

# statewatch

monitoring the state and civil liberties in the UK and Europe

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## PRIVACY CONCERNS IN USA LEAD TO WITHDRAWAL OF CAPPS II - COULD THIS HAPPEN IN THE EU?

- farce over mandatory biometric identifier - facial scans or fingerprints?

The withdrawal of CAPPS II (Computer Assisted Passenger Pre-Screening System) in the USA in mid-July is a salutary lesson in democracy for the EU. CAPPS II would have provided real-time profiling and background checks on all travellers based on data held on both state agencies (FBI, CIA etc) and commercial databases. It was withdrawn because of privacy objections by civil society and in Congress and due to an authoritative report from the General Accountability Office (GAO, previously "Accounting" Office). The report from the GAO, published in February, examined the CAPPS II plan according to eight privacy and data protection standards and found that it did not meet seven of them. The Congress on the basis of this report refused to agree further expenditure on CAPPS II. So CAPPS II is effectively dead - any replacement scheme will have to go through the same accountability checks.

In the USA Edward Hasbrouck said that CAPPS II was a "data-mining programme for surveillance" rather than one that checked passengers names against "watch-lists". Barry Steinhardt, of the American Civil Liberties Union, said: "It is finally sinking in that the focus should be on physical security, not on background checks on all airline passengers".

Passengers will still be screened using their passenger name record data (PNR) against "watch-lists" (said to be 10,000 names and growing) for suspected terrorists or organised criminals - and have to "consent" to giving their fingerprints on entering the USA.

### EU adopts its own passenger screening system

In April the EU adopted the first stage of its own PNR screening system for everyone entering the EU (this was twice rejected by the European Parliament). Their personal data has to be deleted after 24 hours, except if it is needed by national law enforcement agencies who can keep it indefinitely. Whether the multitude of national agencies across the EU who will be able to access this data would have passed the GAO privacy standards we shall never know.

Such a reversal of policy as happened over CAPPS II could

not happen in the EU. Whereas in the EU the opinions of the Article 29 Working Party on data protection (from the 25 member states' data protection authorities) are routinely ignored, or sidelined, the reports of the GOA in the USA cannot be dismissed by government. Equally the repeated opposition of the European Parliament to the EU-US access to passenger data deal was ignored too. The parliament has taken the Council and Commission to the Court of Justice on the issue but this is a last resort. For democracy to function properly the EU should accord the Article 29 Working Party with the status of the GAO and the parliament, based on its reports, should have the final say.

Nor are these issues of independent assessment and parliamentary powers to reject proposals addressed in the new EU Constitution. Quite the reverse: "operational" matters on internal security are to be handled by a new "Article 162" Committee and national and European parliaments only to be "kept informed". While the creation of EU-wide databases and their scope could be hidden under the "non-legislative" category of "administrative" measures.

### U-turn on biometric identifiers?

At a press conference in Brussels on 24 June Admiral James Loy, US Deputy Homeland Security Chief said that: "We would just like to specify fingerprints as a very practical, better biometric to use" indicating an extraordinary U-turn. In 2003 the USA and UK pushed through facial scans as the primary biometric identifier in G8 which then got the proposal through the International Civil Aviation Organisation (ICAO).

Although the EU has agreed that fingerprints are to be the mandatory identifier for its VIS (Visa Identification System) it bowed to the USA, UK, G8 and ICAO determined standard for EU biometric passports (and ID cards). In mid-June the EU confirmed that facial scans were to be the mandatory biometric identifier with fingerprints as an optional secondary one.

The issue may come to a head in the autumn when the European Parliament considers the EU biometric passport proposal - which also has a dubious legal basis.

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## CIVIL LIBERTIES

### GERMANY

## Torture debate continues

In October 2003, Frankfurt police officers, acting on orders from Deputy Chief Constable Wolfgang Daschner, threatened Magnus Gäfgen with torture unless he disclosed the whereabouts of the kidnapped child, Jakob von Metzler. Gäfgen told the public prosecutor in January 2003 that a police officer told him that:

*a specialist is on the way...who would inflict extreme pain. The treatment would not leave any marks...The [police] officer...threatened to put me put in a cell with two big niggers who would sexually abuse me....[He said] he wished I had never been born.[1]*

The events were justified by politicians and police representatives on the grounds that it was only "human". To save a child's life, officials would consider torture in the sake of "interest balancing" (see *Statewatch* vol 13 no 2 for a critique of the arguments promoted by politicians and police in favour of torture).

It was not until June 2004 that the Frankfurt regional court pressed charges against the police officer and Daschner, on grounds of coercion and encouragement, respectively. It will take at least until November for the trial to begin, due to legal proceedings against the accused. After the incident, the Hessian regional government ordered Daschner back to the regional interior ministry to fulfil "administrative duties". The police officer was transferred to another position within the Frankfurt police force.

In line with the general anti-terrorism discourse, statements in favour of torture in "exceptional cases" have continued. The latest came from a history professor teaching at the military academy in Munich. Michael Wolffsohn said in a television interview in May that: "[a]s one of the tools in the fight against terrorism I believe torture or the threat of torture to be legitimate". His comments were criticised by some politicians but also led to anti-Semitic hate mail from the far-right and Islamic extremists (Wolffsohn is Jewish). The Ministry of Defence said it was considering disciplinary measures and Defence minister Peter Struck reprimanded him for damaging the army's image.

Wolffsohn defended his comments on the grounds of freedom of thought and with the somewhat contradictory statement that: "torture has to remain unlawful. However, that does not mean that we should not think about [its] legitimacy". His justification for the necessity to "rethink" the state's strategy is the danger of "international terrorism." Wolffsohn held that it was hypocritical that some politicians criticising his statement had themselves passed the new law on secure airspace, which allows the army to shoot down hijacked airplanes (see this issue).

[1] Heiner Busch "Rechtsstaat und ein bißchen Folter" [Legal democratic order and a bit of torture] in *Grundrechte Report 2004* (pp21-24), *Süddeutsche Zeitung* 19.5.04, 23.6.04; *Die Welt* 12.7.04

## Civil liberties - new material

**Esulca bulletin**, no 5 (June) 2004, pp16 (in Galician). This issue of the bulletin by the Galician-based *Esulca* observatory looks at the exclusion of Basque electoral list *Herritarren Zerrenda* (HZ) from running in the European elections, in a judicial process that it describes as leaving "the unmistakable smell of pre-cooked meals". It also focuses on the Spanish constitutional court's refusal to hear the appeal against the *Ley de partidos políticos* (the law that resulted in the criminalisation of *Batasuna*) submitted by the Basque government,

because a regional government is not among the entities allowed to file such an appeal. Other pieces discuss a meeting held "in defence of civil rights and liberties" in Vigo from 20 to 22 April 2004; the situation in A Lama prison in Pontevedra (which includes allegations of abuses perpetrated by prison guards against inmates); and on torture, with a report on the meeting held by the UN Human Rights Commission in April, during which the UN special rapporteur on torture, Theo van Boven was highly critical of Spain. *Observatorio para a defensa dos dereitos e liberdades, Apto. Correos 2112. 36208, Vigo*

**So Much for Democracy - Iraqis Plan for Introduction of Martial Law**, Robert Fisk. *The Star/Common Dreams* 8.7.04. Seventeen months after the US-UK invasion of Iraq "to bring democracy to the country", Fisk describes how the US-approved prime minister, Iyad Allawi, "has introduced legislation allowing the Iraqi authorities to impose martial law; curfews; a ban on demonstrations; the restriction of movement; phone tapping, the opening of mail; and the freezing of bank accounts." Fisk also draws attention to Bakhityar Amin, Iraq's new "minister of justice and human rights", commenting that it is a "combination of roles unheard of anywhere else in the world." Occupation Watch website: [http://www.occupationwatch.org/print\\_article.php?&id=577](http://www.occupationwatch.org/print_article.php?&id=577)

**Don't mention the (reasons for) war**, Noam Chomsky. *Red Pepper* no. 121 (July) 2004, pp22-24. This article, an edited version of a talk given last May, considers the Syria Accountability Act (and the lack of an Israeli Accountability Act) and the US Treasury Bureau's Office of Foreign Assets Control (Ofac) which has four officers "dedicated to tracking the finances of Osama bin Laden and Saddam Hussein" (but 120 employees dedicated to enforcing the US embargo on Cuba). The second half of the essay examines US concerns that Europe and Asia may take an "independent" course and the "consensus" on how to reduce the threat of terror while inciting terrorist atrocities through actions such as the US deployment of a space-based missile-defence system in Alaska, or supplying Israel with sophisticated military hardware ("Israel's military analysts allege that its air and armoured forces are larger and technologically much more advanced than those of any NATO power apart from the US"). Finally, the article turns to the collapse of the pretexts for the Anglo-American invasion of Iraq concluding that "the Bush administration now assumes the right to attack a country even if it has no WMD or programmes to develop them." However, "the steadfast refusal of Iraqis to accept the traditional "constitutional fictions" has compelled Washington to yield "step-by-step concessions" while the huge demonstrations across Europe have ensured that "crucial questions arise about the nature of industrial democracy and its future."

## EUROPE

## Justice and Home Affairs policy

The European Commission is currently consulting the public on "Tampere II". "Tampere I", a special EU summit in October 1999, adopted a detailed set of "conclusions", also known as the "Tampere milestones" The Tampere conclusions formed an Action Plan for the development of EU justice and home affairs policy under the Amsterdam treaty. A five-year deadline for agreement on a common EU immigration and asylum policy expired on 1 May 2004. EU police and judicial cooperation, the other aspects of the so-called "Area of Freedom, Security and Justice", have also developed rapidly under the Tampere process - hence the need for a "Tampere II".

The European Commission has produced a Communication entitled "Assessment of the Tampere programme and future orientations" and staff working papers on the "most important instruments adopted" and an the AFSJ future orientations. Interested parties and individuals are invited to submit their contributions on a new programme to the JHA Directorate in the European Commission by 31 August 2004 (e-mail: [tampere-consultation@cec.eu.int](mailto:tampere-consultation@cec.eu.int)).

While the Commission is busy consulting civil society, the JHA Directorate in the Council (under the guise of "the presidency") is consulting the member states on the "political orientation" of the new programme. The Council document sets out a framework for "resolutely pursuing the objective of further developing a common area of freedom, security and justice", leaving the Commission's consultation process looking like a rather redundant exercise.

*Statewatch briefing on the Tampere process: "The story of Tampere – an undemocratic process excluding civil society":*

<http://www.statewatch.org/news/2003/sep/04tampere.htm>

### **Access to data by law enforcement agencies**

The European Commission has produced a Communication on access to information by law enforcement agencies. The aim is:

*to improve information exchange between all law enforcement authorities, i.e. not only between police authorities, but also between customs authorities, financial intelligence units, the interaction with the judiciary and public prosecution services, and all other public bodies that participate in the process that ranges from the early detection of security threats and criminal offences to the conviction and punishment of perpetrators.*

The Commission says that the aim of EU policy should be to "make accessible the necessary and relevant data and information, for law enforcement authorities in order to prevent and combat terrorism and other forms of serious or organised crime as well as the threats caused by them".

Sweden has proposed an EU Framework Decision on the Exchange of police data between law enforcement services. This too cites "terrorism" as a justification but is clearly aimed at the exchange of police data across the board. It sets out rules:

*under which Member States' law enforcement authorities effectively and expeditiously can exchange existing information and intelligence for the purpose of conducting crime investigations or crime intelligence operations and in particular as regards serious offences, including terrorist acts.*

This Framework Decision would add to three existing EU frameworks for the exchange of police data: the Schengen Convention (and the Sirene system for the exchange of data), the exchange of data through Europol (the reason the agency was created) and the Mutual Legal Assistance Convention (which provides for case-by-case and spontaneous exchange of data). In this context it can be questioned whether more legislation is justified or proportionate. See Statewatch analysis: "free market" for law enforcement database access proposed:

<http://www.statewatch.org/news/2004/jul/08-com-lea-access.htm>

### **Legal and illegal immigration**

The European Commission has produced a "study" on the "link between legal and illegal migration". It concludes that "There is a link between legal and illegal migration but the relationship is complex and certainly not a direct one". According to the Commission:

*Overall employment projections point to labour shortages in the EU due to the ageing of the workforce and its contraction after 2010. Research also indicates that immigration flows are unlikely to decline for the foreseeable future.*

The Commission also acknowledges that "immigration [will] be increasingly necessary in the coming years to meet the needs of the EU labour market" but then proceeds to dismiss any change to the current Fortress Europe model of immigration control out of hand by asserting that "it is generally acknowledged that immigration is not the solution to ageing population".

