1.04

SPAIN

Entering Fortress Europe

The new year began with the discovery of two stowaways who died of asphyxia on a merchant ship that arrived in Spain from Dakar, Senegal. The first of them was discovered by the ship's crew on 12 December 2003 due to the smell released by his decomposing body. Despite this, during the ship's stop in the Canary Islands, it was authorised to continue its journey with the corpse on board, and the body was only disembarked and buried when the ship arrived in Ferrol (Galicia) on 2 January 2004. The complaints by the *Comisión Española de Ayuda al Refugiado* (Spanish Commission for Assistance to Refugees, see *Statewatch news online, December 2003*) indicated that such a lack of respect for the dead person would not have occurred if the victim had been European. On the following day, 3 January, another dead stowaway was found in the same ship when it reached the port of Pasajes.

On 3 February, another two young African stowaways were found dead in the store of a German ship when it arrived in the port of Avilés, in Asturias. The death was the result of asphyxia, as the deceased had been in contact with the mineral zinc sulphur for some time.

Spain: Expulsions rise

The number of migrants that embark on vessels going to Spain is not diminishing in spite of the measures adopted. Figures provided by the Interior Ministry show that the number of migrants who have been detained in dinghies grew by 14% in 2003, reaching a figure of 19,000. The number of migrants who were expelled last year also rose to 92,679, a 20% increase compared to 2002. In the first two months of 2004, the number of migrants expelled has already reached 18,000. The number of migrants who were regularised last year was 323,000.

The Spanish authorities are taking the task of expelling migrants very seriously, to the point where the Interior Ministry has set up a police unit to provide security for flights expelling migrants. Thus, on 15 January 2004, a special flight departed to Romania with 70 expelled migrants and 160 police officers on board, which, among other things, is resulting in a very high expenditure for the ministry in question.

Spanish-Moroccan cooperation and joint sea patrols

Spanish-Moroccan cooperation was stepped-up in February, with the first patrol launches on the Canary Islands' coast in which police officers from both countries travel together in an attempt to reduce the arrival of dinghies. The following week, it was the turn of the *guardias civiles* (Spanish paramilitary police force) to do the same in Moroccan vessels off the Saharan coast, an activity that has been criticised by the *Frente Polisario* (movement for the independence of Western Sahara from Morocco) as a violation of its sovereignty. The next step will be the appointment by Morocco of four liaison officers who will travel to Spain to stabilise the cooperation between the two countries.

A tragic consequence of this joint operation has been the shooting and killing of two sub-Saharan migrants who attempted to scale a border wall in the Spanish North African enclave of Melilla. Having been warned by the *Guardia Civil*, the Moroccan police opened fire, killing them. Another result of this cooperation has been that, for the first time, a group of 30 sub-Saharan migrants were re-admitted by Morocco. An agreement envisaging this measure was signed with the Moroccan authorities in 1992.

NETHERLANDS

Decision to deport 26,000 refugees

On 17 February the Dutch parliament agreed to deport around 26,000 rejected asylum seekers, living in Holland within the next three years. Many of them are families whose children have never lived outside of Holland. Those affected are refugees who applied for asylum before the coming into force of the 2001 Immigration and Asylum Act and whose asylum application was rejected. Only 2,300 asylum seekers whose individual situation is assessed as particularly precarious might be granted leave to remain in the country, under yet unknown preconditions. Particularly affected are refugees from the former Yugoslavia, Iraq and Afghanistan; they and their families face imprisonment if the authorities believe them to be uncooperative.

Although the Labour opposition party (*Partij van de Arbeid* - PvdA) is critical of the deportation plans, it was the PvdA that drew up the restrictive 2001 immigration law upon which this decision is based. The coalition government under Jan Peter Balkenende (*Christen Democratisch Appèl* - CDA) cut spending on refugees by 90 per cent last year, set-up detention centres for families and pushed for collective mass deportations with neighbouring countries such as Belgium. Immigration minister Rita Verdonk declared that the first refugees would be deported before this summer. Those affected will be brought to so-called deportation centres, a concept first developed by the Netherlands and extended and put into practice by Germany (see *Statewatch,* vol 13 no 5). These centres are openly intended to "break the will" of the deportee and "convince" him/her to return voluntarily. Thus, Dutch authorities say that from these centres the families should organise their own return. If they have not left within 12 weeks, they will be transferred to detention centres, that is imprisoned, or put on the streets without social support. Confronted with accusations by churches and human rights organisations that this policy was inhumane, Verdonk replied that "The Netherlands is a state based on law and order and the courts have rejected the asylum applications of these people."

There has been strong and widespread demonstrations against the decision by school children, human rights organisations, left parties and the asylum seekers themselves. According to some polls, two thirds of the population oppose this recent decision and more than half of the population is against deportation in principle. It is expected that refugees refusing to leave will find strong support within and outside their communities. It is as yet unclear how the government will deal with the mass deportations. Another recent government decision has restricted immigration from accession EU members from Eastern Europe to a maximum of 22,000 and restricts them to only take up jobs that no Dutch person wants to do.

Süddeutsche Zeitung 18.2.04, Jungle World 25.2.04.

Immigration - in brief

■ **Basque country/Spain: Appeal against the *Ley de Extranjería*.** On Friday 14 February 2004, the Basque parliament voted in favour of filing an appeal against the latest reform of the *Ley de Extranjería* (Aliens' Law, the Spanish immigration legislation) which came into force on 2 December 2003, on grounds of its unconstitutionality, something that the *Defensor del Pueblo* (Ombudsman) has refused to do, despite receiving several requests to do so. The *Partido Popular* and *Partido Socialista* voted against the initiative. The appeal deems that the norms to regulate the return of migrants to their countries of origin, to regulate migrant detention centres, and the granting of access and the right to use information from municipal (local council) records to the police, without the agreement of the people whose data is held, are unconstitutional. Dozens of local councils, especially in Catalunya and the Basque Country, are voting to refuse to pass on to the police information from the municipal registration records. The Madrid Tribunal, in turn, struck a legal blow against the reform of the criminal code that was approved by the government and envisages that judges should substitute prison sentences of under six years passed on migrants with expulsion. The ruling by the court rejects this amendment.

■ **Melilla/Spain: Children's rights undermined.** In Melilla the Education Ministry has refused 300 children access to schooling because they do not have residence permits. The *Asociación Pro Derechos de la Infancia* (Association for the Rights of Children) has demanded an investigation by the *Defensor del Pueblo*, because the law guarantees access to schooling for any minor, if they live in Spain. The government has also been criticised after reaching an agreement with Morocco, signed on 23 December 2003, under which Spain will hand over unaccompanied Moroccan minors. This contravenes both the spirit of the legislation and current practice, by decreeing that Moroccan border police officers will become the authority responsible for the children's care. This measure affects 2,000 minors who are already under the tutelage of the *Comunidades Autónomas* (the Spanish regional government authorities).

Immigration - new material

Campsfield Monitor. November 2003, pp.16. This latest issue of the newsletter of the Campaign to Close Campsfield coincides with the tenth anniversary of the detention centre. Two years ago Home Secretary, David Blunkett, announced that Campsfield would close by 2004, because it was "outdated" and "inappropriate" in the 21st century. Now immigration minister, Beverley Hughes, has announced not only will it stay open but that its intake is to be expanded from 184 to 290 people. Demonstrations outside the detention centre condemning the tenth anniversary were received with the heaviest policing in a decade, during which vehicles were stopped and searched and people filmed in an attempt to intimidate them.

Asylum from deterrence to destitution, Frances Webber. *Race and Class* Vol 45 no 3 2004, pp77-85. Excellent article providing a recent history of government immigration policy. Recounts the adoption of deterrence over welfare as a system of handling asylum seekers, starting with the Conservatives in the early 1990s and accelerated by the subsequent Labour governments. Webber provides damning evidence against Labour's National Asylum Support Service (NASS) citing many examples of its inadequacy in providing health care and protection from racist attacks to those seeking asylum. Not only has it led to a decline in provisions and condition for asylum seekers, but has "far outweigh[ed] the costs of the more generous welfare benefits it replaced". Webber also analyses the 2002 Nationality, Immigration and Asylum Act, in particular its notorious Section 55 which highlights "the move from restriction to exclusion of asylum support". Those childless "late claimants" who had not claimed asylum as soon as "reasonably practical" are denied support unless it would breach their human rights. The supposed logic behind this being to stop those who have been in the UK for months or years from abusing the system. Yet, as the Court of Appeal ruled, Home Office officials interpret this far too strictly (construing ignorance as being tantamount to evasion) and in the first quarter of 2003 two-thirds of claimants were refused. Webber argues that though the number of immigration claimants has recently gone down, this is likely due to less people claiming asylum upon arrival than anything else. Faced with the prospect of no welfare support, no right to work, and children being taken into care, seeking illegal "underground" work is increasingly appealing. The Labour government has strived to "ensure that claiming asylum is both difficult and counterproductive", the next proposed step is to reduce public funding for legal aid in asylum cases.

Rapporto sui centri di permanenza temporanea e assistenza. *Medici Senza Frontiere,* January 2004, pp. 207. An in-depth report on Italy's detention centres by the international humanitarian organisation MSF. Based on interviews with staff and detainees, it concludes that "The failure to comply with the laws and procedures in the CPTs (immigrant detention centres) all too often results in the violation of human right and dignity of individuals", and calls for the establishment of an independent authority to monitor the conditions in these centres. The treatment of asylum seekers is also criticised, as is the fact that 60% of detainees are interned after serving prison sentences for offences, thus becoming an "inexplicable extension of their period of detention". Available on:

www.msf.it/msfinforma/dossier/missione_italia/prima_pagina/24012004.shtml

LAW

DENMARK

Guantanamo prisoner freed without charges

A Danish prisoner held at Guantanamo Bay has been released after having been imprisoned for 741 days at the US prison complex in Cuba. The Danish Minister of Foreign Affairs, Per Stig Møller, announced the release on Thursday 19 February during a debate in parliament. The minister explained that he had struck a deal with the US Foreign Secretary Colin Powell to have the Danish prisoner released.

In a press release the spokesman of the US State Department, Mr Richard Boucher, said, among other things:

> *[The] US has agreed to release the Danish citizen held in Guantanamo and hand him over to the Danish Government. The decision is taken on the basis of assurances from the Danish Government that it will take upon itself the responsibility for its citizen and take appropriate and necessary measures to make sure that he will not be a threat to the US or international society.*

The agreement was result of the close relations between the USA and Denmark. Boucher said that "the Danish Government and people have shown itself as a courageous partner in the struggle against terror. Our cooperation in this case, as in so many others, is a proof of the close connection between our two countries".

According to press reports Mr Per Stig Møller informed a closed meeting of the Foreign Affairs Committee, also on the 19 February the details of the agreement. It was revealed that it includes surveillance by the police intelligence service (PET) of the man's movements. The Minister of Justice, Ms Lene Espersen, told the news agency *Ritzaus Bureau* after the meeting:

> *In light of the circumstances regarding the released Dane it would be*

a surprise if he didn't attract considerable attention by the security service, PET. Initially, there will be reason for the PET to follow him very closely, but within the Danish law.

As part of the agreement the prisoner has agreed to inform the authorities about his whereabouts, and his travels in the future. It was emphasized that there are no limitation on his rights.

The release of the prisoner was based on the fact that the Danish found that the evidence in his case would not hold-up in court. This came as a surprise to the public and the opposition in the Danish parliament since only a few days before the American war crimes ambassador, Pierre-Richard Prosper, told the daily *Politiken*: "We know for sure, that he has connections to *al-Quada*", referring to his travel profile after leaving Denmark.

Hitherto, the Minister of foreign affairs had told the public that the man was caught during serious fighting in Afghanistan. But it seems that this information was wrong and that the man was neither caught during fighting nor in Afghanistan, but in Pakistan.

The Danish Government had accurate information about his arrest in Pakistan for more than a year, according to various newspaper reports. Until the announcement of the release the Minister of Foreign Affairs had presented different versions of the man's story, ranging from calling him a terrorist caught during fighting to being an unlucky tourist at an unlucky place at an unlucky time. According to a source in the Ministry of Foreign Affairs, whom the daily *Information* quotes, the minister deliberately failed to correct the picture he had drawn of the man so as not to give a wrong impression of what is going on at Guantanamo Bay: "The prisoners don't sit there so that the US can decide if they are guilty or not. They sit there because the US can get intelligence information from them and because the US does not want them back on the fighting field", the source said.

Criticism directed at the government has come from politicians, human rights experts and the Danish Red Cross. The general secretary of the Red Cross, Mr Jørgen Poulsen, said:

If he had been arrested in Jutland [a part of Denmark], Denmark would have protested very differently. No one would doubt that a foreign power had kidnapped a Danish citizen. No matter where he was arrested he is just like all the other Guantanamo prisoners covered by the Geneva Convention and should have status as a prisoner of war. We know that some of the captives were not apprehended during fighting but detained because they were at the wrong spot at the wrong time.

Across the political opposition there are demands that the government present the full content of its agreement with the USA and produces a report on the case detailing what happened from the man's arrest until his release.

During the man's 741 days in Guantanamo the PET and officials from the Ministry of Foreign Affairs interviewed him four times. He was at no time allowed to have a lawyer present nor to have a medical expert examine him for the physical and mental consequences of his imprisonment.

Law - in brief

■ **Crimes of the powerful**. Two thoughtful and incisive books on state and corporate crime have been published recently. The first, "Unmasking the Crimes of the Powerful" is edited by Steve Tombs and Dave Whyte of Liverpool John Moores University, is the more theoretical tome, including contributions from some of the best known radical criminologists on the practical and theoretical aspects of scrutinising states and corporations. The second, "State Crime: Governments, Violence and Corruption", by Penny Green and Tony Ward, provides a more simplistic overview, exploring the range of crimes regularly committed by authorities and executives. Both are thoroughly recommended reading. "Unmasking the Crimes of the Powerful: Scrutinizing States and Corporations" was published by Peter Lang Publishing in October 2003, ISBN 0-8204-5691-8 ($44.95, paperback); "State Crime: Governments, Violence and Corruption" was published by Pluto Press in March 2004, ISBN 0-7453-1784-7 (£14.99, paperback).

Law - new material

This covert experiment in injustice, Gareth Peirce. *Guardian* 4.2.04. Gareth Peirce is the solicitor representing some of the Muslim prisoners incarcerated without trial at Belmarsh prison under the UK's Anti-Terrorism Crime and Security Act (ATCS) 2001. She compares their plight to that of the innocent Irish victims of the UK's war on Northern Irish "terrorism", such as the Birmingham 6 and Guildford 4, who were "buried alive in English jails" after being abused and framed. She writes of the impossible task of representing her clients: "The suggestion that I and other lawyers are representing them is in itself a travesty; neither they nor we know the evidence against them. We know only that it is claimed to be in large part based upon "intelligence", and this is why - it is argued - the men cannot be prosecuted in a trial with mandatory safeguards before the only tribunal of fact allowed to consider criminal offences in this country: a jury." She accuses the Home Office and legal establishment of "collective amnesia" and condemns the government for shedding "crocodile tears" for the British detainees in Guantanamo Bay while sending intelligence agents to interrogate them.

Was Attorney General leant on to sanction war?, Clare Short. *Independent* 28.2.04, p.1. Following the decision to drop all charges under the Official Secrets Act against Katherine Gunn, the GCHQ whistleblower who revealed that the spy centre had received a request from the USA to eavesdrop on uncooperative members of the UN Security Council, Short revealed that she had been privy to "disturbing transcripts of Kofi Annan's private telephone calls."

POLICING

UK

Low-level policing schemes mushroom

The Police Reform Act 2002 initiated a new government policy designed to alleviate the work burden on police forces through the deferral of their powers, in minor areas such as low level crime, anti-social nuisance behaviour and motoring offences, to other, less qualified, people. The most obvious example of this is the introduction of Police Community Support Officers (PCSOs) who have been patrolling London and other parts of the country since September 2002. Another example, and arguably the most controversial, is the Commencement Order, which came into operation on 2 December 2002, that granted chief constables the ability to pursue "community safety accreditation schemes". Accompanying a recent mushrooming in local authority employment of "street patrollers" and "neighbourhood wardens" to patrol council estates and borough town centres, it is intended to enable the more immediate combating of low level crime within communities. Organisations and their employees (which includes individuals from the private sector such as security guards) who display an "appropriate level" of training may be accredited powers to issue fixed penalty notices for a range of offences. In the Traffic Management Bill 2003 the government has also unveiled plans to give traffic wardens basic police powers to tackle motoring offences. A Home Office spokesperson outlined the thinking behind all of these recent changes: "It is our view that the extended police family should include all of those who have a role to play in combating crime, disorder and anti-social behaviour, regardless of whether they

are drawn from the public, private or voluntary sectors".

By January 2004, there were 3,243 PCSOs employed throughout Britain (over double the number of 1,601 in October 2003), with Home Secretary David Blunkett promising a rise to 4,000 by 2005. They are police authority employed civilian staff, designed to provide greater police visibility and presence within communities, performing non-specialist police functions and thus freeing up resources. Their legal powers are very limited and subject to their chief officer's granting under the provision of the Police Reform Act (2002) that came into effect on 15 November 2003. They may be granted the powers to detain someone for 30 minutes pending the arrival of a constable, direct traffic and remove vehicles, and issue fixed penalty notices in response to anti-social behaviour (under the Anti-Social Behaviour Act, November 2003). However these powers are only being piloted in six areas for the first two years (Gwent, Lancashire, West Yorkshire, Northamptonshire, Devon and Cornwall and the Metropolitan police), and the chief constable can choose whether to confer all or any of these powers to all or any of their PCSOs.

There was initially little police enthusiasm for the scheme (apart from the Metropolitan police only about 30% of forces in England and Wales showed any desire to employ PCSOs) and more recently concerns have been voiced over the victimisation of PCSOs by officers opposed to the scheme. This is perhaps a police response brought about by both the usurping of their powers, the amount PCSOs are paid (given they are capable of performing only the most basic police functions), and also the corresponding level of training they initially received upon their introduction. The Home Office claims that training courses have been devised by forces themselves to meet local needs, but that many have adapted the Met's programme. According to the Metropolitan Police Careers website this includes only three weeks of specialist training, in contrast to a police officer's two years which includes 18 weeks at the Met's Hendon centre. In London, after their training, PCSOs can expect to earn around £21,000 a year while after their two years a police officer will be on around £27,000. Glen Smyth, chairman of the Metropolitan Police Federation, said:

> *We have always had concerns that the level of training [they] undergo is so minimal. Some may well be over the basic standard required for police officers, but they don't all achieve that...We think the rush to get them in, and to do that at a certain [financial] cost, has been at the expense of training and robust vetting (Guardian 7.6.03).*

Frequent reports of disciplinary problems are perhaps of little surprise then. In July and October 2003, Hugh Muir, writing in *The Guardian*, made several damning claims about the quality of both PCSO selection and training. He reported that at a central London police station, where the first recruits were based, 16 out of 100 PCSOs had disciplinary procedures brought against them. Dozens more across the country have also been investigated under charges ranging from fraud and assault to bigamy and racism. One was even deported upon the discovery that he was an illegal immigrant. Moreover, roughly half of those disciplined are reported to belong to ethnic minorities, prompting the Black Police Association to voice concern. Gareth Reid, a BPA spokesperson, claimed these statistics to be of little surprise in that they are "consistent with the experience of all black police staff and personnel". According to Muir these problems culminated in a Met commissioned enquiry whose preliminary findings suggested a need to improve PCSO training. The Home Office now estimates the length of "classroom based" training at five weeks.

Another controversial aspect of the scheme centres around Blunkett's proposals for communities and home-owners to be able to hire their own PCSOs if they raise £10,000 towards their wage. Although designed to provide communities with the option of bolstering its police presence, it has faced criticism. Liberal Democrat home affairs spokesman Mark Oaten claimed that:

> *it will create a two-tier police service where in affluent areas police numbers and resources are greater than where people are worse off (www.bbc.co.uk)*

Kensington and Chelsea has already become the first borough to pay for extra PCSOs, hiring 12 in November 2003. Their total number currently stands at 41 with a projected rise to 59 PCSOs by July. In contrast, Hackney, a substantially larger borough, currently has only 13 in operation with funding approved for a further 10. Here a parallel can be drawn with the rise in CCTV security cameras in city centres throughout the 1990s which frequently served to displace rather than reduce crime (Norris & Armstrong 1999). Will street crime and anti-social behaviour merely move to (poorer) boroughs and communities that are unable to hire as many PCSOs to patrol their streets?

According to *Liberty* this is part of a worrying trend towards the privatisation of police roles and powers. The most striking example of this is in Liverpool where a plan to privatise a large part of the city centre awaits final approval. Should it be granted, 35 streets would be sealed off and redeveloped and upon reopening placed under the control of US-style private police force personnel known as "quartermasters". Similar to security guards in shopping centres, they have the power to use reasonable force and will act to "maintain standards". In addition traditional rights of way are to be replaced with "public realm arrangements" giving private sector employees the right to decide who may walk through a city's streets for the first time. Donald Lee, a spokesperson for the Open Spaces Society, says:

> *When I queried with city council officials as to why the new routes could not be dedicated as public rights of way...it was explained to me that the developers and the council needed to be in a position `to control and exclude the riff-raff element' (www.indymedia.org.uk)*

"Undesirables" such as skateboarders, unruly groups of teenagers and demonstrators can expect to be turned away at the area's entrances. On top of these obvious threats to civil liberties there again exists a danger of displacement. Barry Hugill, spokesperson of Liberty, warned, "the danger is that we're heading towards an American style system where rich areas are policed and poor ones are not."

Attempts to free-up police time have been pursued in the Traffic Management Bill 2003. The government plans to give traffic wardens powers to fine motorists, who jump red lights or illegally block junctions, thus signalling a transfer of power from the police to local authorities. However these proposals have come under attack from all sides. Gwyneth Dunwoody, chairwoman of the Commons Transport Committee, called into question the logic of giving powers, that may have an immediate affect on driving licenses and on accidents and resulting legal action, to individuals the public does not recognise as appropriate authority figures (indeed figures that are almost universally disliked by motorists). Damian Green, the Shadow Transport Secretary, claimed that "Motorists expect people enforcing the law to be trained to a very high standard and this could entail thousands of new people being given enforcement powers. Are they all going to be properly trained?" (*Independent* 5.1.04).

Similar questions must be asked of "accredited persons" whose powers have been extended under the Anti-Social Behaviour Act. They have initially been given powers such as the ability to stop cyclists from riding on the pavement but, together with PCSOs, will see the scope of their powers extended later in the year. For PCSOs this will mean the accruing of new controversial police powers to disperse groups of young people gathered in areas the local council has determined to be an "anti-social hotspot". The group size necessary to invoke such action is down from 20, under the 1986 Public Order Act, to two.

Together with the Police Reform Act then, and if the Traffic Management Bill is passed, there will be an ever-increasing

number of individuals with police powers. PCSOs and accredited traffic wardens, security guards and neighbourhood wardens can all issue a range of penalty notices, for instance if they deem actions to be "Behaviour likely to cause harassment, alarm or distress". Particularly alarming is how this potentially large number of new law enforcers will be held to account for their actions, especially given the many shortcomings of existing mechanisms for the police. PCSOs are subject to the same complaints and disciplinary procedures as other police staff and will come under the auspices of the Independent Police Complaints Commission upon its re-launch later this year. But "accredited persons" are subject only to the disciplinary procedures of their employers if they were to abuse their police powers. Although their accreditation can always be revoked, this is essentially self-regulation at the same time the police are striving for greater independence in their own disciplinary system.

Guardian 23.9.02, 7.7.03, 7.10.03, 20.1.04, Times 30.11.03, BBC news website, Indymedia website

SPAIN

Guardias civiles seek an end to military status

On 22 January 2004, the *Asociación Unificada de Guardias Civiles* (AUGC) which represents over 22,000 members of the Spanish paramilitary police body, held its fifth Congress and launched a *Manifiesto por los derechos de los Guardias Civiles* (Manifesto for the rights of *Guardias Civiles*). The document has three main objectives: the democratisation of the force; placing it under the exclusive control of the Interior ministry (as opposed to the Defence ministry); and reviewing its military nature. With regards to the process of democratisation of the paramilitary police force, the AUGC calls for officers to enjoy the recognition of fundamental and professional rights, such as the free choice of where to live, freedom of expression, and the right to be represented by professional or trade union bodies, which they are currently denied. The manifesto also argues that improved coordination and cooperation between the national police force (*Policía Nacional*) and *Guardia Civil* would result from the new model in which both bodies come under the control of the Interior ministry, because "The citizens do not need two national police forces...that are constantly competing and are completely uncoordinated". The shift would also result in the "homogenisation" of training procedures and pay conditions. Calling for a substantial review of the *Guardia Civil*'s procedural and legal framework to separate it from the armed forces, the document also stresses that the *Guardia Civil* is "not an army", and its officers "are not soldiers, but professional police officers, and they must not be subjected to military rules, orders, legislation and training". In fact, *Guardia Civil* officers are subjected to military discipline codes and secrecy regulations.