On the basis of its "fact-finding mission", the Commission advocates:

*- legal migration for skilled workers (there is no mention of the EP*

*resolutions calling for an end to the "brain drain" from developing countries);*

*- regularisation programmes for people in illegal situations and the transformation of "undeclared work into regular employment";*

*- the integration of legally resident third country nationals including measures to facilitate their mobility and the recognition of their qualifications;*

*- the development of a Community return programme;*

*- cooperation with countries of origin and transit;*

*- and visa policy measures, particularly "categories of persons who are potential overstayers".*

It can be observed that most of these issues fall outside the European Commission's (or "Community") competence and are either intergovernmental or national policy matters. In this context one wonders how seriously the member states will take the Commission's laudable ambitions for the integration of third country nationals. It also notable that "return policy" - "voluntary return, forced return and support for the return of irregular migrants in transit countries" - manages to find its way into just about every Communication on migration that the Commission produces.

*A full round-up of Justice and Home Affairs issues can be found in the Statewatch European Monitor published every month on:*

<http://www.statewatch.org/monitor/monitor.html>

## **EU**

### **France, Germany and Spain to share access to databases**

Work is underway to enable France, Germany and Spain to give access to each other to their respective criminal record databases. Tests are expected to begin before 2004 is over, and systematic information exchanges on offenders between the three countries will start next year. A joint working group was established by the three countries at the start of 2003 to provide solutions for any technical or legal difficulties that this initiative may entail. Press statements by the French and Spanish justice ministries stressed that the working group is responsible for guaranteeing that these information exchanges are characterised by a high level of security and confidentiality, and for developing a system that may be easily extended to other countries.

The initiative was presented in Brussels on 19 July 2004, during a joint press conference by the Justice Ministers of the three countries, Juan Fernando Lopez Aguilar for Spain, Dominique Perben for France and Brigitte Zypries for Germany, in which they invited the other EU member states to participate. The scope of this plan is to "ensure an improved access to the information available in the Member States and to increase the effectiveness of judicial investigations". Perben explained that "In a Europe without internal frontiers, it is indispensable that information about the authors of criminal offences should be available in the other Member States".

Perben said that the three countries agreed to link their respective national criminal record databases electronically at the start of 2003, to establish a model which could be extended into an EU-wide system to include the criminal record databases of all the EU member states. The benefits of this approach, described as a means to replace the current system of international formal judicial requests for information and to overcome the lengthy bureaucratic procedure this entails, would be to speed up the process by creating a system of automated information exchanges, whereby judges would request information about individuals from their own national criminal record database, which would in turn transmit the request to its

counterpart in another participating country from which the information is sought. Information on anyone who has ever been convicted for any criminal offence would be made available to the requesting country.

Lopez Aguilar, the Spanish Justice Minister, highlighted one of the "positive aspects" of this initiative that would allow judges to consider the aggravating circumstance of "repeat offences at an international level", envisaged in Spain for crimes involving terrorism, the corruption of minors and drug trafficking. He also argued that the authorities must "adapt to the current social situation, in which the mobility of persons and, consequently, of crime, are no longer an exception, but rather the general rule".

*French Justice ministry press statement, 19.7.04, available from: <http://www.justice.gouv.fr/presse/com190704.htm>*

*Spanish Justice ministry press statement, 19.7.04, available from: <http://www.justicia.es/servlet/Satellite/040719.pdf?blobcol=urldocumento&blobheader=application%2Fpdf&blobkey=id&blobtable=Documento&blobwhere=1088608616951&ssbinary=true>; El Pais 20.7.04.*

## MILITARY

### UK

## "Hearts and Minds": teaching Iraq to love freedom and democracy

The government admitted in June that there are up to 75 inquiries into allegations of killings, woundings and ill-treatment of Iraqi civilians by British troops serving in Iraq. The figures were revealed only after the Ministry of Defence's (MoD) original estimate of 33 cases was amended following a "verification exercise to ensure all cases were being properly investigated and centrally reported." Later the same month the first prosecutions were announced.

Four British soldiers are to face military courts martial, accused of assault and the indecent assault of Iraqi civilian prisoners. The charges arise from the arrest of one of the soldiers, Fusilier Gary Bartram, of the 1st Battalion the Royal Regiment of Fusiliers, when he took a roll of film to be developed on 28 May 2003 while on home leave. The roll included four photographs showing male Iraqi prisoners being tortured and sexually abused in Iraq during the summer of 2003. Shop workers called in the police and Bartram was arrested when he tried to collect the pictures later the same day. He was handed over to military authorities and an investigation was launched by the Special Investigations Branch of the Royal Military Police who questioned eight soldiers from Bartram's regiment. They recommended that four of the soldiers face prosecution.

It was more than a year after the arrest of Bartram, before the Attorney-General, Lord Goldsmith, announced in the House of Lords on 14 June that:

*The APA [Army Prosecuting Authority] directed trial on 11 June 2004 against four soldiers from the Royal Regiment of Fusiliers on charges relating to alleged abuses of Iraqi civilians. The charges against the four include assault, indecent assault which apparently involves making the victims engage in sexual activity between themselves, and a military charge of prejudicing good order and military discipline...The case concerns conduct alleged to have occurred while the civilians were temporarily detained, but not in a prison or detention facility. It involves photographic evidence developed in this country and referred to the UK police. A date for the trial has yet to be set by the Military Court Service (House of Lords Hansard, 14.6.04.)*

Three of the four men were named in the media as Fusilier Gary

Bartram, Cpl Daniel Kenyon and L/Cpl Mark Cooley.

The photographic evidence against the men is similar to the pictures taken by US troops at Abu Ghraib prison and other US military establishments in Iraq. One photograph appears to have been taken in a warehouse. It showed a terrified Iraqi man stripped and suspended from a rope attached to the forks of a fork-lift truck. He is being watched by a laughing soldier. Another photograph "looked like an Iraqi POW being forced to give a soldier oral sex" and another showed "a close-up of the naked backsides of two Iraqis, as if they were simulating anal sex." The fourth photograph showed two Iraqis, naked on the ground.

The delay in bringing the charges against the responsible soldiers was criticised by Adam Price MP who accused the MoD of dragging its feet. He told the *Independent* newspaper:

*there has been an abject failure within the Ministry of Defence to address [the issue of bringing charges against the soldiers]. It has taken more than a year to reach a stage where people are facing charges.*

Andrew Gilligan, writing in the *Evening Standard*, noted that "the only British soldier to be prosecuted so far is a military policeman who killed a dog."

In June the Prime Minister, Tony Blair, admitted that an Iraqi prisoner had been hooded and shackled by US troops during an interview with British intelligence officers, thereby contravening the Geneva Convention. In July Severin Carrell, writing in the *Independent on Sunday*, revealed that "The routine hooding of Iraqi prisoners was sanctioned by British Army commanders despite repeated warnings that the practice broke human rights laws." The practice only ceased with the death of Baha Mousa who was allegedly killed by British soldiers of the Queen's Lancashire Regiment in September 2003.

In July the families of six Iraqis, including the relatives of Baha Moussa, went to the High Court to demand an investigation into the deaths of their relatives. They want to see action under the European Convention of Human Rights, which guarantees the right to life and, in the case of Baha Moussa, freedom from torture and inhuman and degrading treatment. They are also calling for an independent inquiry. The six deaths are those of:

**Hazim Jum'aa Gatteh Al-Skeini (4.5.03):** 23-year old Hazim Jum'aa Gatteh Al-Skeini was shot dead in front of his family by a British soldier in the Al Majidyan area as he walked home, (Abed Abdul Kareem Hassan was shot dead in the same incident.) Hazim was unarmed. The 1st Battalion, King's regiment admitted responsibility for the killing and offered a donation of £540 to the Al-Skeini family.

**Waleed Fayayi Muzban (24.8.03):** 43-year old Waleed Fayayi Muzban was wounded in a hail of bullets, allegedly fired by British soldiers, as he drove home. He died in hospital the next day. Countless witnesses saw the British soldiers open fire. The man's family received £540 in compensation but Waleed's brother did not know if this was for the damaged vehicle or his relative's death.

**Raid Hadi Al-Musawi (27.8.03):** Raid Hadi Al-Musawi, a 29-year old policeman, was shot by a passing British Army patrol as he visited his home in Basra. He died ten days later.

**Baha Mousa (September 2003):** The death of 26-year old Baha Mousa was reported by Andrew Johnson and Robert Fisk in the *Independent* newspaper (15 February). Mousa died after he and seven colleagues working at a Basra hotel were arrested by British soldiers of the Queen's Lancashire Regiment and taken to the al-Hukimia detention camp. "The eight men had their hands tied and were all hooded during prolonged assaults in which the prisoners have described being "kickboxed" by uniformed soldiers." Mousa allegedly died after four days of beatings. His father claimed that his body was so bloody and bruised that he "looked like half a human" when he went to identify it.

**Muhammed Abdul Ridha Salim (5.11.03.)** 45-year old Muhammed Abdul Ridha Salim was shot in the stomach when British soldiers raided his brother's house and died later in hospital. The 1st Battalion, King's regiment acknowledges the raid and claim that they were misled by an informant.

**Hanan Shmailawi (10.11.04):** 33-year old Hanan Shmailawi was shot in the head and legs as she sat down to eat a meal at her home with her husband and children. She died in hospital the same night.

In July a fifth British soldier, Private Alexander Johnston, of the 1st Battalion King's Own Scottish Borderers, was charged with unlawful wounding and negligent handling of a weapon. The charges arise from an incident in which a 13-year old Iraqi boy was seriously wounded near Amarah on 15 September last year. A date has still to be set for the courts martial.

*Sun 31.5.03; Standard 13.5.04; Independent 15.6.04*

## EUROPE

### New weapons giants are born

Europe's military enterprises are scrambling, in ever new combinations, to take the pick of the new common weapons market that is coming into existence:

France's SNPE, Saab of Sweden and Finland's Patria set up a new European explosives and propellants company EURENCO in the beginning of this year with headquarters in Paris. The company claims to be the European leader in this field with an annual revenue of 100 million euro and 25% of the market. It has plants in Vitavuori (in Finland), Karlskoga in Sweden (Bofors), Belgium (PB Clermont) and France (Sorgues and Bergerac).

Rival European fighter aircraft manufacturers Dassault Aviation and EADS have agreed in June to work together on two key unmanned aerial vehicle projects that could later lead to co-operation in building a successor to their Rafale and Eurofighter combat aircraft. The two companies will develop together an unmanned combat aerial vehicle and a reconnaissance drone. The French ministry of defence will invest heavily in the combination (225 million euro), which might later be transferred to the new European Armaments Agency. This is a radical shift in strategy for the family-owned Dassault that always has kept its distance from EADS.

A new European satellite company is to be formed by France's Alcatel Space and Italy's Alenia Spazio. The company will do about half of its business in the military sector. The new merger will become Europe's largest satellite company with a combined revenue of 2.15 billion euro. The biggest defence projects for the moment will be the French Syracuse 3 military communication satellite program, the Italian military satellite communications system Sicral, and an observation satellite for dual civil-military use. The companies also team up on Europe's future satellite navigation system Galileo.

*Jane's Defence Weekly 19.5.04, 23 & 30.6.04 (JAC Lewis)*

## NETHERLANDS

### Dutch government misled parliament on Iraqi WMD

According to a confidential military intelligence document, dated 23 July 2003, that was seen by the main evening paper *NRC Handelsblad* the Dutch military intelligence service MIVD "came regularly to other conclusions than the American and British leaders presented" on the question of the weapons of mass destruction (WMD) of Iraq, before the war started. Another confidential defence document, dated the 1st August 2003, concludes that "the MIVD has never stated that Iraq had resumed

the production of chemical and biological means after the departure of UNSCOM in 1998" and notes that this differs from a letter to parliament from the Dutch Foreign Minister, De Hoop Scheffer, that said in September that there was "no doubt" that Iraq had continued the development of WMD after 1998. On the so-called "45 minute claim" in the report of the British government of September 2002 the MIVD stated that there was not much new in it:

*The "new" fact that some chemical and biological weapons could be deployed in 45 minutes (is) only a reference to existing Iraqi battlefield weapons like chemical artillery grenades with limited reach and military use.*

*NRC Handelsblad* concludes that this and other nuances were not communicated to the Dutch parliament in the crucial debate that formed the foundation of a majority decision to "support politically but not militarily" the war against Iraq.

The paper also discovered that the legal departments of the Dutch ministries of foreign affairs and defence thought it questionable that the attack on Iraq was in accordance with international law because the war was fought without a UN resolution. The top legal official of the Ministry of Defence wrote on 28 January 2003 in an internal document that: "only a new decision of the UN Security Council could serve as a foundation for a lawful attack on Iraq."