The Congress was attended by over 1,000 people, and the manifesto received the support of the trade unions *Unión General de Trabajadores, Comisiones Obreras*, the left-wing *Izquierda Unida* party and the *Partido Socialista Obrero Español* (which offered qualified support for the gradual "de-militarisation" of the *Guardia Civil*), whereas it was opposed by Julio Sánchez Fierro, of the ruling *Partido Popular*. The AUGC's president Fernando Carrillo also criticised the *Guardia Civil*'s involvement in Iraq, arguing that its involvement would only be justified for peace-keeping purposes under a UN mandate, and not for "tasks of military occupation" a role that is inappropriate for a police body.

"Manifiesto por los derechos de los Guardias Civiles", 22.1.04. El País 23.1.04; El Mundo 23.1.04

UK

"Beam me up, Scottie"

Ian Arundale, the ACPO advisor on the police use of firearms, has predicted that "Star-Trek-style phasers could be seen on the streets of the UK in years to come." Talking to the journal *Police Review*, Arundale expressed the hope that the technology, which does not exist at the moment, would supersede the use of the taser, which is currently on trial with five police forces in the UK. He told the magazine that ACPO would like to see a weapon that will temporarily switch people's brains off. In a further venture into the world of science fiction, Arundale suggested that the weapon should be able to be used from a distance, be reliable and be safe to both the officer and the target:

> *What we would like in the future is a Star-Trek-like phaser...that perfectly safely, temporarily switches someone's brain off so that officers can move in.*

He continued: "We know we are not going to get that, probably not in my lifetime anyway, but we will look at anything that takes us in that direction."

Arundale also told *Police Review* that ACPO is looking at two alternatives to the baton round: "the attenuating energy projectile" (described as a "a safer version of the baton round") and the "discriminating irritant projectile ("pellets that explode to incapacitate the target with a localised cloud of gas"). Both devices are based on technology available in the USA and are alternatives being considered to replace the plastic bullet round in Northern Ireland. They are thought to be about eighteen months from being introduced. The Sinn Fein policing spokesman, Gerry Kelly, pointed out that the plastic bullets they will replace "are less lethal weapons that have killed 17 people". "The consideration of alternatives", he said, "is no excuse to delay further the removal of plastic bullets." He added that any alternatives must be "non-lethal" rather than "less-lethal".

Arundale, and the chief constable of the Thames Valley police force, Peter Neyroud, have recently called for a "UK-wide standard on the use of less-lethal technology". Neyroud said that "Forces in the UK need a single set of standards for tactics, training, equipment and command for firearms and less lethal weapons" while Arundale pointed out that "there are currently 61 different less lethal pieces of equipment on the market and only a proportion have been approved by law-enforcement agencies. We also want a standard of police training and tactics in place [for the UK] that less-lethal weapons should be used in accordance with."

Five forces are currently testing the taser, a weapon that delivers an electric shock that disables targets and has resulted in a number of deaths in the USA. There are particular concerns that it can aggravate heart conditions and about their effects on pregnant women. The taser has been used on 11 occasions during the tests: the Metropolitan police have used the weapon four times, Lincolnshire and Northamptonshire constabulary have fired it three times each and North Wales police once. Under proposals from ACPO the weapon is expected to be deployed on completion of the trials. Neymoud, addressing a firearms conference in London, said that his experience led him to believe that the "taser had prevented officers from using fatal force to control incidents." However, Paul Acres chief constable of Hertfordshire constabulary, said that less-lethal weapons "will not replace firearms where officers need to protect themselves"

Police Review 13.2.04.

Policing - new material

The detention and questioning of young persons by the police in Northern Ireland, Katie Quinn & JoHn Jackson. *Research & Statistical Series* Report no. 9 (Northern Ireland Office) 2003, pp.190

(ISBN 1 903686 7534). This report originates in a recommendation by the Criminal Justice Review 2000 "to provide the Northern Ireland Office with a comprehensive account of the issues surrounding the questioning, cautioning, charging and detention of young people" in Northern Ireland. Its findings include chapters on "Young persons' experiences of police custody", "The appropriate adult", "The right of silence" and "The police interview" with recommendations made for each area.

Forensic evidence stands accused, James Randerson & Andy Coghlan. *New Scientist* 31.1.04, pp.6-7. Following on from the revelation that forensic evidence given to the courts may have led to the wrongful convictions of hundreds of men and women accused of harming their children, this article explores doubts over the use of fingerprint evidence to convict suspects. The *New Scientist* investigation discovered that "potentially flawed, forensic assumptions are still routinely being accepted by the courts" and criticises "the supposed infallibility" of fingerprint evidence. Using data from the USA, where doubts over the reliability of fingerprint evidence were raised in 1999, the report cites critics of fingerprinting who say that because fingerprinting "is such a long-established technique...it has never been subjected to the rigorous scientific scrutiny necessary to work out how often a bogus match is likely to come up."

MILITARY

USA/UK/IRAQ

10,000 civilian deaths in 2003

The war monitoring group, *Iraq Body Count* (IBC), has recorded "as many as 10,000 non-combatant civilian deaths during 2003" and the *Independent on Sunday* reports "that more than 350 civilians have been killed in attacks since the beginning of the year" until mid-February. "When added to the deaths recorded in 2003...this brings the number of non-combatants killed since the conflict began to as many as 10,433". The IBC, an independent group of US and UK researchers, warns that "Many civilian deaths are almost certainly, as yet, unreported, and even the current IBC maximum cannot be considered to approach the a complete and final toll of innocent deaths." The organisation is calling for "an official inquiry into the human costs of the Iraq war."

The IBC undertook its Iraqi civilian body count (estimated at between a minimum of 8,235 and a maximum of 10,079) to fill the lacuna left by the US and UK governments' refusal to count, or even acknowledge, the Iraqi civilian death toll. While the governments' have been precise on the number of British and US invaders killed - 57 British military personnel and 535 Americans at the time of writing - the IBC characterises the official response to Iraqi civilian casualties as "evasive". They argue that the governments are dissembling by using tactics such as:

** repeated professions of ignorance and a denial of any possibility of gaining useful knowledge*

** denial of responsibility*

** the establishment of narrowly-limited military "self-investigations"*

** a focus limited to US/UK military deaths*

** the deliberate obstruction of Iraqi's own efforts to count their dead*

** "Insultingly low" token compensation payment to a small number of Iraqi claimants*

The IBC also has published detailed evidence of at least 200 civilians killed by coalition cluster bombs during the Iraq war. The number has been questioned by the Pentagon, which has insisted that their war is was not against the Iraqi people but to liberate them.

Independent on Sunday 15.2.04; Iraq Body Count www.iraqbodycount.org

EU

Defence surge despite constitutional hold-up

The development of a European Security and Defence Policy (ESDP) made significant progress during the EU summit in Brussels on 12-14 December 2003 despite the crisis in the EU's constitutional process. Three major steps were taken. A scaled-down operational civil military planning cell, independent of NATO but amenable to the US, was launched. A somewhat watered-down strategic security document was approved. In it the term "pre-emptive engagement" in relation to the combat against terrorism and the spread of weapons of mass destruction was replaced by "preventative engagement" A new armaments agency was formed whereby a 12-member "establishment team" will formulate the agency's legal basis, a budget, the links to the European Commission and the EU Military Committee and the relation with existing armaments groups (OCCAR, WEAG, Letter of intent group).

On the other hand three major elements of the EDSP remained in limbo after the collapse of the constitutional process. The matter of the Mutual Defence Clause designed to subsume the text in the treaty of the former Western European Union was not resolved. The enhanced co-operation in defence, also known as permanent structured co-operation to form a military vanguard of the EU complying with stronger requirements (higher defence expenditures). And the transforming of EU High Representative Solana in a real foreign minister.

Jane's Defence Weekly 24.12.03 (Luke Hill)Euobserver.com 15.12.03 (Mihaela Gherghisan)

Military - in brief

■ **EU: Rapid reaction units proposed.** Britain, France and Germany have laid out plans for a string of EU rapid reaction units for combat in difficult terrain, accelerating the drive for European defence co-operation. The new units are designed to be around 1,500 strong, the size of a battle group, and ready for action at 15 days' notice as of 2007. They should be able to stay in the field for 30 days, although that timescale could be extended to a maximum of four months. According to reports in the German press several battle groups of 1,500 strong each are planned. The units will include strategic airlift, artillery, communications and engineering support. The UK and France would also mount joint training for operations in tough environments, such as jungles, mountains or deserts, and put more effort into insuring that equipment and structures are compatible. According to *The Independent* the initiative underlines the importance attached by the EU's two biggest military powers to boosting joint military capabilities. It also illustrates the importance of the alliance between London, Paris and Berlin, that has prompted fears among smaller EU countries that they are destined to be dominated by a new triumvirate. The initiative will be discussed by EU defence ministers in April and if approved formally agreed by a joint meeting of EU foreign and defence ministers in May. *Independent 11.2.04 (Stephen Castle); Reuters.de 10.2.04; euobserver.com 11.2.04 (Honor Mahony)*

■ **EU: UK wins race for heading EU defence agency**. The race between France and the UK to become the first leader of the EU's Defence Agency Team - set up to streamline and enhance defence procurement - has been won by the UK, when EU High

Representative Javier Solana named Nick Witney, currently Director-General for international security policy at the UK Ministry of Defence. The Agency, that will be officially launched in June this year will develop defence capabilities in the field of "crisis management" (foreign intervention), enhance European armaments co-operation and identify policies to strengthen the European defence industrial and technological base. Solana decision was the end of a fight between France and the UK over who would lead the new agency. This result was not without political significance as Britain does not want the agency to be focused solely on a "buy European" policy but have a whole range of tasks promoting defence research and capabilities in Atlantic co-operation. France favours creating an independent European capability supported by a strong industrial base. Informally it has been agreed that Witney should be replaced after three years by a Frenchman. But of course the first head of the agency will shape its statute and have decisive influence on direction and scope of the new body. As a form of compensation a French general will take the command of the 140 strong EU military staff in March., responsible for strategic planning of European military operations. *euractiv.com 29.1.04; Reuters 27.1.04 (Yves Clarisse); Le Monde 28.1.04 (Laurent Zecchini); Libération 16.2.2004 (Jean-Dominique Merchet)*

Military - new material

Europäische Luftmacht [European Air Power], Jan Kuebart. *Europäische Sicherheit* 1/2004 pp. 22-28

The world is the stage - a global security strategy for the European Union, Sven Biscop and Rik Coolsaet. *Notre Europe Policy papers* No. 8, December 2003

War in Iraq: Not a humanitarian intervention, Ken Roth. *Human Rights Watch* 2003. The failure to locate a single one of Saddam Hussain's alleged weapons of mass destruction led UK Prime Minister, Tony Blair, to declare that they were not the reason for invading Iraq and, contrary to what was said before the war, the invasion was carried out on humanitarian grounds. This report points out that, unlike the 1988 *anfal* genocide of Iraqi Kurds, "by the time of the March 2003 invasion, Saddam Hussain's killing had ebbed" and the USA/UK had no justification for invading Iraq either on grounds of alleged threats from illicit weapons of mass destruction nor as a humanitarian mission. "Humanitarianism, even understood broadly as a concern for the welfare of people, was, at best, a subsidiary motive for the invasion of Iraq" the report concludes. Available at: http://hrw.org/wr2k4/3.htm

"Enduring Freedom": Abuses by U.S. Forces in Afghanistan, John Sifton. *Human Rights Watch* 2004. This report says that "U.S. forces operating in Afghanistan have arbitrarily detained civilians, used excessive force during arrests of non-combatants, and mistreated detainees." It concludes that "The United States is setting a terrible example in Afghanistan on detention practices" and that the "system of arrest and detention in Afghanistan exists outside the rule of law."

PRISONS

UK

Prisons in crisis

In February 2004 the UK prison population hit a record high of 74,543 - a rise of 2,167 in 2004 and 2,674 higher than the equivalent date in 2003. Almost twice as many people are in prison today as 25 years ago. The UK has a higher rate of imprisonment than any other state in western Europe - with 141 per 100,000 of its citizens incarcerated. More than 80 of the prison estate's 138 jails are officially overcrowded. Eleven are estimated to have exceeded the maximum safe capacity - they are Ashwell, Birmingham, Cardiff, Doncaster, Hull, Lancaster, Leicester, Lincoln, Stafford, Wandsworth, and Wormwood Scrubs. The number behind bars is now 500 higher than Home Office projections. On some estimates,the prison population could reach 87,200 in 2006-9, 500 more than the number of prison places expected to be available at that point. Juliet Lyon, director of the Prison Reform Trust, commented:

> *Prisons on the brink of safe overcrowding capacity should set alarm bells ringing for a government preoccupied with tough talk. To avoid a crisis, it must act now to divert petty offenders into effective community penalties, addicts into rehabilitation and the mentally ill into the health system, as well as curbing excessive sentence lengths and any needless use of custodial remand.*

Consequent upon the increase in overcrowding has been a rise in the incidence of acts of suicide and self harm. The death by hanging of Vincent Palmer at HMP Woodhill in January was the eighth jail suicide in 2004 in England and Wales. Ninety-four prisoners took their own lives in 2003. Fourteen of the 94 were women - the highest number of female suicides in any one year. One half of the women who died were under 25, with almost one in three aged 19 or under. Almost 80 per cent were in custody for non-violent offences. The Prison Reform Trust contends that:

> *Female prisons are being used as psychiatric holding cells on the cheap. Solutions are not to be found by putting a little bit more money in to repaint some walls and increase prisoners' out-of-cell time. These women simply should not be in prison at all.*

Although women make up 5 per cent of the total prison population they account for over 15 per cent of suicides and 45 per cent of incidents of self-harm. Of the 19 prisons in England and Wales which take women prisoners, it is Styal prison in Cheshire, New Hall in Yorkshire, Brockhill in Worcestershire and Bulwood Hall in Essex that have the worst records. In Styal prison there were six suicides in 2003 alone.

Since Labour came into office the prison population has risen by 24%. The number of adults serving sentences under 12 months is up by 160% since 1999. The growth in prison population and the rising numbers of incidents of self-harm and suicide do not appear to trouble the Home Secretary. Commenting on the suicide of Harold Shipman (for whose care he was ultimately responsible) David Blunkett observed that he had been tempted to crack open a bottle of champagne when he was first informed of Shipman's death. Frances Crook of the Howard League responded "At the time Blunkett was rejoicing in the death of one prisoner for whom he was responsible, two 18-year olds and a woman took their own lives. Did he rejoice about their deaths too?" The government, though, are convinced that, simply put, prison works. Writing in *The Guardian* on 3 February 2004 Blunkett stated:

> *I will be tough with violent offenders while getting smart in coping with the pressures on our outdated prison facilities. I am interested in creating special open prisons and hostels which would deny liberty but allow offenders to work and learn new skills.*

Far from diverting prisoners from custody, it was clear that Blunkett intended these new places to be additional to the mainstream prison population. The "crisis" articulated in terms of overcrowded jails and prison suicides apparent to the prison reform lobby does not manifest itself as a crisis to David Blunkett. As one serving prisoner put it: "Animal experiments at Cambridge University cause more public concern than suicides and self-harm in the prison system."

Times 6.1.04; Observer 1.2.04; Guardian 3, 13.2.04; Independent 18.2.04; Prison Reform Trust; Howard League for Penal Reform; Miscarriages of Justice UK

Prisons - in brief

■ **UK: Justice for John Boyle.** Following admissions by the Home Office that prison officers at Wormwood Scrubs threatened prisoners with being hung, and claimed to have in the past got away with hanging prisoners and making their deaths look like suicide, the family of John Boyle has called on the Home Secretary to hold a public inquiry into John's death. John Boyle died on 7 December 1994, having been found hanging in a cell in the Segregation Unit at Wormwood Scrubs on 4 December 1994. Bruises found on his body were never satisfactorily explained. Police called to the prison collected no evidence and left it to the prison to investigate itself. Potential witnesses were moved from the Segregation Unit and never traced. Following an anonymous call to their solicitors alleging that prison officers were responsible for John's death, and the many allegations of assaults in the Segregation Unit since 1994, John's family now demand a public inquiry. Anyone with information which may assist the family, or who was in the Segregation Unit at Wormwood Scrubs during 1994, contact: Daniel Machover, Hickman and Rose solicitors, 144 Liverpool Road. London N1 1LA. Tel. 0207 700 2211

■ **UK: Prison officer violence "part of the culture" at Portland** Seven former young offenders who were assaulted by prison staff at HMP Portland have won a £120,000 pay out. The prisoners say they were punched, slapped, kicked and had their heads slammed repeatedly against the floor by segregation block officers at Portland Young Offenders Institute in Dorset. The Prison Service agreed an out-of-court settlement days before the case was due to be heard at Weymouth County Court. According to the solicitors for the seven, the police had investigated up to 53 such cases of intimidation and brutality at the jail. Nogah Ofer, for the applicants, noted "The experience in Portland has shown that children and young people in prison are intensely vulnerable to abuse that is easily hidden in such a closed environment." The seven were aged between 16 and 21 when the attacks took place. The prison's former chaplain Peter Tullett said prison chiefs turned a blind eye to violence at Portland. "Violence by prison officers against inmates was part of the culture at Portland." In a statement to have been disclosed to the court, Kevin Lockyear, governor until 2002, damned the segregation unit he inherited and stated "It was a regime run with the conscious direction of senior management; this was the regime management wanted to run." One inmate reported being punched and kicked in the back, stomach and testicles by a group of officers, then dragged screaming into a strip cell and slammed into the floor. One officer then shouted "We will keep doing this to you until you conform." *BBC News Online 22.1.04; Guardian 22.1.04; Howard League for Penal Reform.*

RACISM & FASCISM

UK

NUJ protest against BNP "intimidation"

Between 250 and 300 journalists, workers and students rallied to a call by The National Union of Journalist (NUJ) to defend free speech after the British National Party (BNP) announced a picket of their offices in Kings Cross on February 16. The NUJ condemned the picket as intimidatory and called on members to mount "a dignified counter protest to declare that we will defend our union from fascist attacks." The union said:

> *The NUJ deplores the demonstration by BNP members outside its office. The union condemns all attempts by the BNP to harass and intimidate journalists and anybody else... The BNP does not believe in free and balanced reporting. The BNP uses physical threats to try and intimate journalists. They put details of journalists whose coverage they don't like on race-hate websites, to make them targets of attack.*

NUJ members in the north of England have "received direct threats from these thugs" and have passed a dossier of them to the police. It is part of an ongoing campaign to silence those who do not share their racist views.

The BNP rally was part of their ongoing "rights for whites" campaign and they carried placards complaining of bias in the media and commemorating the death of Gavin Hopley, a 19-year old white youth who died after a fight with Bengali youths in Oldham. The far-right party had erected a plaque in memory of Hopley near where he died, but it has been removed by the local council after complaints from the teenager's family, who have stressed that they not do wish to be associated with the extremism of the BNP. NUJ speakers at the rally pointed to the "avalanche of racist reporting against refugees and asylum seekers in sections of the tabloid press." NUJ members have protested at coverage in the *Express* newspaper in particular.

The forty or so BNP members and supporters arrived at the NUJ after protesting at the Commission for Racial Equality (CRE) offices. The BNP contingent was led by Tony Lecomber, who served a prison sentence after being found guilty of a car bomb attack on opponents in south London and another for a racist attack on a Jewish teacher in east London. Lecomber is described as the "Branch Development Officer" for the organisation. Also present was at least one former member of the Chelsea Headhunters, the notorious football firm that has close links to Combat 18.

The National Union of Journalists, Headland House, 308-312 Grays Inn Road, London WC1X 8DP, email: info@nuj.org.uk

GERMANY

AI criticises institutional racism and police brutality

On 14 January the international human rights organisation Amnesty International published a report on Germany, entitled: *Back in the Spotlight. Allegations of police ill-treatment and excessive use of force in Germany* (AI Index: EUR 23/001/2004).

The report found a "persistent pattern of alleged ill-treatment and excessive use of force by police officers in Germany" and called for the German government to set up an independent complaint's commission to investigate alleged police misconduct.

Another problem the report found, was a systematic failure by German authorities to investigate and bring to justice officers responsible for violence and ill-treatment, mainly directed against black people, but increasingly also white people. This institutional neglect is summarised as:

> *unreasonably protracted length of criminal investigations into allegations of police ill-treatment, the reluctance of some prosecuting authorities to forward cases to the courts, the high incidence of counter-charges brought by police against those who complain, and sentences which in some cases do not appear to match the gravity of the crime.*

The problem is compounded by the lack of a system to maintain and publish uniform and comprehensive statistics that would enable a systematic analysis and proof of institutional failure. With police statistics currently collated by the individual *Länder* (regional states) under varying categories, comprehensive

analysis is impossible (see *Statewatch* vol 11 no 2).

The report can found at:

http://web.amnesty.org/library/Index/ENGEUR230012004?open&of=ENG-DEU Also see Statewatch vol 12 no 3.

Racism & fascism - new material

Informe anual 2003: Sobre racismo en el Estado español. *SOS Racismo, 2003, Icaria, pp.327.* The annual report on racism that is published by SOS Racismo collects a wealth of information about racist incidents on Spanish territory, and features articles on its different forms. It is divided into sections on the regression of human rights as a result the worldwide obsession for security; the practical impossibility for migrants to enter Spain legally; the contravention of human rights norms and of the provisions in the Spanish immigration law; exploitation at work; attacks and intimidation; the consolidation of racism in discourse and social structure; the far-right and neo-nazis; and the racism ("by omission") suffered by the Rom collective. Available from: SOS Racism Central Office, Bou de Sant Pere 3, 08003 Barcelona, Spain.

Etnicidad y exclusión. *Mugak* no 25, 4th quarter 2003, pp. 59, 5 Euros. This issue focuses on issues of ethnicity and exclusion, and includes articles on the misrepresentation of ethnicity in political and journalistic discourse, on the construction of a citizenship model which results in the exclusion of different groups within a national territory, on the understanding of "integration" as the "civilising" process that corrects the "deficiencies" of migrants, and on the policy shift in France which has seen a move away from the recognition of the social roots of criminality to intensified policing and the adoption of a zero tolerance approach to offenders, particularly in underprivileged areas. Available from: *Mugak, Centro de estudios sobre racismo y xenofobia, Peña y Goñi, 13 1_ - 20002 San Sebastián.*

Viewpoint

Spain: Thursday 11 March 2004

Carnage on the Madrid commuter line causes a rude awakening

On 11 March 2004, Madrid woke up to find that it had suffered the worst terrorist attack since the 1930s. Ten bombs, hidden in rucksacks and plastic bags, exploded between 7.35 and 7.45 a.m. in El Pozo del Tio Raimundo, Santa Eugenia and Atocha train stations, the largest in Madrid, on four commuter trains packed with workers travelling from the suburbs to their workplaces. At lunchtime on 12 March, the death count had risen to 201 dead, and there were over 1,600 injured. The death count was expected to rise due to the large number of people who were critically or very seriously injured. The injuries were such that it has not yet been possible to establish the identity of some of the bodies. According to investigators, the attack was aimed at causing the highest possible number of casualties, and the bombs on all of the affected trains were alleged to have been intended to explode as the trains entered the old station, an important landmark in Madrid designed by the French architect Eiffel, blowing it up, and thus multiplying the number of casualties. No warning call was given before the blasts occurred. People from twelve different countries, including Spain, Chile, Cuba, Peru, Guinea Bissau, Honduras, Poland, France, Morocco, Colombia, Romania and Ecuador, were killed in the explosions. All the Spanish political parties expressed their condemnation of the attack and called for national unity and the setting aside of differences, suspending their campaigns for the general election that was held on Sunday. The government was quick to blame ETA for the attack, although as the hours passed, evidence surfaced linking Islamic groups to the attack. Jurgen Storbeck, the head of Europol, argued that the attack "doesn't correspond to the *modus operandi* they have adopted up to now".