*NRC Handelsblad 12.6.04 (Joost Oranje)*

## Military - In brief

■ **Europe/USA: US assesses European missile shield sites:** The USA is discussing with European countries the possibility of basing long range anti-missile interceptors in Europe, formally against ballistic missiles of countries like Iran, Syria and North Korea, but in the long term also directed against Russia. The plan is to establish first an initial, rudimentary shield by the end of this year to protect the US homeland. This system will comprise interceptors based at two sites on the US West Coast, in California and Alaska, along with satellite sensors and terrestrial-based radar. A third interceptor site in Europe is planned in 2006 to shield Europe itself and additional capacity for shielding the US. The US administration is negotiating with Poland about placing this site in Central Europe. There are parallel talks with Poland and the Czech republic about two or three additional radar stations in southern Poland and the Czech Republic as part of the missile shield project. But also, Britain is not excluded, possibly for a second European site later on. An interceptor site will consist of 10 three-staged ground-based anti-missile missiles in a large reinforced underground silo. In 2003 the UK signed already a Memorandum of Understanding (MOU) with the US, whereby the US got permission to upgrade the early-warning radar at Fylingdales in northern England for ballistic missile defence by 2005. Consultations between the US and Denmark about the upgrading of the early warning radar at Thule in Greenland continue. *Jane's Defence Weekly (JDW) 5.5.04 (Michael Sirak), Guardian 13.7.04 (Ian Traynor)*

■ **Greece: Army commander resigns over deaths.** The head of the Greek army and former commander at the NATO Joint Command South base in Larissa, resigned on 6 May 2004 for "reasons of sensitivity" following the death of two second lieutenants on 5 May, when an armoured personnel carrier crashed into a makeshift training facility near the north-eastern city of Ioannina. The accident was reported to have been caused by the personnel carrier's engine stalling at the top of a slope, resulting in a loss of control of the steering and hydraulic breaking system by its driver. This was the latest in a spate of fatal accidents suffered by armed forces personnel. These include the death of a sergeant, also on 5 May, in mysterious circumstances as he carried out maintenance work on a Mirage 2000 fighter

plane at Tamagra airfield outside Athens, and the death by electrocution of five soldiers installing a flagpole that got tangled up with an overhead power cable on the Greek-Turkish border on 8 April 2004. *Athens News* 7.5.04.

## IMMIGRATION

### SPAIN

## Lock-in by undocumented migrants

On 5 June 2004, 2,000 migrants locked themselves in two churches in Barcelona, calling for the regularisation of their situation, and demanding "papers for all". The lock-in took place following a demonstration in the city centre by 5,000 people. The police intervened on the morning of 6 June, violently evicting the migrants from the cathedral and arresting around 15 of them, who were held in the *Centro de Internamiento de La Verneda* (La Verneda detention centre). Expulsion proceedings have been started.

A similar mobilisation took place in January 2001, when around 1,000 migrants staged a lock-in at the church of Santa María del Pi, in Barcelona. In the same period, similar lock-ins also took place in other Spanish towns. The *Partido Popular* (PP) eventually approved an extraordinary regularisation process which resulted, in Barcelona alone, in 14,000 migrants obtaining documents, including almost all of the participants in the lock-in.

On 3 and 4 July 2004, around 100 migrants staged a 24-hour fast, at the end of which they decided to postpone any further actions until September.

## Immigration & asylum - in brief

■ **Spain rejects the majority of asylum applications.** In 2003, 5,732 foreigners applied for asylum in Spain. Of these, the government only allowed 1,714 (28.8%) of the applications to be processed, of which only 369, equal to 5.8% of the original applications, were approved.

■ **Italy: Courts rules expulsion in Milan illegal.** The Court of Cassation (Italy's highest appeal court) ruled on 6 May that the expulsion of 31-year-old Moroccan Said Zarigue was illegal. As has happened to several other foreigners seeking to regularise their status, Zarigue was expelled in April 2003 while awaiting the outcome of his application for regularisation. He received a letter asking him to appear in Milan's central police office, accompanied by his employer, to ratify his employment contract and to receive a residence permit. Instead, he was held, notified that an expulsion order had been issued against him, and detained in *via Corelli CPT* (immigrant detention centre) for 15 days before he was expelled. *Il manifesto*, 7.5.04.

■ **Spain: Regularisation for some 11 March victims.** Around 1,300 foreign victims of the 11 March bomb attacks in Madrid have been regularised, obtaining residence permits or similar documents. 9,857 people requested information on the regularisation and nationalisation processes.

■ **Spain: Stowaways abandoned.** In May 2004, the captain of the *Wisteria*, the property of a Japanese company flying a Panamanian flag, ordered its crew to abandon four stowaways who were discovered when the ship was on the open sea, in the Atlantic Ocean. The information surfaced after several crew members filed complaints about the events when the ship reached a port in Galicia (north-west Spain).

## Immigration - new material

**Swoop on legal eagles**, Nadine Finch. *Labour Left Briefing* July 2004. This article recounts the latest in a series of government attacks on asylum seekers' legal rights in the UK. Already unrealistic ceilings have been imposed on the number of hours a solicitor can spend preparing a client's case. With asylum seekers increasingly being seen as "commodities", the success of whose applications is judged in cost-effective terms. There is an increasing tendency among lawyers to "cherry-pick" only the stronger cases; a move likely to be accelerated by government proposals to introduce a "no win, no fee" system for any funding after an initial appeal is unsuccessful. This government "onslaught" is "totally at odds with the serious issues at stake which could be the termination of family life, torture or even death". As a consequence it is the "top of the range" solicitors who are leaving the field. "It is they who cannot reconcile their own professional responsibilities with the need to cut corners and ignore the possible existence of crucial evidence imposed by the Legal Services Commission."

**Asylum, Immigration & Nationality Law Update**, Robert Sutherland. *SCOLAG Legal Journal* issue 319 (May) 2004, pp.85-89. This review of significant court cases from Scotland and England covers asylum, asylum support, deportation, detention, human rights, immigration and procedure.

**Immigration accreditation scheme explained**, Kay Everett & Noel Arnold. *Legal Action* June 2004, pp10-12. This article provides guidance on the compulsory immigration and asylum accreditation scheme that will affect "every person undertaking or wishing to undertake publicly funded immigration work".

**Support for asylum-seekers update**, Sue Willman. *Legal Action* June 2004, pp13-16. This article is an update on welfare provision for asylum-seekers and other persons subject to immigration control.

**Immigration law review**, Jawaid Luqmani. *Legal Action* June 2004, pp17-19. This piece discusses the "most significant statutory instruments and statements of changes to the immigration rules".

## LAW

### UK

## Children bear the brunt of "anti-social behaviour" measures

On 19 July the Home Office launched a five-year strategic plan entitled *Confident Communities in a Secure Britain* which Tony Blair claims marks the end of "the 1960s social-liberal consensus on law and order" that has enabled some to take "freedom without responsibility". It is the latest step in the government's drive to cut crime by 15% over the next four years and reduce "anti-social behaviour". The main points are:

\* *Fixed Penalty Notices extended to cover more crimes such as under-age drinking, petty theft, shoplifting and the misuse of fireworks*

\* *Anti Social Behaviour Orders (ASBOs) to have their process of application sped up to a matter of hours and media reporting of those who break them to be made easier*

\* *Numbers of Community Support Officers (CSOs) to rise to 24,000 by 2008.*

\* *12,000 police officers to be freed for frontline duty by reducing paperwork*

\* *New £36 million unit to offer support to witnesses and crime victims*

\* *Doubling of electronic tagging to 18,000 people and the*

*introduction of satellite tracking of offenders*

*\* Number of pilots for "Together" schemes to be increased from 10 to 50. The 50 worst offenders in each area will be "named and shamed"*

*\* Under plans to be published in the autumn, local communities will be able to trigger snap inspections of their local police force, call for increased use of curfews and ASBOs, and set priorities for local policing. The levelling of petitions is the example Blunkett gave of how they would do this*

*\* Specialist anti-social behaviour courts and prosecutors to be created, and legal aid to be "streamlined" so that by 2005 a system of fixed fees will be in place*

*\* Everyone entering or leaving the country, after 2008, to have their photo taken and "facial mapping" technology to be used*

The package was greeted with uniform hostility from opposition parties who claimed it to be little more than an attempt to grab headlines. Indeed, there are very few new measures, rather just modifications to existing mechanisms for combating anti-social behaviour. Liberal Democrat home affairs spokesman, Mark Oaten, claimed that "this government promised to be tough on crime and the causes of crime. We have seen a lot of get tough rhetoric but little progress on tackling the causes". Criminalising low-level nuisance behaviour is not likely to reduce the public's fear of crime. It is children, in particular, that seem to be the target of this anti-social behavioural clampdown having already faced increasing restrictions of their civil liberties over the last five years.

For example, a new power, introduced under the Anti-Social Behaviour Act 2003, which allows for the dispersal of groups (defined as two or more people) gathered in an area deemed to be an anti-social "hot-spot", has been frequently applied. This is regardless of age and time of day and refusal to obey can lead to arrest. The Act also provides for the taking home of anyone under the age of 16 found on the streets after 9pm who "is not under the effective control of a parent or a responsible person aged 18 or over". In Wigton, a Cumbrian market town, children were banned from the town centre after dark for the two-week duration of their Easter holiday. Summer "curfew" zones have also been established across London, (in Trafalgar Square, Regent Street, Camden and 14 other areas), in which children are not allowed to gather. If they ignore an order to disperse they could be held in a police cell and later handed custodial sentences or a fine of up to £5,000. Many other areas have pursued similar policies.

Police-style security and drug checks are also being enforced in schools. Sniffer dogs are regularly used in over 100 schools throughout England and Wales according to Drugscope, a UK drugs charity. Twelve police forces have taken up the scheme with a further 15 said to be interested in setting up similar projects. The *Guardian* says that:

*A common approach is for a police officer to demonstrate their sniffer dog to an assembly while another dog is sniffing bags left behind in classrooms. The children are also individually sniffed as they leave. (18.5.04)*

A Kent police survey found that some children felt they had been lied to about the bag searches, and were uncomfortable around the dogs. Headteachers are apparently also turning to Drugwipe products which can conduct two minute drug tests detecting any traces of cocaine or ecstasy left on desks and keyboards. Drugwipe claimed, in June 2004, that 30 schools were using these tests. Martin Barnes, chief executive of Drugscope, argues that "these measures risk driving drug use further underground, an increase in truancies and exclusions and a breakdown in trust between pupils and schools." Concern was also voiced by Chris Keates, the acting general secretary of the teachers' union, NASUWT: "We are extremely concerned about the apparent trend for some schools to use private companies, whether or nor they are using dogs."

Children are also bearing the brunt of ASBOs, whose numbers have doubled over the last 12 months and the application of which has sparked much controversy. A key part of the Crime and Disorder Act 1998 they came into force on 1 April 1999 and were later modified by the Police Reform Act 2002 and the Anti-Social Behaviour Act 2003. Breaching an ASBO is a criminal offence and carries a maximum penalty of five years in prison. Moreover, as a civil law matter the burden of proof is lower than in criminal cases, and hearsay evidence is admissible. Home Office guidelines for the Crime and Disorder Act had stated that "ASBOs will be used mainly against adults" and only against children in exceptional circumstances. This has been far from the case. Alarming in June a ten year-old in Birmingham was punished with an ASBO by the City Council for anti-social behaviour. Manchester City Council has received particular attention for the large number of ASBOs it has issued for a range of far-reaching sanctions. These include meeting more than three non-family members in public, the wearing of a single golf glove, the use of the word "grass", and misbehaving in school. Five years in prison await these four children should they ignore the orders.

The misuse of ASBOs also extends to other areas such as environmental protestors (for example at the Newchurch Guinea Pig Farm). Similarly, in June, protestors gathered at Caterpillar construction company's offices in Solihull to demonstrate, as they had on previous occasions, at their continued sale of bulldozers to Israel. This time eight out of the 11 protestors were arrested under ASBOs. In Rugby, a man who has campaigned against the council over issues such as health and safety and corruption was served with an ASBO. Having broken it he is now on remand at Blakenhurst prison staging a hunger strike. Bizarrely in Rushmoor, Transco, a national gas company, was served with an ASBO after one of its buildings was spray-painted with graffiti and they had failed to clean it up quickly enough. Clearly ASBOs are being used well outside their original remit of dealing with "nuisance neighbours" with this trend only likely to accelerate as more police forces and councils begin to recognise its potential for quashing challenges to authority.

Those exercising a legitimate right to demonstrate are being criminalised under these measures. As are children when, without having committed or even been charged with a crime, they are liable to five years in prison if found standing on a forbidden street. This on the basis of an order attained through anonymous hearsay evidence and judged upon the "balance of probability." National Youth Agency development officer Bill Badham claims the use of ASBOs to prohibit children using certain words, wearing certain clothes, and banning them from congregating in certain areas serves to "criminalise young people for non-criminal activity." This represents a shocking reversal of the principal of innocent until proven guilty. The government appears happier to fine and alienate a 10 year-old child than to address the symptoms of "anti-social" behaviour.

A 2001 study by the British Medical Journal emphasised that the best way to tackle the latter is to provide their parents with a structured training programme at the earliest possible stage. ASBOs often seem to do little more than further alienate children already feeling disassociated from the society in which they live. Moreover, many apparently see the orders as little more than a badge of honour. Of course in all cases, ASBOs will only be effectively enforced if there is a high level of public awareness of which individuals are under them, hence the drive to "name and shame" people through leaflets and local papers. The 20,000 new CSOs will perform a similar function, but with the public now having a large role in both the issuing and enforcing of ASBOs there would seem to be a lot of potential for abuse. Regardless, it represents the latest step in the privatisation of police roles and powers (see *Stawatch* Vol 14 no 1).

Plans to create a national database containing the

confidential details of every child in Britain will also be added to the Children's Bill in the autumn. There will now be cradle to grave surveillance, and according to Barry Hugill of Liberty, "a national database through the back door. You start with information about all the children but in 20 years' time you've got almost half the population." (see *Statewatch News Online*, March 2004)

The Prime Minister's recent soundbite blaming the 1960s for making these measures a necessity, argued that its eroding of individual responsibility has led to an onslaught of anti-social behaviour. No attention is paid to the promotion of individualism in the Thatcherite era, which many would argue played a significant role in the dismantling of civic society. This was followed by the Labour government's agenda on the privatisation of police roles and powers. Moreover, the claim that crime has dropped by 39% over the past nine years while Britain's prison population has risen by 25,000 over the last decade needs an explanation.

*Home Office Strategic Plan: "Confident Communities in a Secure Britain", CM 6287, 17.5.04, <http://www.homeoffice.gov.uk/docs3/strategicplan.pdf>  
Guardian 2.4.04, 18.5.04, 20, 25, 24, 27.7.04; BBC 18.5.04; Independent 20.6.04, 20, 22.7.04; Times 20, 25.7.04, 25.7.04; Evening Standard 18.6.04; Belfast Telegraph 11.6.04; Just News May 2004*

## GERMANY

### New government terror powers a "license to kill"?

On 18 June this year, the German Lower House (*Bundestag*) passed an amendment to the Air Safety Act (*Luftsicherheitsgesetz*) that will allow the government to order the air force to intervene in cases of hijacking and, if necessary, to order to shoot down civilian aircraft if they are a danger they will be used as a weapon. The Government agreed the draft bill on new regulations for air safety tasks on 5 November 2003 and passed it on to the Federal Council.

Article 13 of the amended Act allows for the government, under certain preconditions, to call on the armed forces to support the state police from the air. The power to shoot down a civilian aircraft in these cases is regulated under Article 14 Section 3 (the last resort clause), which will only be permitted "if one can assume according to the circumstances that an airplane is to be put into action against human life and if shooting down the plane is the only means to avert a present danger." [1]

The government's press release from 5.11.03 says:

*Events, such as 11 September 2001, have shown that there are threats from airspace which can no longer be dealt with adequately through police action and sanctions alone. This threat is not necessarily from terrorists, it can also come from mentally deranged individuals, as happened on 5 January 2003 when a power glider was hijacked in Frankfurt am Main. For this reason Federal Government has decided to support the police by military means in combating severe threats from airspace.*

The measures outlined in Section 14 of the Air Safety Act lays down the following (<http://www.bundesregierung.de/>):

- (1) To prevent the occurrence of a particularly severe disaster the armed forces may divert aircraft in airspace, force them to land, threaten to use armed force or issue warning shots.
- (2) From several possible measures the one chosen should be that which is likely to cause least harm to the individuals and the general public. The measure may only be used for as long and as far as required to fulfil its purpose. It shall not result in a disadvantage that is clearly out of proportion to the desired result.
- (3) Direct intervention with armed force is only permitted if under the circumstances it is assumed that the aeroplane is intended to harm human life and if it is the only means to avert this present danger.

*(4) The measure stated in Para 3 can only be ordered by the Federal Defence Minister or in the case of representation by a member of the Federal Government authorised to represent the minister. Furthermore, the Federal Defence Minister can give the Chief of Staff of the German Air Force (Luftwaffe) general authorisation to order measures stated in Para 1.*

In addition, the new Act lays down general safety regulations, amends the existing law to incorporate the existing EU regulation [2] and empowers authorities to check on foreigners within the framework of the so-called reliability test (*Zuverlässigkeitsüberprüfung*) which student pilots have to undergo. Authorities will thereby introduce a standard check with Germany's central database on foreigners and foreigner authorities when foreign student pilot apply.

The law has been criticised, particularly by the liberal party *Freiheitlich Demokratische Union Deutschlands* (FDP), some of whose members have announced that they will go to the Constitutional court if the newly-elected president of the German Republic signs the law. Former regional Interior Minister, Gerhart Baum, former federal minister of justice Sabine Leutheusser-Schnarrenberger and Burkhard Hirsch, the FDP's constitutional expert, have initiated an expert report on the constitutionality of the amended Act and are calling on the president not to sign it into law. If the law comes into power, Baum announced, they will test the law before the Federal Constitutional Court.

Baum, Leutheusser-Schnarrenberger and Hirsch have already had success in reversing a law on grounds of its unconstitutionality, namely, the law on bugging, popularly known as the "massive bugging attack" (*Großer Lauschangriff*). Baum views this latest law dealing with the aftermath of 11 September as being one of a long list of infringements of basic rights:

*My fear is that in the long-run, everything that is imaginable and technically possible is going to be implemented...The single measure might not even appear to be problematic, but the sum of the measures leads to the democratic state dying through its defence measures.*

Criticism has also been levelled by pilots themselves. Thomas Wassermann, head of the Association for the Crew of Steel Powered Fighter Planes (VBSK), argued that even under the new law pilots would commit a criminal act by shooting down a civilian aircraft. They could also be criminalised for refusing to obey the order. The "license to kill" clause would bring the pilot into moral conflict.

Finally, politicians and pilots alike have been critical of the lack of a legal definition of a terrorist act. The "facts constituting terrorist acts have still not been adequately defined, legally" said conservative constitutional lawyer Rupert Scholz.

[1] "Entwurf eines Gesetzes zur Neuregelung von Luftsicherheitsaufgaben" [Draft of an Act for new Regulation of Air Safety Tasks], *Bundesrats-Drucksache*. 827/03 of 7 November 2003.

[2] EU-Regulation no 2320/2002 of the European Parliament and Council as of 16 December 2002 for fixing joint regulations regarding the safety in civil aviation (OJ L 355 p.1).

*taz* 23.06.04, *Süddeutsche Zeitung* 21.6.04, <http://www.politikerscreen.de>

## Law - new material

**Proceeds of Crime Act 2002 - to disclose or not?**, David Burrows. *Legal Action* May 2004, p22. "Lawyers are faced with the real possibility of having to breach client confidentiality and act as government narcs [informants] if some commentators, including the Law Society and prominent members of the Solicitors Family Law Association, are to be believed." This article outlines when lawyers must, under the Proceeds of Crime Act 2002, disclose their clients' financial activities concerning suspected or actual money laundering to the National Criminal Intelligence Service.

**The Human Rights Act 1998: An impact study in south Wales**, R

## PRISONS

### SPAIN

## Prison revolt amid allegations of ill-treatment in Quatre Camins

A revolt by 77 prison inmates in Quatre Camins prison in La Roca del Vallés (Barcelona) saw the prison's sub-director Manuel Tallón attacked and seriously wounded with a pointed metal object, and another prison officer was also beaten. The prisoners claimed that the revolt was the result of ill-treatment to which inmates are allegedly subjected, and Tallón has been the object of several complaints on this subject, although he has always been cleared. The prison authorities claimed that this was not the case, and that the revolt was related to the sub-director's tough stance against drug dealing in the prison.

On 5 July 2004, the Justice department of Catalunya's *Generalitat* (the Catalan regional government) admitted that 28 prisoners who were transferred following the revolt may have suffered ill-treatment. A total of 56 inmates were transferred after the uprising, 40 of whom had reportedly taken part in the revolt. Allegations by prisoners talk of beatings that took place over several days, in some cases while they were handcuffed or held in isolation cells, of being thrown down stairs, and of beatings on arrival in the jails to which they were transferred – Brians and Modelo prisons in Barcelona, and Ponent prison in Lleida. Medical reports concerning twenty-eight of the transferred prisoners confirm the reports of beatings in a case that the Catalan Justice councillor, Josep Maria Vallés, described as "isolated incidents" caused by individuals, which should not tarnish the image of Catalunya's 3,000 prison officers. Vallés identified five of the officials responsible for the prisoner transfers, although it was impossible to identify the officers who took part, because of the loss of control that resulted from the arrival of off-duty prison officers and of prison officers proceeding from different jails. Details of the information have been submitted to prosecuting magistrates for criminal investigations to be carried out.

A report by the *Observatori del Sistema Penal i els Drets Humans* (OSPDH, Observatory on the Penal System and Human Rights) in Barcelona University, published in October 2003, in the framework of the development of a European observatory on the penal and prison systems, documented cases of ill-treatment suffered by prisoners in the Catalan prison system. The report, entitled "Análisis de las condiciones de vida en los centros penitenciarios de Catalunya" (Analysis of living conditions in penitentiary establishments in Catalunya) is aimed at beginning the elaboration of "successive reports on the conditions of imprisonment in Catalunya, placing an emphasis on those issues or situations that may result particularly problematic" and focusing especially on questions that "generate situations of defencelessness for imprisoned persons or that contravene their rights". The report highlights problems such as overcrowding, a lack of professional staff, degrading living conditions and a deterioration in prisoners' health conditions, as well as highlighting the far-right ideology of several members of the CATAC trade union, which has the highest representation among Catalan prison personnel.

On 9 June 2004, the OSPDH issued an urgent statement after talking to several of the transferred prisoners, in which it condemns the aggression against the deputy director and other

officials in *Quatre Camins* prison; it describes the allegations of ill-treatment during transfers made by prisoners as "extraordinarily serious", which "cannot be tolerated and must be immediately investigated"; it welcomes the Catalan justice department's prison service attitude, described as a "clear change" from the previous regime, for allowing the OSPDH to interview inmates, offering its cooperation and submitting the information provided by the OSPDH to public prosecutors; it highlights that the criticism is not aimed at creating a "generalised suspicion" involving all prison service personnel, highlighting that it is in their interest for the incident to be investigated thoroughly, and that they cooperate with inquiries; it also explains that any material the OSPDH has on this issue has been passed on to the relevant authorities.

Point 2 of the statement, which describes the allegations of ill-treatment made by the detainees, reads as follows:

*2. Likewise, we wish to clearly state that, after having visited several inmates who were transferred to other prisons after the mentioned disturbances in the month of May, they have given us a version of events which is extremely worrying, as the descriptions of the alleged ill-treatment that they suffered coincides. The version given by 8 prisoners who we visited indicates that around 22:00 on 30 April 2004, the disturbances in the courtyard of Modulo 1 (Block 1) ceased and the prisoners returned peacefully to their usual cells. That is, order had been re-established. Between two and four hours later ... around forty prisoners began to be taken out of their cells by groups of prison personnel. Outside of the cell, they all reported that they were handcuffed, usually with their hands behind their backs, and thrown down the stairs that lead [to the floor] below. They indicate that from there, they were led down a long corridor that leads from Block 1 to the Admission Block, a route during which the inmates indicate that they were brutally beaten with punches, kicks, truncheons and other objects. The prisoners continue to recount that once they arrived to "Admission" they were unclothed, beaten once more and thrown into the vans to start being transferred to other penitentiary establishments. They noted that they were practically naked as they were transferred and that once they arrived to the establishment of Ponent, Brians and in one instance in La Modelo, they were once again physically attacked. They also allege that they continued being beaten for several days, and that this ill-treatment ceased when they began receiving visits. We must put it on record that several medical reports exist that confirm several injuries. Finally, the prisoners note that they were beaten as punishment for the injuries suffered by the deputy director of Quatre Camins and also to obtain the names of those who were responsible for the aggressions and/or leaders of the disturbances. The prisoners also claim, and in one case we can document this, that they were subjected to daily 24-hour isolation without being able to leave their cells to go into the courtyard, not even for an hour, during several days.*

*Observatori del Sistema Penal i els Drets Humans, Universitat de Barcelona, press statement, 9.6.2004; available on*

<http://www.ub.es/ospdh/urgente/comunicat1.htm>

*Report on living conditions in Catalan penitentiary establishments, October 2003; available on:*

<http://www.ub.es/ospdh/investigaciones/investigaciones.htm>

*El País, 2-3.5, 6.6.2004; El Periodico de Catalunya, 16.10.2003.*

### UK

## Deaths in prison

The death toll in UK prisons continues to rise. In recent months, the following deaths due to self-harm have been recorded:

*HMP SHREWSBURY*

*Brian Carter, 9.3.04*

*William Butterfield, age 61, 8.5.04 (William was not on suicide watch, despite outbursts during his trial and a history of depressive illness.)*

## RAINSBROOK SECURE TRAINING CENTRE

Gareth Myatt, 19.5.04

## HMP BLAKENHURST

Spencer Smith, 19.5.04

Stephen Ram, 28.7.04.