Dynamics

The reconstruction of the dynamics of the attack by the Interior ministry indicated that fourteen bombs (four of which did not explode), containing between eight and twelve kg. of *Goma 2 Echo* dynamite had been placed on trains in rucksacks and plastic bags in Alcalá de Henares, in an operation whose planning involved between 12 and 30 people, and was executed by at least six terrorists. The trains were successive, with the first train that started in Guadalajara passing through the station at 7am, and the following ones starting their journey from Alcalá de Henares at 7, 7.10 and 7.15. Five and four bombs were placed on the first and second train respectively (one of which exploded in Atocha, before reaching the terminal building, and the next one was a short way behind, parallel to Calle Tellez), and three were placed on a third train that exploded in *El Pozo* (another one which did not explode was found later), and one more was placed on the last train that exploded in Santa Eugenia. Thirty-four people died in the first train, 64 died in the second, 67 in the third and 16 in the last train, while 20 others died subsequently in hospital. In El Pozo del Tío Raimundo, a working class neighbourhood that was symbolic of the struggle against Franco, where the explosion caused the highest number of casualties, the train exploded next to a platform crowded with people. A witness claimed that he saw three men with their faces covered, and possibly wearing headgear, acting suspiciously around a white Renault Kangoo van, and people were reportedly seen getting on and off trains before they left Alcalá de Henares station.

Civilian response

As news of the attacks spread, the population spontaneously offered their help to the victims, bringing them covers and helping in the rescue operation. Passengers jumped off other trains to offer immediate help in spite of the multiple explosions and devastation. Some people who survived the first explosion, died in subsequent explosions while they were rescuing others. The response to a call for citizens to donate blood was such, that a couple of hours after mobile blood collection units were set up, another announcement went out to tell people to refrain from going to the units due to the massive response. Taxi drivers and the Madrid hotel association offered free rides and accommodation to the affected and their relatives. Rescue workers, policemen, firemen, civil protection, hospital, ambulance and nursing staff, as well as volunteers and psychologists, were considered the heroes of the day for their response to the emergency under extreme circumstances, both for the seriousness of the injuries, for the psychological distress resulting from what they saw, and for the sheer numbers of injured people needing treatment. The injured victims of the attack were taken to several Madrid hospitals, most of all to the Gregorio Marañon hospital. There were several migrants among them and the government announced that any migrants concerned about their undocumented status, and possible detention if they sought their relatives or medical care, would not be arrested. Later on, Aznar said that people injured and killed in the bombings, and members of their families, would be granted citizenship or, if they preferred, residence permits.

Demonstrations

Massive demonstrations, called by the government in response to the atrocity, were held all over the country on 12 March. They were attended by numbers of people that topped 11 million all over Spain, with over two million turning out in Madrid and well over one million in Barcelona, according to police sources. The choice of the slogan, "For the victims, for the Constitution, and for the defeat of terrorism", was divisive in itself, because the defence of the Constitution has been a feature of the political tension between the central government and regional parties (as well as the PSOE, albeit less belligerently), particularly the *Partido Nacionalista Vasco* (PNV, Basque Nationalist Party) in the Basque Country. Nonetheless, the demonstrations were massively attended throughout the country, as solidarity and an enormous outpour of emotion for the victims prevailed.

Laying the blame

At 2 pm, hours after the attack, Interior Minister Angel Acebes announced that "ETA has fulfilled its objective. The government has no doubt that ETA is behind this." He went on to criticise the "intoxication" that "miserable" people arguing that ETA was not the terrorist group responsible for the attack were practicing. Among these was Arnaldo Otegi, the spokesman for *Sozialista Abertzaleak* (SA), formerly of the illegalised *Batasuna* party, who expressed his party's "absolute rejection" of the attack, as well as the Basque nationalist left's belief that "it does not even contemplate the mere hypothesis" that ETA was behind the attack. Around lunch-time, a van containing seven detonators and a cassette, which is widely available for purchase, with verses from the Q'ran had been found outside a school in Alcalá de Henares in the Madrid suburbs, the first stop on the C-2 commuter line, which is used daily by 260,000 people. Acebes changed his message in the evening, arguing that all lines of inquiry remained open, although ETA remained the main suspect. A message from the *Abu Hafs Al Masri Brigades* was also received by the London-based Arab newspaper *al-Quds*, claiming that "we have succeeded in infiltrating the heart of crusader Europe and struck one of the bases of the allied alliance". They referred to the attack as "Operation Death Trains". On Friday Aznar dismissed the claim as unreliable, although he conceded that different lines of inquiry remained open, arguing that it was perfectly reasonable for the government to initially suspect ETA was behind the attack. He criticised a member of the opposition PSOE (Socialist Party) for suggesting that the government may have been witholding information. On the evening of 12 March, ETA denied that it was behind the attack in phone calls to the Basque regional television station ETB and to the newspaper *Gara*. On Saturday, a video claiming the attack on behalf of *Al Qaida* surfaced.

Nonetheless, the government continued to argue that ETA was behind the attack. Acebes had previously claimed that the type of explosive used (Titadyne), previous indiscriminate terrorist attacks undertaken by ETA (such as the bloodiest one, in a Barcelona shopping centre in 1987 when twenty-one persons were killed), the arrest of ETA members planning to bomb Madrid's *Chamartín* train station during the last Christmas holidays, the recent arrest of ETA members carrying large amounts of explosive to Madrid, and threats issued by the terrorist group to the Spanish transport infrastructure made it "clear and evident that ETA was looking to commit a major attack". He later contradicted his previous claim by saying that the explosive used in the attack was Spanish-made and called *Goma Echo 2*, although he added that a similar type of explosive (*Goma 2*, its predecessor) had also been used by ETA in the past.

However, it was also true that there were elements in the attacks pointing to *Al Qaeda* involvement. The attacks were simultaneous, like bombings of the US embassies in Kenya and Tanzania in 1998, the airplane strikes in the United States in 2001, explosive attacks Riyhad (Saudi Arabia) in May 2003, in Casablanca (Morocco), also in May 2003, and in Istanbul (Turkey) in November 2003. The *modus operandi* of the operation also had aspects linking it to the *Al Qaida* terrorist network, in that no warning call was given (ETA gives warnings), the high number of victims (totalling the amount killed by ETA in thirteen years), within the range of previous *Al Qaida* attacks, and the fact that Spain had been among the countries threatened by *Al Qaida* in the wake of the war in Iraq. It later surfaced that the van that was found in *Alcalá de Henares* had been used to carry the bombs, and had not had its number plate changed, which ETA usually does.

Remainders of explosives, of the same type that was used in the attack, were also found in the van, as well as copper detonators that are believed to have been used in the attacks, which were different from the ones used previously by ETA. Inquiries are continuing, and the people detained include a Moroccan man alleged to have links with the Moroccan Islamic Combat Group, and an Algerian beggar who told *Ertzaintza* (the Basque regional police) officers in January that "We will kill loads of people in Madrid", making an explicit reference to Atocha. The Moroccan man, who runs a call centre in the *Lavapiés* neighbourhood, was investigated by judge Baltasar Garzón in 2001 in relation to the 11 September 2001 attacks.

The government's response

The response from the whole of Spanish society was exemplary, although it must be said, to put it mildly, that the role played by the PP government left a lot to be desired, resulting in its unexpected electoral defeat on Sunday after days of mounting tension. The Interior Ministry betrayed its role as a source of reliable information early on in the crisis by claiming that ETA was responsible for the attack before it had conclusive evidence. Although, as Aznar claimed, it was reasonable to initially suspect ETA, the lengths to which the government went to prevent the possibility of an association of ideas relating the attacks to support for the war in Iraq, which was forcefully opposed by the public and opposition parties, proved its undoing. It progressively began to change its line as evidence surfaced linking the attack to *Al Qaida*, but its persistence in publicly arguing that ETA was the likeliest culprit smacked of opportunism.

On Thursday, Ana Palacio, the minister in charge of Foreign Affairs, sent telegrams out to Spain's ambassadors around the world to instruct them to "take advantage of the opportunities that may arise to confirm ETA's authorship of these brutal attacks, thus helping to clear any kind of doubt that certain interested parties may wish to raise". The instruction resulted in a clash in the United Nations Security Council, where Spain pushed through a resolution condemning the attack in which an explicit reference was made to ETA's authorship, in spite of resistance, notably from Russia. It was also clear that the news that could be seen on international television was different from news on the main television channels within the country, which tended to follow the government line in spite of increasing evidence pointing to Islamic involvement. When five people (three Moroccans and two Indians) were arrested on Saturday afternoon in relation to the sale and purchase of a batch of phonecards that were used in the attack to detonate the bombs, demonstrators spontaneously gathered outside PP party offices in several cities (including Madrid, Valencia, Barcelona and cities in Galicia). There was also a demonstration in Madrid's central square, the Puerta del Sol. Cries of 'liars', 'peace' and 'murderers', were directed at the government amid the widespread perception that it was trying to prevent news of *Al Qaida* involvement from surfacing until after the elections. The PP complained that the gatherings were illegal, as it was "the day

of reflection" when political campaigning is not allowed, and the complaint was upheld by the *Junta Electoral Central* (Central Electoral Committee), but to little effect. Already during the demonstrations called by the government on Friday evening, some PP officials had been the target of insults, most notably, but not only, in Barcelona.

It suddenly appeared clear that the "interested party", that had been seeking to "intoxicate" the available information was in fact the government. On Sunday, foreign correspondents and Spanish journalists complained about the pressure they had been subjected to by the government, including the knowing provision of false information. Steven Adolf of the Dutch National Radio and the newspaper *NCR Handelsblad* said that it was "an attempt to manipulate our work and it is inadmissible". On Monday, workers from several media outlets (including *EFE*, the public news agency, the Spanish public television and radio broadcaster *RTVE* and the regional television station *Telemadrid*) denounced the manipulation and censorship that they witnessed. The Spanish delegation also apologised to the UN Security Council for pushing its line, because "In good faith, we gave a character of complete certainty to something that has turned out to be a hypothesis".

The election

The Spanish electorate reacted by confounding prior opinion polls and punishing the PP. The PSOE candidate José Luis Rodríguez Zapatero won the election with 42.64% of the vote (worth 164 seats, up from 125), dramatically overtaking the PP, which obtained 37.64% of the vote (148 seats, down from 183). There was a large increase in the proportion of the electorate that voted, up from 68.71% in 2000 to 77.21%, but nonetheless the PP lost nearly 700,000 votes. It remained the leading party in the Senate, almost enjoying a majority, with 102 seats (down from 127) out of 208.

The PP's mismanagement of the crisis would not have had the same impact if it had not been for a series of precedents which had allowed the Socialists to use "*No más mentiras*" ("No more lies") as one of its slogans during the election campaign, in relation to events including the war in Iraq, the disaster involving the *Prestige* oil tanker, and the death of 62 members of the Spanish armed forces in an air disaster as they returned from Afghanistan. The horrific attack suffered by Madrid resulted in a rude awakening for Spain. In this instance, and possibly thanks to isolated Spanish media outlets (notably *El País* newspaper and the *Cadena SER* radio station), the presence of foreign media, as well as citizens who felt it was important for everyone to find out about the manipulation that was taking place, the electorate was able to channel its emotions non-violently through the ballot box, in an election that was an example of democracy at work.

Statewatch's correspondent in Madrid

El País, 11-18.3.04; Guardian 12.3.04; Le Monde 13.3.04.

Consejo Provisional de Informativos TVE – Torrespaña. Informe nº 4 – "Vergonzosa manipulación de los telediarios en la jornada de reflexión; available (in Spanish) at:
http://www.cpinformativos.org/informes/cpi-informe-04.htm

Viewpoint

Internment under the ATCS Act: the first two years

Extracts from a speech by Gareth Peirce, solicitor for a number of the men interned in Belmarsh high-security prison under the Anti-Terrorism, Crime and Security Act 2001 on its implementation

In December 2001 the Home Secretary informed the Council of Europe that there was in the UK a national emergency threatening the life of the nation so extreme that the UK needed to withdraw from its treaty obligation, specifically the obligation that no individual could be detained without trial. No other country of the now 40-plus member states of the Council of Europe has felt that necessity. At the beginning, when the Home Secretary announced the legislation that he was intending, he was reminded that it was impermissible short of a national emergency. His response was that that was a "technicality". Later, clearly after received having forceful legal advice, he attempted to put flesh on the bone of that claim. The claim that was then made was that there was a specific threat of a kind only encountered otherwise in a time of war or internal armed conflict. It came from *al Qaeda* and organisations and individuals closely linked to and working in harmony with *al Qaeda* with the same objectives, the objective being to attack America and its close allies, Israel and the United Kingdom.