## HMP WALTON

Michael Misrall, 19.5.04

## HMP WOODHILL

Stuart Horgan, 20.6.04 (died as a result of self-inflicted razor-blade wounds while awaiting trial for murder of his wife and sister-in law).

## HMP MANCHESTER

Andrew Williams, 21.6.04

## HMP HIGH DOWN

Lynton Setterfield, 8.6.04

Most alarming has been the increase in suicide and self-harm within the female prison population. The following are women prisoners who have taken their own lives to date this year:

HMP DURHAM	Sharon Miller
HMP BUCKLEY HALL	Rebecca Smith
HMP HOLLOWAY	Heather Waite
HMP NEW HALL	Louise Davies and Mary Lucy Walsh
HMP BROCKHILL	Sheena Kotecha
HMP HOLLOWAY	Julie Hope
HMP EDMUNDS HILL	Tina Bromley
HMP EDMUNDS HILL	April Sherman
HMP MAGHABERRY	Roseanne Irvine
HMP SEND	Page Tapp
HMP LOW NEWTON	Rebecca Louise Turner

Britain locks up more women than any other EU country except Spain and Portugal. The female prison population in England and Wales has grown 173% in the last 10 years - to 4,400. Between 1990 and 1995, seven female inmates killed themselves - an average of 1.2 per annum. In 2002, nine female prisoners took their own lives; in 2003, the death toll stood at 14.

Women prisoners are three times more likely to commit suicide than males. Women make up only 6% of the prison population, but account for half of all incidents of self-harm. The majority of offences for which women are jailed relate to property (theft), poverty (unpaid fines) or drugs. Suicide by female prisoners has risen by over 100% in the last decade. Recent research by the Howard League shows that the majority of female prisoners are under 25, prime carers of young children and convicted of non-violent offences. More than 90% have diagnosed personality disorders. There were 21,000 incidents of self-harm in the female prisoner population in 2003.

Two recent reports by Ann Owers, Chief Inspector of Prisons, gives some insight into the conditions women in prison have to endure. A report into HMP Durham described the conditions for women prisoners as "oppressive, claustrophobic and entirely unsuitable for holding women." The report noted that the conditions at the jail aggravated the distress and disorder felt by inmates. The report described HMP Durham as a constricted and forbidding physical environment with little space for association or activity on the enclosed wings and a particularly bleak and dispiriting exercise yard:

*This is scarcely likely to enhance the mental state of women who are*

*feeling distressed or anxious and who spend many years in this environment.*

Six women have killed themselves at the jail in the last two years. In response to the report, Martin Narey, chief executive of the National Officer Management Service, stated that:

*Staff at HMP Durham have been looking after a great variety of prisoners, both men and women, with very different needs. The pressures they are working under are enormous, and yet, despite that, there is evidence of real care for prisoners and a determination to make a reality of resettlement.*

A further report into HMP Styal, described by prison reform groups as the most savage report in 10 years, criticised the jail for reducing its drug detoxification programme to a methadone dispensing service, and condemned the high level of force used by staff. Six women died at Styal in 2002-3, all within the first month of custody. Five were addicts. It was only after the sixth death that a methadone-prescribing programme was put in place to manage heroin withdrawal and the regime was "set up in great haste, within a matter of days." Women spent long periods of inactivity in cells - up to 19 hours per day. The report condemned the frequency with which "special cells" - with no light, ventilation, furniture or sanitation - were deployed. "Women were held there for lengthy periods - an average of seven and a half hours - sometimes long after records showed they had calmed down". Juliet Lyons, of the Prison Reform Trust) commented:

*The fact that six women had to take their own lives before the Prison Service put in place basic procedures on drug detoxification is one of the most shocking examples of institutional failure in a public service. Styal is being used as a dumping ground for the mentally ill and drug addicts who have been failed by society.*

Helen Shaw, co-director of INQUEST, observed:

*The government must undertake a radical rethink of sentencing policy and the imprisonment of vulnerable people. The Prisons Minister must respond to this crisis and outline what action will be taken to stop this shamefully rising death toll.*

Deborah Cole, of INQUEST, added:

*The situation is now unprecedented in terms of the number of women who are killing themselves in prison. It is a national scandal and it is getting worse and nothing is being done about it.*

The only response from the Home Office has been a statement to the House of Commons by Prisons Minister Paul Goggins in which he outlined "a number of suicide prevention interventions - individual crisis counselling, new training for all staff working with women in custody, continued development and evaluation of Dialectical Behaviour Therapy, investment in detoxification strategies." (Hansard 8.6.04.)

And there's the rub. The one thing not on the agenda is an end of the policy of jailing the most vulnerable and forcing the least able to cope into overcrowded failing jails. Despite the largest and most sustained fall in crime for over a century, the prison population has risen by 25,000 in the last decade.

Howard League, INQUEST, Prison Reform Trust; Independent 27.5.04, 26.6.04; Guardian 28.5.04; Independent on Sunday 30.5.04; Hansard 8.6.04; Observer 18.7.04.

## GERMANY

### "Torture" alleged at Brandenburg prison

The public prosecution has initiated an investigation into allegations of intimidation and violence by guards in the Brandenburg/Havel prison (Justizvollzugsanstalt - JVA) near Berlin. This action was prompted by a report on the regional television programme *Klartext*, in which ex-prisoners alleged

systematic abuse by guards wearing masks. It was claimed that "the disciplining of so-called troublemakers by "black" gangs is normality in the JVA". Guards are said to have stormed into cells and beaten up prisoners with sticks, breaking bones and inflicting other serious injuries. In one instance a prisoner who complained about heart troubles was beaten and denied medical help all night. Conservative regional interior minister Barbara Richtstein (*Christlich Demokratische Union*) has come under criticism over the allegations. This has led her to suspended the prison chief and five officers who denied medical help to the prisoner with the heart condition. Nine more officers are facing disciplinary proceedings.

The investigations have not concluded, but have established that masks had been used in the prison. Guards claim they use them for their protection. Politicians and prosecution have stressed that *JVA Brandenburg/Havel* should not be condemned as a "torture prison", thereby promoting the "rotten apples" theory. Richtstein has, however, re-opened 80 complaints that inmates have filed against prison guards in the last five years (they had been abandoned by the same prosecution authorities that will now reassess all complaint cases since 1994). Germany has no independent prison or police complaint's commission, a fact that has repeatedly been criticised by Amnesty International, which argues that the state is doing nothing to monitor and seriously prosecute police brutality and abuses (see *Statewatch* vol 14 no 1).

*Süddeutsche Zeitung* 4.6.04; *Jungle World* 12.5.04

## ITALY

### Alarming prison death statistics

The *Associazione Antigone* has published a table on its website that includes all deaths due to natural causes and suicide in Italian prisons in 2002, divided by region, sex, nationality (Italian or foreign citizens) and the status of the prisoners (whether they were charged awaiting trial, sentenced or interned). The figures indicate that 160 persons died, of whom 108 for natural causes and 52 as a result of suicide. The majority were Italian men, and six of the deceased were women (two of them foreign), and 26 were foreign citizens. The regions where most prisoners died of natural causes were Lazio (19), Campania (18) and Lombardy (18), while none died in Basilicata, Calabria, the Marches, Trentino Alto Adige and Val d'Aosta. As regards to suicides, the highest numbers of suicides took place in Lombardy (9), Emilia Romagna (7) and Sardinia (6), with none taking place in the regions of Abruzzo, Friuli Venezia Giulia, Molise, Val d'Aosta and Veneto. The only one out of Italy's 20 regions where no deaths took place during 2003 was the small north-western mountain region of Val d'Aosta. The highest number of prisoners who died had been sentenced (84), although there is also a large number of people who died who had been charged and arrested as they awaited trial (62). The Italian regions which have the highest prison populations are Lombardy, Campania, Sicily, Lazio and Piedmont; the ones with the least number of prisoners are Val d'Aosta, Molise and Trentino Alto Adige.

The figures for the period running from 2001 to 2003 indicate that over 500 prisoners died as a result of ill-health or suicide, according to the Conferenza Nazionale Volontariato Giustizia (*National Conference of Volunteers in the Justice sector*), which submitted its findings to the Italian parliament's Social Affairs and Justice Committee on 4 May 2004. Livio Ferrari, the association's president stressed that the number of deaths in custody has been increasing since 1995, and many of these involve persons who are under 40 years old. Other NGOs were also heard by the parliamentary committee, including *Associazione Antigone*, which indicated that 65 inmates committed suicide in 2003 (the prison administration's figure is

57), two of whom were under age. Representatives from the NGOs highlighted the high number of prisoners who are drug addicts or suffer from psychiatric problems, and that several prisoners suffer from infectious diseases such as hepatitis, with diseases such as scurvy, tuberculosis and syphilis, "diseases which appeared to belong to the past", making a comeback.

*Associazione Antigone*, 4.5.04, and *Chart on figures for deaths for 2002*, available on: [www.associazioneantigone.it](http://www.associazioneantigone.it); *Il manifesto*, 5, 9.5.04; *Annuario Sociale 2001*, Gruppo Abele, Turin, May 2001.

## Prisons - in brief

■ **UK: Overcrowding.** As of 30 June 2004, 11 prisons were operating above maximum capacity, and 81 prisons were operating above certified normal accommodation level. *Home Office*

■ **UK: Joseph Kassar's conviction unsafe.** Joseph Kassar was jailed 11 years ago after being found guilty of trying to smuggle £200 million of cocaine into the UK in lead ingots. Sentenced to 24 years, Joe's was Britain's biggest drugs trial. In July 2004 he was freed by the Court of Appeal with his conviction quashed. The case was referred back to the Court of Appeal by the Criminal Cases Review Commission, and the appeal was not opposed by the Crown Prosecution Service, which conceded that the failure to disclose information at the trial meant the conviction was unsafe. The information which eventually freed Joe Kassar had been known since his conviction, but Joe was refused leave to appeal in 1996.

■ **UK: "Evidence" too secret for prisoner.** Harry Roberts is now 67. He was jailed 37 years ago, convicted of murdering three policemen during an armed robbery. The trial judge, handing down a life sentence, recommended that he serve 30 years. In 1999, three years after his tariff expiry, the then-Home Secretary Jack Straw accepted a Parole Board recommendation that Harry be moved to an open prison. However, in 2001 he was returned to a closed jail, on "security" grounds, and told he would be given the opportunity to respond to the allegations made against him when he next applied for parole. The Parole Board, though, decided that the "security" information was too sensitive to release to him, and appointed Nicholas Blake QC as an independent specially-appointed advocate, who could be given the information but could not tell Harry its substance. The Parole Board has no statutory power to appoint such advocates at a parole hearing and Harry has mounted a legal challenge to the process employed against him. He compares his situation to that of the inmates at Guantanamo Bay, in that he is faced with "secret allegations, secret evidence, and a secret trail." His lawyers are going to seek leave to appeal to the House of lords, following the Court of Appeal's decision to uphold the Parole Board's use of a special advocate.

■ **UK: Campaign Against Prison Slavery (CAPS).** CAPS was formed in 2003 to highlight the exploitation of prisoners through forced prison work. The campaign has targeted high street chain Wilkinsons, which uses prison labour to pack its goods and has organised over 100 pickets at stores, as well as sit-ins, graffiti and leafleting. Contact details: Campaign Against Prison Slavery, PO Box 74, Brighton BN1 4ZQ; [www.againstprisonslavery.org](http://www.againstprisonslavery.org); Tel. 07944 522001

■ **UK: Mother campaigns for justice.** In January 2003, Sarah Campbell, sentenced to 3 years in jail, died of an overdose within hours of being received at HMP Styal. She was 18-years old. Since then, her mother Pauline Campbell has been arrested three times and organised six protests, aiming to protest whenever a woman dies in a UK jail. Pauline states: "My life is now dedicated to finding out how an 18-year old girl with a known history of depression and drug dependency came to injure

herself fatally within hours of being received into prison care. Sarah's death has transformed me...opened my eyes to the fact that women are treated with medieval brutality by our prison system." Contact: Pauline Campbell, 6 Market Place, Hampton, Cheshire SY14 8HS; [Paulinecampbell1@tiscali.co.uk](mailto:Paulinecampbell1@tiscali.co.uk)

■ **Portugal: Hunger strike against prison violence.** One hundred and fifty detainees in Carregueira prison in the province of Sintra went on hunger strike in May 2004 to protest against alleged violence by prison guards against two migrants from Eastern Europe. They said that "violence in a prison is intolerable under a regime that says it defends human rights". *El Publico*, 10.5.04.

## Prisons - new material

**Inquests and the right to protection of life**, Stephen Cragg. *Legal Action* p36. May 2004. In this article Cragg explores the implications of two cases, both heard before the House of Lords, concerning prisoners who hanged themselves in jail "in circumstances where prison officers and healthcare staff might have done more to prevent these deaths." Cragg believes that the judgements on *Middleton* and *Sacker* "present a real opportunity for the inquest system to provide satisfaction for the families of people who die while in the care of the authorities, and to press home the need for important reforms to ensure there are fewer such deaths in future."

**The Northern Ireland prison population in 2003**, S. McMullan, K. Amelin & M. Willis. *Research & Statistical Bulletin* 2 (June) 2004, pp.24.

## POLICING

### UK

## Raissi family sue the Met

The wife and brother of Lofti Raissi, who were arrested at gunpoint on 21 September 2001, have launched a legal action against the Metropolitan police alleging wrongful arrest. Lofti Raissi, along with his wife Sonia and his brother Mohammed Raissi, were detained on suspicion of involvement in "terrorist" activities under the Terrorism Act 2000. Mohammed was released without charge after two days and Sonia was released without charge after five days. Lofti Raissi was released after seven days but immediately rearrested on the basis of an extradition warrant issued by the USA. The FBI had claimed that they had extensive evidence proving that he was actively involved in a conspiracy with members of the al-Qaeda network.

The charges in the extradition warrant were used to hold Mr Raissi for a further five months as a suspected terrorist in Belmarsh prison, before he was released on 24 April 2002. The judge said that there was no evidence substantiating his involvement in terrorism. He continued:

*[Lofti Raissi] has appeared before me on several occasions where allegations of involvement in terrorism were made. I would like to make clear I have received no evidence whatsoever to support this contention.*

The case exemplified what Amnesty International described as "the dangers of how the extradition process could be used to label someone as a "suspected terrorist" and to detain someone for a prolonged period of time, in the absence of a prompt and thorough assessment of the evidence".

Sonia Raissi and her brother in law, who were ordered to strip in front of police officers, forced to wear white paper overalls and held incommunicado, say that they were falsely imprisoned, unlawfully detained and assaulted by Metropolitan

police officers. They are seeking damages for humiliation and loss of dignity and a "punitive award for arbitrary, oppressive and the unconstitutional conduct of the police." Sonia Raissi told the *Guardian* newspaper: "There was not a shred of evidence that Lofti had ever been connected to terrorism. He was not even charged with terrorism, just stupid minor charges that the judge threw out anyway....I now want an apology and my life back".

*Guardian* 30.6.04, *Times* 30.6.04; *Amnesty International "Rights Denied: the UK's Response to 11 September 2001"* 5.9.02

### UK

## Commissioner calls for more "lethal weapons"

London's most senior police officer, Metropolitan Police Commissioner, John Stevens, has called for the police use of the Taser to be expanded, despite international concerns about its safety. In April, five UK police forces finished a year-long trial of the M-26 Taser (see *Statewatch* vol 13 no 2, 14 no 1), a "less-lethal" hand-held weapon that disables individuals by firing a dart for up to 7 metres delivering a 50,000 volt electric charge. A final decision on whether the guns will be used nationwide has yet to be made, but the Police Federation has also backed them. Stevens, who will be retiring at the end of the year, said that he would like to see "police response cars in the force kitted out with the Taser."

There is widespread alarm at the use of such an unstable weapon, which is banned for export from the UK "because of evidence of their use in torture", according to Amnesty International's UK arms campaigner, Robert Parker. Amnesty has documented electro-shock torture in 87 countries since 1990 including in at least three EU member states, Greece, Spain and Austria. They note that this figure is certainly an underestimate and observe that: "Those who manufacture and trade in this equipment benefit from official secrecy and lack of accountability."

There is also concern about the weapon's general safety. According to Alex Berenson, writing in the *New York Times*, manufacturer Taser International's primary safety studies for the latest M-26 model "consist of tests on a single pig in 1996 and on five dogs in 1999". The results were never published in a peer-reviewed journal. Taser International "has no full-time medical director and has never created computer models to simulate the effect of its shocks...". Moreover, no US federal or state agencies have studied the safety of Tasers or the deaths alleged to have been caused by them. They are, to quote Berenson, "effectively unregulated."

*Police Review* 16.7.04; Alex Berenson "As Police use Tasers, Questions over Safety Increase" *New York Times* 18.7.04; Brian Rappert "Moralising violence - representations of electro-shock weapons"

<http://www.statewatch.org/news/2001/aug/taser.pdf>;

Amnesty International "The Pain Merchants: Facts and Figures" (2003) <http://news.amnesty.org/may/Index/ENGPOL300272003>;

### SPAIN

## Police officers acquitted of torture

A Court in Girona (Catalunya) has acquitted 12 *Mossos d'Esquadra* (the Catalan regional police force) of torturing a Moroccan citizen, Driss Zraidi, who was arrested for a traffic offence and taken to *Roses* police station in Girona on 3 August 1998. The ruling admits that Zraidi was the object of "not serious torture", consisting of insults, threats, vigorous shaking and pushing, and criticised the psychological pressure to which the

detainee was subjected by an unspecified number of officers. It did not find that the evidence allowed any of the accused to be found guilty. In the words of the judge: "they insulted him with insults like son of a bitch and fucking Moor, they directed intimidating expressions such as "we'll kill you", but it "was not proven that the acts of physical violence undertaken against him went beyond mere shoving or pushing".

The judge claimed that Zraidi's testimony was unreliable, as he exaggerated his injuries, and she also found that the injuries suffered by Zraidi, including the fracture of three ribs, and a bruised eye, may have been the result of efforts by officers to restrain him as he violently opposed his arrest. The defence lawyer Joan de Anguera, claimed that the ruling confirms the existence of a "police that tortures", adding that the acquittals, which were motivated by the impossibility of attributing the offences to specific individuals, does not contradict the serious nature of what happened to Zraidi.

*El País 21.5.04.*

## RACISM & FASCISM

### SPAIN

#### Racist attacks in El Ejido

On 1 June 2004, two Moroccan migrants were on the receiving end of a racist attack during which they were brutally beaten for half an hour by a group of youths in El Ejido, as they returned to their house, near the greenhouse where they work. They were both taken to hospital, one of them with a broken femur, and the other with a substantial haemorrhage in his eye.

However, the situation is still more serious when a complaint made by several social and trade union organisations, filed before the Andalusian *Defensor del Pueblo* (Ombudsman) and the United Nations rapporteur is taken into account. According to this complaint, which was filed in May 2004, institutional racism is exercised by the town council and it is translated by the local police into violent and systematic racist attacks.

In a plenary meeting the municipal council of El Ejido agreed unanimously to ask the Justice ministry for a pardon for two local men who were sentenced to 15 years imprisonment for kidnapping and beating three Moroccans with baseball bats in 1997. Their decision was preceded by the collection of 50,000 signatures from local residents supporting the pardon.

### GERMANY

#### Nazis using law to gather data on anti-fascists

Anti-fascist groups in various parts of Germany have claimed that so-called anti-anti-fascists (neo-nazi groups focusing on fighting anti-fascists) have started using public prosecutions to access the personal data of anti-fascists by informing on them to the police. If the police investigations lead to legal proceedings, lawyers on both sides are given access to files, which provide personal details such as home addresses. Last year, anti-fascists from Aachen reported that shortly after police carried out house searches following neo-nazi complaints, fascists had turned up on the doorstep of one of the victims of the house search and demolished his car.

In Dresden, reports by neo-nazis have also led to preliminary investigations against anti-fascists. The latest case concerns around 40 anti-fascists from around Vlotho, who

blockaded a far-right think tank and events organiser *Collegium Humanum* to prevent the entry of the far-right, anti-Semitic lawyer Horst Mahler. This "educational institution" was set up in 1963 by the Werner Georg Haverbeck, who had been amongst the leaders of the student branch of the NSDAP in 1929 and worked in important ideological positions during the Nazi regime. The institution is known for the organisation of lectures denying the Holocaust.

After the sit-in blockade, neo-nazis reported the anti-fascists to the police on grounds of coercion, upon which 28 anti-fascists received an order to be fingerprinted and photographed, because, as the chief of the Bielefeld police, Dirk Butenuth, argues, "we have the obligation to prosecute crimes, we have to identify the people, and with these pictures we will be able to do this by comparing them with the videotapes of the demonstration." The anti-fascists have appealed against the fingerprinting and await a decision. Butenuth is not worried about personal data being made accessible to neo-nazis, because "we don't have anti-anti-fascists here."

[http://www.info3.de/ycms/artikel\\_1170.shtml](http://www.info3.de/ycms/artikel_1170.shtml); *Jungle World* 19.5.04

#### Racism & fascism - in brief

■ **Germany: Nazi propaganda at schools.** Over 60 far-right groups, production and distribution companies are cooperating in a recruitment drive in German schools by distributing CDs with far-right music and propaganda. The authorities stopped two attempts to mass copy the CDs but estimate that around 250,000 copies are intended to be distributed. According to the far-right watchdog *Blick nach Rechts*, the project was initiated by Lutz Willert, a well-known far-right music producer, and Thorsten Heise, leader of the right-wing group *Kameradschaft Northeim*. The public prosecutor is currently testing the legality of the CD. *Süddeutsche Zeitung* 12.7.04

■ **Germany: Young neo-nazi sentenced for killing three foreigners:** On 16 July, the regional court in Ellwangen sentenced the 18-year old Leonard S. to nine years in prison for killing three (15-17-year old) Russian migrants of German origin. Leonard S. had made contacts within the right-wing scene in the German city of Heidelberg after moving there from Berlin. He was under investigation for attacking a punk, when he stabbed the three youths - Alexander, Viktor and Waldemar - to death in a night-club, after a fight broke out between members of the local right-wing scene and the three migrants. *Süddeutsche Zeitung* 17/18.7.04

■ **Germany: NPD gets up to 25% in Saxony:** In the regional state of Saxony, the far-right party *National Sozialistische Partei Deutschland's* (NPD) has gained 10-25% of votes at the local government elections held on 13 June. Altogether, the NPD gained 53 seats, 18 of which were in the communal district *Sächsische Schweiz*, which is known for its extensive far-right structures. NPD ideology is the norm rather than the exception in the *Sächsische Schweiz*, and the connections between the far-right party and the prohibited neo-nazi group *Skinheads Sächsische Schweiz* are well documented. One NPD politician was caught with explosives in his shed and members of local anti-fascist and liberal citizens' groups are regularly threatened and attacked by neo-nazis. *Jungle World*, 30.6.04.

■ **UK: The final betrayal?** On 5 May the Crown Prosecution Service (CPS) advised the Metropolitan police force that there is insufficient evidence "to prosecute anyone for the murder of Stephen Lawrence and the attack on Duwayne Brooks following a re-investigation into the crime." Doreen and Neville Lawrence, who waged an 11-year campaign to bring their son's murderers to justice, described the CPS decision as "devastating". Crown Prosecution Service press release 5.5.04.

## UK: Police can keep DNA of innocent people indefinitely

The law lords have set a dangerous precedent by backing the demands of the state over individual privacy

The highest court in the land, in the House of Lords, ruled on 22 July that DNA samples taken from people who are not charged with an offence or who are acquitted can still be held indefinitely by police.

The court was hearing two test cases. The first by a boy from Sheffield who was 11 years old when he was arrested for attempted burglary in 2001. His lawyers asked for his fingerprints and DNA samples to be destroyed after his acquittal. The second case involved a man from Sheffield who gave a DNA sample when he was charged with harassing his partner - the case never came to court as the couple came together again and the woman decided not to press charges. He asked the South Yorkshire police to destroy the sample and fingerprints.

Peter Mahy, the solicitor representing the two people, said he was surprised that four of the five law lords found no breach of privacy (under Article 8.1 of the European Convention on Human Rights). He said that his clients hope to challenge the judgement in the European Court of Human Rights.

In July the UK Forensic Science Service announced that the number of DNA profiles on the national database had reach two million.

### A history of non-compliance by police leads to changes in law

Before looking at the judgement in this case it is worth taking a look at the history of police powers to take and retain DNA samples.