Entry into force

There was extensive publicity attached to the coming into force of this legislation, the Anti-Terrorism, Crime and Security Act (ATCS) just before Christmas two years ago. Whatever the reassurances that were given to Parliament that individuals would have legal representation and their interests would be protected, this was not the case. Ten individuals were seized from their homes the morning after the legislation was passed in 2001 and taken straight to Belmarsh Prison and Woodhill Prison near Milton Keynes. Their families had no idea what had happened to them or where they had gone. No one was informed that they were arrested. By complete accident a number of them arrived on a landing in Belmarsh Prison where a remand prisoner who had money in his property and a phone card was able to phone his solicitor and inform her that a number of people had arrived who were not being allowed to make phone calls and who needed a lawyer urgently. Belmarsh refused visits until after Christmas. There was now a day and a half before a complete shut-down before Christmas. Threatened Judicial review produced a scrappy visit in Belmarsh the next morning. The Commission was informed that an urgent bail application was to be made and listed an application for one man the following day. HMSO said that the legislation was not yet published and would not be available until after Christmas. In desperation a radio interview produced the following morning a copy of the legislation five minutes before the bail application, hot off the press. A faxed note late at night from the Home Secretary's lawyers contained the reasons why that first individual had been certificated. It was too dangerous for him to be removed to Morocco and he had visited two named individuals in Belmarsh Prison. It was clearly wholly astonishing to the innumerable unnamed members of government departments who were present at that bail application to learn that the man was not an asylum seeker. He had lived in this country for 18 years as a taxpayer but had visited Morocco each year for those 18 years to see his family. Yes indeed he had visited two named persons in Belmarsh Prison. He had done so as an interpreter and had been cleared by police and security at Belmarsh before doing so. Nevertheless the Commission said it must regard the purpose of

the legislation as detention and must regard the decision of the Secretary of State to have issued a certificate as reasonable until proven to the contrary and that the only circumstance in which bail could be granted would be if an individual was terminally ill or could prove that he was not the person in question.

Horrifying

That hearing was the first experience of the reality of the legislation. In the two years since that time each revelation as to what has been the true basis of internment and how it has been dealt with has left us increasingly horrified. Though the shock of the first bail application was considerable nevertheless we believed that the legislation was unjustifiable and hence unlawful legally, factually and morally, and that in relation to the individuals, all of whom expressed their wholesale astonishment to have been selected for certification and equally their astonishment at the selection of some of the others detained because they had known them previously, we might be able to be establish when we saw the actual evidence against each detainee. One in particular, Mamoud Abu Rideh, a Palestinian victim of Israeli torture, was very well known in the community as a highly eccentric and damaged individual, albeit one with a burning commitment to helping others, in particular fundraising for charities in Afghanistan. We have had described to us over and over again Abu Rideh's travels around the Muslim communities of this country with a little exhibition. He would set up of photographs of schools, projects for wells, projects for work for widows and the details of a recognised UN charity for humanitarian aid to which these monies were transmitted. This man, already traumatised, in Belmarsh immediately began to react to the reintroduction of trauma. He became gravely disturbed, now one and a half years ago, after he had deteriorated into a life-threatening state, being unable to eat and too weak to be out of a wheelchair, came to be removed on the orders of the Home Secretary to Broadmoor, against the wishes of Broadmoor who said he was not at all dangerous and mentally ill, but clearly suffering the effects of being confined in Belmarsh and there he remains. Bail application for him before the Commission had no more success than those on behalf of the Moroccan interpreter. We considered however that some ability to analyse the evidence produced against each would allow for us as lawyers to investigate and challenge the assertions made by the Home Secretary.

No evidence produced

More shocking to us, however, came the realisation of what the evidence was that we were to be allowed to know. We had assumed when the faxed information was sent at that first scrabbled together early bail application that when we received the evidence against each individual, then we would begin to understand why he had been detained and be able to work to disprove the contention. Instead, we saw that these first few lines were to remain the evidence. This was not evidence. These were assertions, unsupported by any evidence whatsoever, thus an individual would be said to have been certificated as being an international terrorist or person who was a supporter of international terrorism on the basis that he associated with other persons who had links with other persons who were extremists and were associated with groups which in turn had links with *al Qaeda*. This was it. Of course the words "links", "associated with", "extremists" are words lacking any definition. On occasion the name of the individual with whom a connection was made would emerge. One such man was an individual called Abu Doha awaiting extradition to the United States. Others were clerics in this country, or other persons who were all alive and well and undetained in the community here. Very rarely, in relation to one or two people, was there a snippet of surveillance evidence showing that the individual had been seen for instance, going to a particular address on a particular day, such as to demonstrate association. As for the evidence as to what those allegedly more central individuals might themselves have been doing, we could hardly believe what we were presented with. Someone in the Security Services or the Home Office had simply searched the internet and obtained in relation to each name or proposition a range of newspaper articles on any one subject for instance the GIA, an Algerian organisation, for Abu Doha, for Abu Hamza, Abu Qatada, for *al Qaeda*. There was no evidence whatsoever. There were simply assertions by unnamed Security Service officers purporting to constitute a statement backed by ring binders of newspaper articles, the claim being made "normally intelligence information cannot be given but since what is enclosed here is already in the public domain we will provide it". Therefore what was being provided was the very evidence that journalist Martin Bright, biting the hand that fed him, said in a statement to the Commission had been fed to the press week by week, month by month, for the purpose of obtaining the passage of the legislation itself and as Mr Bright said as well - recently having seen with astonishment one of his articles included in the bundle - was that embarrassingly now, along with many journalists two years later, they could hardly bear to read things that they had written.

No charge, no prosecution

The failure to provide any evidence in real terms against the detainees was baffling. It was not just shocking, but baffling in terms of the reassurance Parliament had been given. Remember, despite all of the wide provisions for arrest and questioning for seven days under the Terrorism Act, various pieces of terrorism legislation, those who were certificated were never arrested at all and questioned. Not at all. We therefore believed that there must be some other consideration that had led the Crown Prosecution Service to make its decision not to prosecute, otherwise as happens in every other case, if consulted about the sufficiency of evidence, they would say to the police what the police would know very well and think for themselves. If we have a suspicion that a person is involved in support for terrorism, then it is our duty to arrest them and to question them and by questioning of course our intention to obtain evidence that will either support or refute our suspicion. I have spent months of my life during the past several years in Paddington Green Police Station, at detentions for seven days under the wide powers of the Terrorism Act, while the police seek evidence on which to prosecute individuals with all of the safeguards, however insufficient they appear to defendants and defence lawyers, that a trial provides. I therefore wrote to the Director of Public Prosecutions and asked him on which date the decision had been taken not to prosecute each of the detainees, which Crown Prosecution Service officer had taken the decision and what information he or she had before them when they took it. After some time a reply came back that the Crown Prosecution Service had never taken any decision in relation to any of these individuals. They had never been consulted. In the first of the individual appeals themselves, when a Security Service witness standing behind a curtain, Witness A, was questioned about the decision-making process Parliament had been reassured had been taken in every case by the Crown Prosecution Service. The answer was that they thought there had been conversation between the relevant Special Branch officer and someone in MI5.

The role of the intelligence services

In relation to any individual and any information, one would want to go to the best source. Bear in mind that the proposition advanced by the Home Secretary for the legislation is that this country has in its midst a significant number of individuals who present a threat. The Home Secretary said in his evidence that

some of these individuals are detained here awaiting extradition to other countries, for instance Abu Doha. Some are British nationals and the legislation does not cover them. Those who are detained, there is no other way to deal with them. Not only has each of the individuals internees expressed his astonishment that nobody ever came to talk to him but so also have some of the individuals whose presence in this country, and contact with whom is said to justify the certification of other individuals have themselves. They neither have ever been interviewed. Four individuals said to be key in Belmarsh Prison now, have said in puzzlement, is there nobody in the Government who will be interested or who would like to talk to us? Is there nobody who would be interested to hear what is the real position about the fears and suspicions they have? Is there nobody who has a concern to know our view as to whether there is or was a threat and who might like to know that insofar as we ever had the ability to influence anybody, our repeated message was if you come to this country, as a refugee, if this country has provided you with hospitality then Islam says that is a contract and you have an absolute duty to obey the laws of this country and to respect it. Ironically we have seen an MI5 report of some five years old in relation to a conversation with one of those individuals in which that was precisely the reported impression that the MI5 officer had that this individual was a charismatic figure of influence and was exerting a restraining influence upon potential younger hotheads. That individual is now locked up with others in Belmarsh. One may be entirely wrong, the picture may not be that, but if this country was interested in the reality then informed conversations with willing individuals would have appeared to be an important prerequisite.

Instead, a significant number of solicitors who have clients in Muslim communities around this country will tell you the process of information gathering has been frighteningly inappropriate. Innumerable individuals have expressed their fear. They have had a knock on the door, an approach in the street, an obstruction in the aisle at Tesco's, from an individual saying that he was from the Security Services and wanted to obtain from them information about this country as to whether there was a threat from terrorism and that - in "exchange" - considerable help could be given to the obtaining of British citizenship or regularising of immigration status. A significant number of individuals have reported a threat that in the absence of doing so they would be returned to countries from which they had fled. It is entirely obvious that much of the information that must have been heard in secret session must be evidence obtained through methodology known to produce entirely unreliable evidence since it involves coercion, inducements and threats. We do not even know if such individuals appear as witnesses behind closed doors to the Commission or if what they say or are claimed to have said is reported second-hand through the evidence of Security Service agents. We suspect the latter but we do not know and we are not allowed to know. Secret evidence is evidence that enjoys the confidence that it will never have to withstand the bright light of public exposure and scrutiny.

First challenges to ATCS

Worse, however, was to come. The [failed] challenge to the legislation itself came first. The individual appeals came more than a year later, the first ten appellants waited almost two years to have any decision on their individual cases. The appeal consists of receiving the assertion, putting in a written statement and any evidence to try to counter the assertion and eventually a semi-oral appeal, in the sense that there is a brief session in which there is a security witness who appears behind a curtain but is able to be cross-examined, but whose frequent response is "I can give the answer to that in closed session but not in open session". Then, the appellant, if he wishes, can give evidence and be cross-examined, and in the process it is extremely clear that the barrister on behalf of the Home Secretary is asking questions of the appellant which can have no possible meaning other than that the advocate believes that he can establish that what the appellant says is a lie in closed session.

It was always our real concern that a number of brutal regimes had for many years been pressing this country to take action against refugees here who opposed them. The internment legislation that had been brought in here demanded a direct connection (to justify detention) with *al Qaeda* since that was the basis upon which the emergency had been claimed. No link was able to be made between the detainees and *al Qaeda*. Instead, links were claimed with organisations linked to opposition to entirely different regimes and it was then asserted that those organisations had in turn a link with *al Qaeda*. Algeria, the most significant in terms of the number of internees, has long claimed that some members of the GIA and the GSPC have found safe refuge in this country and has provided information to this country that in more than case has been clearly obtained through the use of torture. We expressed our view to the Commission that any evidence sourced from these regimes had to be discounted. Not only was it partisan but it was likely to have been obtained by means which the international community rejected as unlawful through the use of torture and the infliction of death.

The evidence that the Secretary of State presented suggested direct connections which are entirely baffling and fly in the face of all known objective evidence. He claimed because he had to claim in order to intern a number of these people, that they had links with terrorist groups which he claimed had links with *al Qaeda*, presenting them as directly threatening to this country as outposts of *al Qaeda* using terminology that suggested exact definition - providing safe houses, providing logistical support, fundraising. He provided a graphic showing a hierarchical structure with al Qaeda and bin Laden at the top with an ever-expanding series of boxes underneath, spreading out to Algerian, Egyptian and other organisations of Islamic resistance or opposition to those respective countries. For a number of reasons the expert who provided that graphic has been accepted as being discredited. However, his thesis, of a cohesive network leading to the pinnacle of bin Laden and al Qaeda and now comprehensively disregarded, was the thesis adopted by the Home Secretary in declaring the national emergency. In consequence, the evidence against the individuals detained had to be choreographed to that theme and it was.