Under the Police and Criminal Evidence Act 1984 (PACE) police could take body samples (DNA from mouth swabs) where people were suspected of having committed a "serious arrestable offence". The same law stipulated, in PACE, Section 64, that DNA samples taken from a "person who is not suspected of having committed an offence or is not prosecuted or is acquitted of the of the offence, the sample must be destroyed" and "cannot be used in evidence against that person or for the purposes of any investigation of an offence".

The first change to the law on DNA came in the Criminal Justice and Public Order Act 1994 which removed the test of "serious arrestable offence" for the taking of samples without consent. Instead samples could be taken from; i) those "in police detention or held in custody" if there were "reasonable grounds for suspecting involvement of that person in a *recordable* offence" (a much lower standard); ii) any person charged with a recordable offence; and iii) any person convicted of a recordable offence.

Although the scope of the law was widened in 1994 it was still based on the simple proposition that if a person was innocent - never charged or found not guilty of charges brought against them then fingerprints and DNA samples taken should be destroyed.

The next change came in 2001 when the Criminal Justice and Police Act amended Section 64 of PACE to allow fingerprints and DNA samples to be retained indefinitely where they "were taken from a person in connection with the investigation of an offence".

This change was prompted because it transpired that many police forces were not complying with the law as it stood by failing to destroy the fingerprints and DNA samples of those not charged with any offence or who were acquitted.

In the run-up to the new Act the Prime Minister, Tony Blair

said: "I believe the civil liberties argument is completely misplaced. This is using technology to catch criminals" (31.8.00).

However, according to a report prepared for Her Majesty's Inspector of Constabulary (HMIC) published in July 2000, "Under the Microscope", "urgent action" was needed to remove from the national database those who had been arrested but not charged and those who were subsequently acquitted. The report estimated that: "perhaps as many as 50,000 may be being held on the database when they should have been taken off". This estimate was based on a 20% non-conviction rate but the report then admitted that in reality the figure "falling within ACPO's CJ sampling guidelines" was "over 45% not convicted" and the overall figure for those charged but not convicted for all offences was 33%. The true figure for the number of DNA samples which should have been removed was therefore not 50,000 but somewhere between 82,500 and 112,500 (evidence presented to the appeal in this current case suggested that between 128,517 and 162,433 DNA profiles are now being held where the parent PNC record has been deleted).

Under Home Office Circular no 16/95 and the Data Protection Act 1998 police forces were required to notify the National DNA Database (NDNAD) of all acquittals and "discontinuances" (where no charge is made). The report concluded that in the short term forces should comply with the law - which they never did - and that:

*perhaps the time has come to revisit the legislation to consider whether all samples.. should be retained on the NDNAD to provide a useful source of intelligence to aid future investigations.*

The government acted to remove this embarrassing situation through the changes in Criminal Justice and Police Act 2001 by amending Section 64 of PACE. Where the scope for taking DNA was widened in 1994 the retention of all DNA samples from those innocent of any offence was made lawful in 2001.

### The judgement by the "Lords of Appeal"

The appeal heard in the House of Lords on 22 July was based on the contravention of Articles 8.1 and 14 (discrimination) of the European Convention on Human Rights by retaining fingerprints and DNA samples.

Article 8: Right to respect for private and family says:

*8.1: Everyone has the right to respect for his private and family life, his home and his correspondence*

*8.2: There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others*

The main reasons for dismissing the appeal were given by Lord Steyn who opened by saying that:

*It is of paramount importance that law enforcement agencies should take full advantage of the available techniques of modern technology and forensic science... It enables the guilty to be detected and the innocent to be rapidly eliminated from enquiries... Making due allowance for the possibility of threats to civil liberties, this phenomenon has had beneficial effects*

In the Court of Appeal prior to this judgement Liberty had argued that DNA samples "potentially contain very much

greater, more personal and detailed information about an individual" such as latent genetic illness or behavioral tendencies. In Lord Steyn's view this was not relevant as DNA was only used for criminal investigations with "rigorous safeguards" and that "the trial process ought to weed out such abuses" feared by Liberty.

Lord Steyn cites forensic expert Dr Bramley who gave evidence that the prevention and detection of crime is:

*not interpreted so widely as to allow general testing of the retained CJ scrapes (criminal justice) for medical conditions or susceptibilities and linking the results to a specific known individual*

While this is clearly the official police position on the use of forensics it might be asked in current climate of security fears whether in other circumstances the security and intelligence agencies have access to DNA profiles and whether they use them for different purposes?

Lord Steyn concludes that Article 8.1 of the ECHR is "not engaged" and "If I am wrong in this view, I would say any interference is very modest indeed".

When considering the legislation he concludes that:

*It is true that the taking of fingerprints and samples involves an interference with the individual's private life within the meaning of article 8(1) of ECHR. On the other hand, such interference for the limited statutory purposes is plainly objectively justified under article 8(2)*

In the previous decision by the Court of Appeal Lord Justice Sedley argued that:

*The power of a Chief Constable to destroy data which he would ordinarily retain must in my judgement be exercised in every case, however rare such cases may be, whether he or she is satisfied on conscientious consideration that the individual is free from any taint of suspicion*

Lord Steyn rejected this idea of a case by case evaluation as it would counter:

*the benefits of a greatly extended database and would involve the police in interminable and invidious disputes (subject to judicial review of individuals decisions) about offences of which the individual has been acquitted*

and he cites the contrary opinion of Lord Justice Waller in the same Court of Appeal who said that for DNA to be retained in no way stigmatises the individual as it is:

*simply that samples lawfully obtained are retained as the norm, and it is in the public interest in its fight against crime for the police to have as large a database as possible*

The appeal against discrimination, under Article 14, was also dismissed by the law lords. Here Lord Steyn cites Lord Justice Sedley approvingly where he says that:

*The line between those unconvicted people who have faced charges and those who have not, while not a bright line, is not arbitrarily drawn. It does not tarnish the innocence of the unconvicted in the eye of the law. But it recognises that among them is an indeterminate number who are likelier than the rest of the unconvicted population to offend in the future or to be found to have offended in the past.*

The validity of this assertion is open to question, namely, that innocent people who come into contact with the criminal justice system more likely to offend than the rest of the population and it is therefore legitimate to keep their DNA on file as a "suspect" group.

The other law lords sitting on the case gave their views too. Lord Rodger doubted whether there was a "greater cultural resistance in Britain than in other European countries to the collection and retention of data about individuals". However, he observed that:

*it may well be that, with their bitter experience of life under totalitarian regimes, people in some other European countries would nowadays be more concerned than people here about official files on*

*individuals*

However, it might be observed that the reason people in central and eastern European countries would be "concerned" is that:

*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, 11.12.03)*

And as the Canadian Privacy Commissioner, cited by Baroness Hale (below), says:

*The measure of our privacy is the degree of control we exercise over what others know about us*

Baroness Hale dissented from Lord Steyn's view arguing that the "retention and storage of fingerprints, DNA profiles and samples" was an interference with Article 8.1. However, she concludes that this is overridden by Article 8.2:

*The whole community, as well as the individual whose samples are collected, benefit from there being as large a database as it is possible to have*

While Lord Brown who said that:

*I find it difficult why anyone should object to the retention of their profile (and sample) on the database once it has been lawfully placed there*

The objections to this he found "entirely chimerical" (meaning a "fanciful conception" according to the Oxford dictionary) for example, the:

*fear of an Orwellian future, in which retained samples will be re-analysed by a mischievous State in the light of scientific advances and the results improperly used against the person's interest*

and he goes on to say:

*no such abuse is presently threatened and if and when it comes to be them will be the time to address it. Sufficient unto the day is the evil thereof*

and he goes on:

*it seems to me that the benefits of the larger database... are so manifest and the objections to it so threadbare that the cause of human rights generally... would inevitably be better served by the databases's expansion than its proposed contraction. The more complete the database, the better chance of detecting criminals, both those guilty of crimes past and those whose crimes are yet to be committed. The better chance too of deterring from future crime those whose profiles are already on the database*

Tony Bunyan, Statewatch editor, comments:

*This is a classic instance of the slide into authoritarianism where the privacy of the individual is subsumed, allegedly in the "interests of all", to the demands of the state. When the privacy of the individual is weighed against the interests of the state all five law lords come down on the side of the latter. Thus all want as large a DNA database as possible which, by extension, would be best served by covering the whole population.*

*Their lordships do not address the implications of their decision on the planned, "blanket" and compulsory, collection of biometric data for ID cards, passports and driving licences.*

*This case demonstrates the fundamental shortcoming of the law in protecting liberties and privacy. Providing data is "lawfully" collected there can be no objection whatsoever - but what if the laws themselves are contrary to the standards of a democratic society? What if the cumulative collection of personal data is such that democracy slides into authoritarianism and authoritarianism into totalitarianism?"*

*Guardian, 1 & 2.9.00; Independent, 1.9.00; "Under the Microscope", report for Her Majesty's Inspector of Constabulary, July 2000; Lords of Appeal, 22.7.04; Forsensic Science Service, July 2004; Daily Telegraph, 23.7.04.*

# UK: Ethnic injustice

## More black and Asian people are being stopped and searched than ever before

The Home Office published the *Statistics on Race and the Criminal Justice System – 2003* in July. These form part of a series of statistics, which the Home Secretary has an obligation to publish, for among other things, in order to enable persons working in the criminal justice system ‘to avoid discriminating against any persons on the ground of race or sex or any other improper ground’. The report was due out in March but was delayed possibly because of the highly controversial nature of some of the statistics which suggest that the non-white population is being disproportionately subject to stop and search powers.

The report covers all stages in the criminal justice system but only the use of the powers of stop and search are considered here. There are three main powers for which statistics are published. First, the police may stop and search persons and vehicles under the Police and Criminal Evidence Act, 1984. Second, they can stop and search under section 44(1) and section 44(2) of the Terrorism Act, 2000, which gives them the power to stop and search persons and vehicles without *any* suspicion in an ‘authorised’ area. The whole of London has been permanently designated as at risk and hence this power can be used anywhere in the city. Third, the police can stop and search under section 60 of the Criminal Justice and Public Order Act 1994, which enables a police officer to authorise, for a period not exceeding 24 hours, stop and searches ‘in anticipation of violence’.

Statistics on the use of these powers without any breakdown by ethnicity were published for 2002/03 last December and were examined in Statewatch (Vol 13, No 6). It has taken seven months for the ethnic information to be released.

### Section 1 PACE power

Statistics on the PACE power have been published annually since 1996/97. Figure 1 shows the trend in the number of stops and searches from 1996/97 to 2002/03 by ethnicity. The MacPherson inquiry, which was set up in 1997, to examine the police investigation into the death of Stephen Lawrence in April 1993, who was murdered in a racist attack, clearly had a dramatic impact on reducing the number of stop and searches for all groups. MacPherson had condemned the Metropolitan police for incompetence and complacency and for ‘institutional racism’. The impact occurred following the start of the inquiry in July 1997 and then was shortlived with the number of stop and searches beginning to increase from 1999/00. They now stand at the highest number ever recorded. The pattern for the Asian community was slightly different. The initial increase was much

less dramatic, and then began to fall from 1997/98 until 2000/01 when it began to rise. As with the black community, the number of stop and searches are now higher than they have ever been.

There are wide variations between police forces. Table 1 shows the number of stop and searches per 1,000 of the respective populations for 2001/02 and 2002/03. As can be seen, the per capita rate for white people has increased from 14 to 16 per 1,000, whereas the rate for black people has increased from 67 to 92 per 1,000. The Asian rate has gone up from 20 to 27 per 1,000. In 2002/03 black people were therefore 6 times more likely to be stopped and searched than white people. Asians were twice as likely.

**Table 1: Total stops and searches under PACE per 1,000 of the population, 2001/02 to 2002/03**

Ethnic appearance	2001/02	2002/03
White	14	16
Black	67	92
Asian	20	27

These figures disguise large variations in the use of the PACE power between different police forces. In 2002/03 Merseyside police stopped and searched 168 black people per 1,000, South Yorkshire 147 per 1,000, Metropolitan police 114 per 1,000 and Cleveland 102 per 1,000. In contrast, Durham, Humberside and Lincolnshire stopped and searched fewer than 15 black people per 1,000. In short, the Merseyside police stopped and searched a staggering 15 times more black people per head of population than Lincolnshire. While the rate for Asians was lower and the variation less, nevertheless the Metropolitan police stopped and searched 39 Asians per 1,000, which is higher than the stop and search rate for white people in any police force in England and Wales.

The report also records the number of people who are arrested as a result of the stop and searches under PACE. In 2002/03 Asians and white people had an arrest rate of 13 per cent compared with black people at 16 per cent. These figures, however, must be treated with caution because no information is provided on the circumstances of the arrest – it could, for example, have nothing to do with the original suspicion that gave rise to the stop and search but arose from the way the stop and search was conducted. Moreover, there is no information on what happened after the arrest. Typically, a large proportion of people are released without any further action.