"Supporting terrorism": good Chechens and bad Chechens

The appeals produced a number of surprises for the Home Secretary that demanded alterations to his initial thesis central to his initial claims. In respect of a number of the appellants the assertion had been that they were involved in fundraising or providing logistical support in conjunction with a man, Abu Doha, for the purposes of terrorism. Clearly surprising to the Home Secretary, instead of a denial of the activity those appellants in their response said of course we were involved in fundraising. We were indeed involved in providing logistical support to Chechnya, which had been brutally invaded by Russia the second time in 1999. The world was silent, Russia had received no criticism from the West and the population of Chechnya was being wiped out in mass genocide was attempting to resist. The United Nations Declaration of Human Rights and the United Nations Charter guarantee both self-determination is the right of the people such as the Chechens but also that armed resistance to a tyrant is a guaranteed right to those peoples in the face of tyranny. The European Convention of Human Rights is a child of the UN Declarations and its preamble expresses that view although it specifies only within the Convention only a limited number of rights that it chooses to spell out. Nevertheless

it adopts its overriding ethos in which it was written, all of the principles, both principles of the United Nations. When it was suggested that they were purchasing satellite telephone time and satellite phones they said “yes”. With Abu Doha, "yes". If there was a snip of a surveillance observation saying that they had boots and blankets in a van, they said yes. It was all for Chechnya and it is lawful. The UN tells us we can do this; the European Convention tells us that we can do this; domestic UK law tells us that we are doing nothing unlawful in assisting self-defence.

The Secretary of State during the past year has shifted his position. He said there is Chechen resistance but there are good Chechen resisters, there are middle Chechen resisters who are Islamic and there are bad Chechen resisters who have links to *al Qaeda* and we believe on the basis of no evidence that it is the bad Chechen resisters who you were helping and it doesn't matter if you sent boots that went to a good and a middle resister, if you sent boots that ended up on the feet of the bad resister fighting alongside the good and the middle, then you were assisting international terrorism with a link to al Qaeda. And there were suddenly by the end of the appeal hearings a number of new terrorist groups, one the Abu Doha group. Why a link? Because some Chechens fought in Afghanistan against the Russians, in fact at a time when the USA and the CIA were funding the resisters, and some supporters of Chechen resistance went to Islamic camps in Afghanistan where they received some rudimentary military training en route not necessarily to Chechnya, but earlier than that to Afghanistan and then to Bosnia, which had proved a wake-up call to the Muslim world that no one else would go to their aid. In an echo of the International Brigade in the Spanish Civil War, similar people, principled, serious, law-abiding decent young men went, motivated not by any self-interest but by altruism.

The Afghanistan connection

Afghanistan, it seemed, was the central key to the Home Secretary's thesis in establishing that there were links between individuals in this country and *al Qaeda*. A number of those individuals to whom we have been able to talk at huge length and in great detail have expressed astonishment even at the very name, let alone the concept of *al Qaeda*, a name that they had themselves never heard until after September 11th, even though some had lived at least for a while in Afghanistan. Bin Laden and his small group, *al Qaeda*, were only one of many individuals who had found their way to Afghanistan between 1990 and 2001.

By the mid-1990s the Taliban, the name means in Arabic "scholars", had formed the government in Afghanistan and were attempting to set up a truly Islamic state. Leave to one side the constantly repeated flaws in that attempt, and consider the position of a diaspora of refugees and indeed non-refugees around the world who thought that that ideal was one in which they wished to participate. A small but significant number of individuals moved to Afghanistan in an attempt to be involved in the creation of that state, setting up schools, rudimentary industry, agriculture that was not based on the production of heroin, and were, inevitably as a diaspora, in touch with the wider diaspora worldwide. It is that circumstance that the Home Secretary has entirely adopted as the necessary plank of his thesis but without any satisfactory understanding. When one of the security witnesses was cross-examined as to her understanding of the number of training camps that there were in Afghanistan, whether al Qaeda or not al Qaeda, she expressed the view after a considerable pause that there were between ten and a hundred. In fact there were two, not al Qaeda and one entirely separate different and remote al Qaeda camp. It was during the individual appeals this summer and whilst for the first time in the few answers given in open session by the Security Services witnesses that we were beginning to comprehend the wholesale lack of information and knowledge. We found that having had and taken extensively the opportunity of talking to those whose presence the Home Secretary claimed constituted a national emergency that we were able to have a far more accurate knowledge of many basic facts.

The Guantanamo connection

This led us to puzzle as to what evidence the Secretary of State could be producing in secret session and had relied upon in determining that there was a national emergency. By chance, I had been working with the father of one of the detainees in Guantanamo Bay, Moazzem Begg, who had emigrated to Afghanistan with his wife and children to set up a school in Kabul, who had escaped when Afghanistan was invaded to Pakistan, had been abducted by Americans from Pakistan unlawfully, taken to Bagram airbase - where secret reports have come out again and again and again on the use of what the Americans refer to as torture-light and stress and duress techniques and worse - and then after a year taken to Guantanamo Bay. I had written to the Prime Minister and the Foreign Secretary and the Home Secretary repeatedly asking if they accepted what had been done to him was unlawful and that the two years of unlawful interrogation of him must therefore constitute no basis for a hearing before any tribunal, military or other. In the course of that correspondence I repeatedly asked what information had been given to the American interrogators by the UK. What product has been received by the UK? Have our Intelligence Service agents been present at any interrogation? And a reply came back too late for any of the individual appeals, that the UK had had its agents present at interrogations conducted in both Guantanamo Bay and Afghanistan. Given the illegality and worse of that system of interrogation, the admission that our Intelligence Services were participating was shocking. However, during the appeals one Intelligence Service agent had answered in response to our questions that evidence if obtained from Guantanamo or Bagram or that might have involved the use of torture would be used by the Intelligence Services, it would be merely a question of what weight to attach to it. The advocate for the Home Secretary echoed that that was our official policy and practice and to our everlasting disappointment the Commission in rejecting all ten of the first appeals indicated that it was not excluded from consideration. The Home Secretary only had to raise reasonable suspicion it was not for SIAC to enter into a debate as to the evidence and how it was produced and in any event, it was for the appellant to prove that torture had been used in relation to evidence that we can only guess at and is heard entirely in secret.

A covert experiment in injustice

What is now completely clear to us is that internment for the UK just as detention in Guantanamo Bay for the US is in the nature of an experiment and that a significant part of the experiment is the degree of protest and successful protest including by the courts that these procedures will arouse. To a significant extent, for the present moment, that experiment has been a success for the governments concerned. There has been very little protest, even less in relation to internment, than there has in relation to Guantanamo Bay. No wonder the United Kingdom cannot effectively protest about the fate of British detainees in Guantanamo. Of course it cannot. It is complicit, far more than we originally thought in the process.

Gareth Peirce (edited extracts from a speech given on 15h December 2003)

In March 2004 the first of 16 people detained under ATCS successfully challenged their detention and four of the British detainees held in Gauntanamo Bay were returned. See Statewatch news online.

UK: Civil Contingencies Bill: Britain's Patriot Act

The Bill has been revised but the overalll powers remain a great danger to democracy

On 7 January the government published their response to a highly critical report by the parliamentary Joint Committee on the Civil Contingencies Bill. Douglas Alexander, Cabinet Office Minister, appeared on TV news broadcasts saying that the government had "listened to concerns about civil liberties". Lewis Moonie MP, chair of the Joint Committee, said the changes were: "better than I feared and as much as I'd hoped for". The overall message was that the government had listened to criticisms that the Bill might give governments draconian powers and amended it accordingly (eg: "MPs welcome rethink on anti-terror plans", *Guardian*, 8.1.03). The government's approach was also praised as a good example of pre-legislative scrutiny (Note: this analysis thus replaced that in *Statewatch* vol 13 no 6).

The draft Civil Contingencies Bill and Explanatory Notes had been published in June 2003 and the Joint Committee reported on 28 November 2003. The proposal would replace the 1920 Emergency Powers Act. The government's response to the Committee's report and the formal Civil Contingencies Bill came out on 7 January.

The new Bill meets a number of the concerns raised by the parliamentary Committee and civil liberties groups. The scope of the Bill now no longer covers: "the political, administrative or economic stability of the United Kingdom" and the controversial Clause 25 which could have excluded judicial review is gone too. The term "human welfare" applies in both Parts of the Bill, regulations made under an emergency should not be allowed to change criminal procedures and the creation or use of Tribunals is set out.

On the face of it the new Bill was presented, and widely accepted in the media, as having been significantly changed to respond to criticisms that it could be misused by a right-wing/authoritarian government in the future. But was it?

The new Bill

The Bill has two Parts, Part 1 covers "local arrangements for civil protection" and Part 2 is an entirely new proposal which would protect the state, government, financial companies in times of crisis/emergency and give exceptional and extensive powers to the government and state.

The Emergency Powers Act 1920 is concerned solely with:

> *the supply and distribution of food, water, fuel, or light, or with the means of locomotion, to deprive the community, or any substantial portion of the community, of the essentials of life*

This new Bill, like its predecessor, extends powers to protect the government, state agencies and financial institutions.

The definition of an emergency - Clause 18

The "meaning of "emergency"" (Clause 18) is defined as "an event or situation" which "threatens serious damage" to:

(a) human welfare,
(b) the environment or
(c) the security of the United Kingdom.

Under all three headings this may affect the whole UK, part of it, or a region.

The clause 18 now excludes "the political, administrative or economic stability of the United Kingdom" which was defined in the first draft as covering the "activities of Her Majesty's government", "the performance of public functions" and "the activities of banks and other financial institutions" (however, see below).

Clause 18.2.e, where an event or situation affects "human welfare" has been changed to:

> *disruption of a supply of money, food, water, energy or fuel*

The word "money" has been added and is the first of three changes concerning "the activities of banks and other financial institutions" in the new Bill.

The "security of the UK" is defined in 18.4 as:

> *(a) war or armed conflict, and*
>
> *(b) terrorism, within the meaning given by section 1 of the Terrorism Act 2000*

The inclusion of S.1 of the Terrorism Act 2000 is a major extension in the concept of emergency powers (see S.1 text below). This Act is intended for use in everyday policing and should be outside of "emergency" situations.

Government to declare emergencies rather than head of state - Clause 18

A new section has been inserted in clause 18 on the meaning of an "emergency" which at first sight seems strange. A "Secretary of State" (a government minister) can by "**order**" lay down that:

> *a specified event or situation, or class of event or situation*

is to be treated as triggering an "emergency" under one of the three headings in 18.1. - human welfare, the environment or the security of the UK.

The mystery as to the inclusion of this new power is solved when it is realised that clause 18 in the draft Bill, which said that a "Royal proclamation" would declare a state of "emergency" has or is about to occur has been **deleted**.

The government's response to the Joint Committee report (Cm 6078) simply makes the statement - without any reasoning or rationale - that:

> *the government has decided that it is inappropriate to retain the requirement for a declaration of emergency (page 6)*

A key provision in the EPA 1920, the proclamation of a state of emergency, is to be removed.

Wade and Phillips have commented that:

> *The power to govern by regulation under the Act arises only when a state of emergency has been declared by royal proclamation" ("Constitutional and administrative law" (9th edition)*

Both in terms of constitutional propriety and legitimacy the removal of the step of a declaration of a state of emergency within which certain powers are exercised is highly dangerous. The declaration of a "state of emergency" signals not just to parliament but to the people that an exceptional peacetime situation exists within which "regulations" may be made law for limited periods.

It places in the hands of politicians, the government of the day, a power previously exercised by the head of state (the monarch).

The issuing of a "royal proclamation" by the head of state that a "state of emergency" exists implies a gravity and constitutional importance that is not evident in the new Bill.

The issuing of an "order" that a "situation" or "event" exists or is about to occur is not the same as a "declaration of a state of emergency".

It would allow governments enormous discretion and allow them to mix ongoing business in normal times with powers that are intended to deal with a peacetime emergencies.

This new "normality" could see parts of cities or whole towns subject to exceptional laws and controls in the same way that emergency laws have been in place in Northern Ireland for

more than thirty years.

Moreover, whereas a proclamation of a state of emergency under the EPA 1920 could only be in force for one month without being renewed, the issuing of an order by the government has no such limit set out and appears to be indefinite until revoked.

Thus a Secretary of State (a government Minister, probably the Home Secretary) could under 18.5.a make an order applying to any or all of the main headings - human welfare, environment or security of the UK - in a part or region of the country. The "order" has to be "approved by resolution of each House of Parliament" ("Approved" by the House of Commons and House of Lords is not here defined as being "negative" or "affirmative").

Clause 18.5.b allows the government to re-define the clause on "human welfare" (18.2) as a means of triggering emergency powers to be extended to cover an "event" or "situation":

*"involving or causing **disruption** of a specified supply, system, facility or service" (emphasis added)*

The use of the term "disruption" was rightly criticised by the Joint Committee report.

Finally, clause 18.7 says that the "event or situation" that may trigger an "emergency":

may occur or be inside or outside the UK

This is not in EPA 1920.

"Power to make emergency regulations" - Clause 19 - and "Conditions" - Clause 20

The primary power to make Regulations will be by Her Majesty through "Order in Council" (that is by the Privy Council nodding measures through - these Orders stand unless negated or amended by parliament). The monarch (or a Minister if they are unavailable) must make a statement specifying the nature of the emergency and satisfy themselves that the conditions in clause 20 are met (namely that an emergency has occurred or is about to occur, is necessary and urgent and existing legislation "cannot be relied upon" or "might be insufficiently effective").

Scope of emergency regulations - Clause 21

Clause 21 sets out the "Scope of emergency regulations" and by use of the term "in particular" indicates that the controversial list of purposes is not intended to be exclusive and could be added to.

In Clause 21.2.d. the word "money" has again been inserted in "protecting or restoring a supply of money, food, water, energy or fuel".

A new clause 21.2.h. has been inserted for:

protecting or restoring the activities of banks and other financial institutions

Clause 21.2.l. allows Regulations to be made for:

protecting or restoring activities of Her Majesty's government

and clause 21.2.n. for:

protecting or restoring the performance of public functions

Thus although "political, administrative or economic stability of the United Kingdom" as a ground for declaring an emergency has been removed Regulations can be made in order to enforce these objectives. "**Public functions**" are defined in clause 30 as:

(a) functions conferred or imposed by virtue of an enactment,

(b) functions of Ministers of the Crown (or their departments),

(c) functions of persons holding office under the Crown

Thus by "protecting" or "restoring" the "performance" (surely a subjective term) the continuance government and state is ensured. The term: "persons holding office under the Crown" include the military and police forces.

Taken together, clauses 21.2 (h), (l) and (n) with the definition of "public functions" in clause 30 would allow a government to introduce regulations to cover the deletion of the "political, administrative or economic stability of the United Kingdom". This intent is specifically set out in the government's response to the Joint Committee report (page 8, point 8) where it says that:

The government continues to consider that, should a situation or event pose such a threat to human welfare, the environment or security that the making of emergency regulations is appropriate, it should be possible for those emergency regulations to contain provision which is designed to protect or restore the activities of Her Majesty's government, the activities of parliament or the legislatures of the devolved administrations, the activities of banks or other financial institutions or the performance of public functions.

Clause 21.3 says:

Emergency regulations may make provision of any kind that could be made by Act of Parliament or by the exercise of the Royal Prerogative, in particular, regulations may...

The Joint Committee was extremely concerned about this provision. Indeed so concerned were they that they listed twenty-two fundamental constitutional laws which should not, under any circumstances, be amended or removed (eg: the Magna Carta 1297 and the Bill of Rights 1688). Their report commented that this clause as set out in 21.3.j:

allows regulations to disapply any Act of Parliament. In the wrong hands, this could be used to remove all past legislation which makes up the statutory patchwork of the British Constitution.

The government's response was **to reject the need for a list of constitutional laws that should be protected from amendment or revocation under this Bill.** Their rejection simply relies on a convoluted argument from Parliamentary Counsel namely that:

each proposed exercise of such a power must be assessed by reference to whether or not it is within the class of action that Parliament must have contemplated when conferring the power

The Parliamentary Counsel goes on to advise that "in the unlikely event of needing to use this power Parliament will not permit interference either with a general presumption or with a "constitutional" enactment". This leads the government to conclude:

we cannot presently envisage circumstances in which this power would lawfully enable us to make a substantial amendment to a constitutional enactment.

The Joint Committee argued that if the government wished to even have the possibility of such a sweeping power then it should be subject to separate legislation. The government refusal to remove this clause leaves a hostage to fortune. As the Joint Committee observed:

In the wrong hands, it could be used to undermine or even remove legislation underpinning the British Constitution and infringe human rights

In addition regulations could confer on a government Minister or "other specified person" a "discretionary function" and the power "to give directions or orders (whether written or oral)" (21.3.a).

Property can be requisitioned or confiscated (property can be taken to apply both to building and personal possessions) (21.3.b) and the destruction of "property, animal life or plant life" is covered by 21.3.c, both "with or without compensation".

Clause 21.3. allows for Regulations to be made in order to:

*(d) **prohibit**, or enable the prohibition of, **movement** to or from a specified place;*

*(e) **require**, or enable the requirement of, **movement** to or from a specified place;*

*(f) **prohibit**, or enable the prohibition of, **assemblies** of specified kinds, at specified places or at specified times;*

*(g) **prohibit**, or enable the prohibition of, **travel** at specified times;*

*(h) **prohibit**, or enable the prohibition of, **other specified activities***

*(i) **create an offences** of:*

(i) failing to comply with a provision of the regulations;

(ii) failing to comply with a direction or order given or made under the regulations;

(iii) obstructing a person in the performance of a function under or by virtue of the regulations (emphasis added)

Under 22.4.c **new offences can be created allowing for imprisonment for up to three months or a fine.**

As the parliamentary Joint Committee did not make a recommendation on the inclusion of these powers the government saw no reason to justify them in its response to their report or to make any changes.

The effect of 21.3.d-i. would be to ban the right to demonstrate and the right of free movement and "other specified activities". "Other specified activities" was interpreted in press briefings to include the banning of organisations.

These powers would not just ban protest and travel but authorise the enforcement of the bans (ie: preparatory acts for a protest such as making banners, publicising it etc) and introduce new criminal offences (see 21.4.d) to counter any dissent.

Two new clauses under clause 21.3 have been introduced to empower the military. 21.3.l "enables the Defence Council to authorise the deployment of Her Majesty's armed forces". The "Defence Council" is a variant of the Privy Council where relevant Ministers nod through orders. Such a Regulation would establish an independent centre of power for the military. 21.3.m. allows for "facilitating any deployment of Her Majesty's armed forces" (which may include powers to requisition).

21.3.n. allows jurisdiction to be given to a "court or tribunal" including new tribunals "established by the regulations".

21.3.o. extends the scope of regulations to the "territorial sea", an "area within British fishery limits" (which is much, much larger than the former) or "an area of the continental shelf".

As if all these powers to make regulations were not enough a new 21.3.q. allows for regulations to:

make different provision for different circumstances or purposes

Some restrictions, taken from the 1920 EPA are preserved under clause 22. Regulations cannot be made forcing people to undertake "military service" (22.3.a) or to "prohibit or enable the prohibition of participation in, or any activity in connection with, a strike or other industrial action" (22.3.b) - though how the latter can be reconciled with 21.3.f (banning assemblies) is not at all clear and may mean workers can strike but not demonstrate (assemble) or come together in solidarity.

The making of regulations and parliamentary scrutiny

To the lay person the procedure for making regulations in declared emergency "situations" or "events" is almost incomprehensible. Under clause 19 "Her Majesty may by Order in Council make emergency regulations", so the archaic Privy Council (composed of Ministers, ex-Ministers and members of the Royal Family) can make regulations.

However, as far as parliament is concerned "Emergency regulations shall be made by statutory instrument" (Clause 29). Statutory instruments (or SIs) can be made by either "negative" resolution of the Houses of Parliament (ie: they are listed in the daily Order Paper and if no-one objects the measure automatically become law) or "affirmative" resolution which requires and actual vote in both Houses. Whether a "negative" or "affirmative" resolution is needed in set out in the originating measure - in this case in the Regulation which will already have been agreed by the Privy Council and put into operation by the government unless later rejected or amended by parliament within the seven day period set down.

Under the SI procedure the power to amend them is not established in constitutional practice. In this instance it is proposed, clause 26.3, that if both Houses of Parliament pass a resolution amending a regulation it will be amended and equally the same procedure would apply to both Houses calling for a regulation to cease.

The standard of the EPA 1920 should be restored so that any reference to statutory instruments should be deleted.

The Joint Committee called for draft emergency Regulations to be published not just so that parliament could consider them but also "in the interests of open government". The government has rejected this request.

If Regulations are passed which apply to Scotland the Scottish Ministers are to be only "consulted", there is no reference to the Scottish Parliament. The same goes for Northern Ireland. For Wales the Welsh Assembly has to be "consulted" (clause 28)

The Schedule on "Responders" (those to act under the Regulations or at the "direction" of government Ministers) now includes a wider definition (Schedule 1, Part 3, 22.1) which extends the definition of telecommunications to cover not just phones but also expressly "the transmission of data" (e-mails, websites etc).

Tony Bunyan, Statewatch editor, comments:

The draft Bill would have allowed the imposition of an authoritarian state. The new Bill is only better in that it paves the road to an authoritarian state. The government is really naive if it thinks people will not read the fine print of the new Bill and realise that it has preserved nearly all the powers it originally proposed - albeit in a different form - and added new contentious provisions which were not in the first draft"

The real world of civil contingency planning

The discussion on the Bill has been based on the idea that at some far distant, future, point Regulations will be laid down when an "emergency" is proclaimed. This perspective ignores the fact that an infrastructure of Regulations, regional plans and assigned duties for public officials has been in place for years. In the 1970s this distinction - with the receding possibility of nuclear war - began to disappear and the Civil Contingencies Committee in the Cabinet Office was set up in 1974. During the same period the role of the military inside the UK was defined: i) Military Aid to the Civil Community (MACC), eg: natural disasters; ii) Military Aid to the Civil Power (MACP) for the maintenance of law and order and iii) Military Aid to Government Departments (MAGD) for "work of national importance and essential services".

In the 1970s a number of the Regulations then in place were "leaked" and they included emergency broadcasting services (ES 2/ 1975) and another the Post Officer Telephone Preference System (ES 6/1975). Under this "preference system" subscribers are divided into three categories: i) those whose lines are "vital" to the emergency; ii) additional lines "necessary to maintain the life of the community in a peacetime emergency" and iii) "all lines not covered by Categories 1 and 2". Those in Categories 1 and 2 "can both receive and originate telephone calls", whereas "Category 3 lines will only be able to receive calls".

Further reading: see: a) The Political Police in Britain by Tony Bunyan, 1977; b) Troops in Strikes by Steve Peak; c) Emergency Powers in Peacetime by David Bonner and d) States of Emergency by Keith Jeffery and Peter Hennessy.

Statewatch News online

See: **www.statewatch.org/news**

Homeland Security comes to the EU: European Commission publishes Action Plan on terrorism (and crime):

- plans cover terrorism but also include measures which have nothing to do with combating terrorism

- fingerprinting for EU passports and ID cards to be mandatory

- European Registry on convictions to be created on all crimes

- European Registry of all travel documents to be created

- EU passenger name records (PNR) to be collected and put on database

- UK demanding EU-wide mandatory data retention of communications

European Parliament slams EU data protection enforcement and opposes data transfer to USA

MI5 staff to rise to 3,000

EU driving licences: UK calls for multi-use, interoperable, licences

EU biometric passport proposal exceeds the ECs powers

Statewatch European Monitor vol 4 no 3 (March 2004) published

EU: Security research programme to look at creating "smart" biometric documents which will "locate,identify and follow the movement of persons" through "automatic chips with positioning"

"Privacy is one of the basic values of human life and personal data is the main gateway enabling entry into it. The citizens of countries that experienced a period of totalitarian regimes have that a hard experience - when privacy was not considered of value and was sacrificed to the interest of the state" (Hana Stepankova, Czech Office for Personal Data Protection, on handing over personal passenger data to the USA, 11.12.03)

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Statewatch website

Statewatch's website carries News online and has a searchable database. The url is: **http://www.statewatch.org**

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