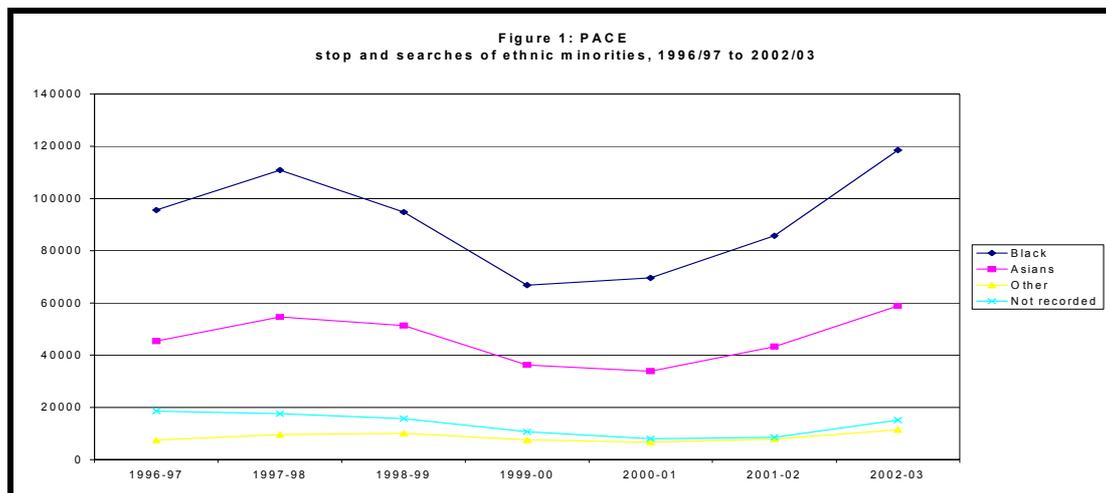
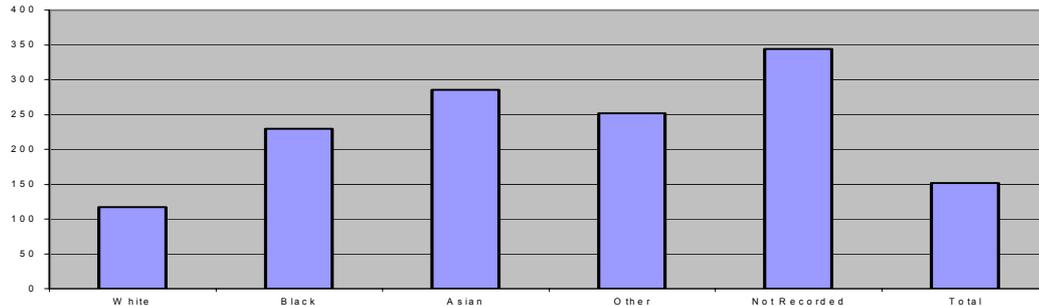


Figure 2: Percentage increase in the number of 'stops and searches' under the Terrorism Acts, 2001/02 to 2002/03.



### Section 44 of the Terrorism Act

The rise in the use of the section 44 powers under the Terrorism Act between 2001/02 and 2002/03 has been dramatic. In 2001/02 there were 8,550 stop and searches and this figure rose to 21,577 in 2002/03 – a 151 per cent increase. However, 21 police forces record no-use of these powers and the City of London and the Metropolitan police accounted for 83 per cent of all stop and searches.

The use of the powers have been disproportionately targeted on black and Asians as can be seen from Figure 2. The number of black people stopped has increased by 229 per cent and Asians by 285 per cent. In addition, those whose ethnicity was not recorded by the police increased by a massive 344 per cent.

In 2001/02 less than 3 per cent of those stopped and searched were arrested. Some 20 people were arrested in connection with terrorism but 169 were arrested for other reasons. In other words, the terrorism power is used 8 times more to arrest people for what has been called by some “ordinary decent crime” than for terrorism. In 2002/03 the percentage arrested dropped to under 2 per cent. The number of arrests in connection with terrorism has declined and the numbers arrested for other reasons increased by 190 to 359 arrests. There are now 20 times more arrests for “ordinary decent crime” than for terrorism under powers which were specifically introduced to counter acts of terrorism.

### Section 60 power CJPO Act power

The number of stop and searches under the section 60 power have also increased dramatically between 2001/02 and 2002/03. In total there has been a 171 per cent increase with wide variations in the increases for different ethnic groups. Stop and searches of white people has increased by 220 per cent, stop and searches of black people by 162 per cent, stop and searches of

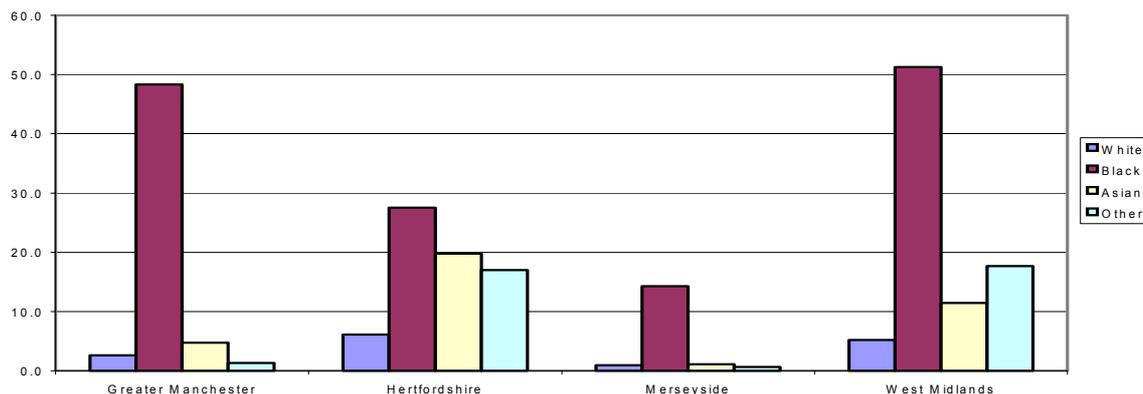
Asians by 71 per cent and stop and searches of ‘Others’ by 373 per cent. *Statewatch* (vol.13, no 6) suggested that this huge rise was most probably due to some police forces recording ‘anti-terrorist ‘stop and searches under section 60 power rather than under the section 44 of the Terrorism Act.

In the light of this practice, it is illuminating to examine the numbers stopped and searched by ethnicity for both powers together. Figure 3 shows the figures for four police forces which have made extensive use or one or other of the powers. As can be seen the combined powers have been used disproportionately against the non-white population and the black population, in particular. The West Midlands and Greater Manchester police stopped and searched over 45 black people per 1,000 of the black population and the Hertfordshire police stopped and searched 20 Asians per 1,000 of the Asian population. In terms of differential rates, the Greater Manchester police stopped and searched 19 times more black people than white people and the Merseyside police stopped and searched 15 times more black people than white people under these powers.

### Conclusions

Statewatch has drawn attention to the differential use of the powers of stop and search over many years. Apart from the decline in the use of the powers against black and Asian people following the setting up of the Macpherson inquiry, the use of all the powers are on the increase. Moreover, they are disproportionately being used against the non-white population. This disproportionate use of the powers is inevitably building up huge resentment among the non-white population. It will do little for police community relations and will be totally counter-productive in terms of obtaining good quality intelligence. At the same time it may well be laying the resentment for widespread urban disorder. No lessons appear to have been learnt from the past.

Fig 3: Number of S&S under Sec 60 CJPO Act and Sec 44 Terrorism Act per 1,000 population, 2002/03



# Germany: 11 September trials collapse

**The collapse of the trials of the alleged members of the Hamburg "Al-Qaeda" cell raises questions over evidence from intelligences services and the USA**

There have been three trials world-wide connected to the attacks of 11 September in New York. One of them concerns the French national Zacarias Moussaoui, who is standing trial in the US District Court of Virginia. The other two concern Abdelghani Mzoudi and Mounir el Motassadeq, both Moroccan nationals, who were friends of Mohammed Atta suspected of piloting one of the 11 September planes. The court case against Mzoudi found that although belonging to Mohammed Atta's circle of friends, there was no hard evidence to prove that he knew of Atta's plans. Judge Klaus Rühle ordered the release of Mzoudi last February. Based on the same evidence, Motassadeq, who was initially convicted in 2002, is expected to be acquitted at his appeal, due to begin on 10 August. Despite the Mzoudi ruling, the Hamburg authorities have issued deportation orders against Mzoudi and Motassadeq for "endangering the free-democratic basic order and security of the Federal Republic of Germany".

The trials have thrown up many questions with regard to the use of security service evidence in court. They have also raised questions about the validity of evidence resulting from US interrogations of alleged suspects, who have not been seen since their arrests in 2002. The USA has refused to allow them to appear at any of the three trials.

## **The Mzoudi and Motassadeq trials**

Both trials in Germany are based on the prosecution's assumption of the existence of a Hamburg-based al-Qaeda cell, which the prosecution claims existed around Mohammed Atta. Several of Atta's Muslim friends and acquaintances were arrested in 2001 and in 2002. The public prosecutor charged Motassadeq and later Mzoudi with 3,077 accounts of manslaughter and membership of a terrorist organisation. The prosecutions main evidence is from statements given by Ramzi bin al-Shibh and Khalid Shaikh Mohammed, who were arrested, although news reports differ, in September 2002 in Pakistan.

Ben al-Shibh and Khalid Shaikh Mohammed, alleged al-Qaeda "chief of operations", became more widely known through an *al-Jazeera* documentary by Yosri Fouda aired in September 2002. According to this report, bin al-Shibh became a key member of the al-Qaeda Hamburg cell after seeking asylum in the late 1990s and meeting Mohammed Atta through a local mosque in 1997. Atta and al-Shibh became roommates and, over the next two years, allegedly engaged in radical Islamic activities. In the *al-Jazeera* report, bin al-Shibh said he travelled to Kandahar in Afghanistan in late 1999 to receive training, where he met many of the key players in the 11 September attacks. According to US officials, bin al-Shibh is the only person believed to have attended both of the crucial meetings held to plan them, one in Malaysia and the other in Spain. He allegedly handled logistics and money matters for the attacks and entered Pakistan just before 11 September (*BBC News* 14.09.02).

Motassadeq's trial started on 22 October 2002 at Hamburg's regional court and ended on 19 February 2003 with a life-sentence of 15 years. The defence appealed the decision at the Supreme Court on the grounds that the trial was unfair. They argued that the prosecution would not allow important witnesses such as bin al-Shibh, or German intelligence officers, nor transcripts of their statements, to be presented in court, (the transcripts had been handed to the German interior ministry by the United States on condition that they not be made public). Motassadeq's lawyer, Josef Gräßle-Münscher, argued that the US had thereby violated several international agreements, such as the 1971 Montreal Agreement and UN Security Council

Resolution no. 1373, which oblige both states to mutual assistance. The failure to do so, he argued, violated his client's right to a fair procedure.

Gräßle-Münscher further claimed there was no proof to support the existence of a Hamburg al-Qaeda cell, which would presume an independent organisation with specific functions. The Federal Supreme Court (*Bundesgerichtshof*, BGH) found shortcomings in the Hamburg regional court's handling of the evidence. It quashed Motassadeq's first sentence and ordered a re-trial in March 2004, to be held in a different criminal division of the Hamburg court. Motassadeq was released from his two-and-a-half year long custody on 7 April this year and his re-trial is to begin on 10 August.

The BGH's decision is related to the trial against Abdelghani Mzoudi, which took an unexpected turn in late 2003, when a leak from the BKA apparently claimed that Mzoudi knew nothing of the plot. The German court had repeatedly asked to see the full evidence, which the Crime Police Authority (*Bundeskriminalamt* - BKA) and public prosecution (*Bundesanwaltschaft* - BAW) claimed proved Mzoudi's knowledge of the plans to attack the World Trade Centre. Initially, the prosecution would not even disclose that the statements were given by bin al-Shibh. However, on 1 December 2003, an unknown person in the BKA sent a fax to the Hamburg court, which stated that they had no evidence of Mzoudi's involvement in the attacks. Bin al-Shibh's statements resulting from the US interrogations seemed to suggest that only the three Hamburg-based suicide hijackers (Mohammed Atta, Marwan Alshehhi and Siad Jarrah) and bin al-Shibh himself knew of the plans and these were drawn up in Afghanistan and not in Hamburg. Mzoudi, whose trial began in September 2003, was freed of all charges in February 2004 because of a lack of evidence.

Mzoudi was acquitted because, as presiding judge Klaus Rühle pointed out,

*there is no possibility to verify bin al-Shibh's statements...There is a serious possibility that (Mzoudi) was kept away from all knowledge of the plot. If there is any doubt of his innocence he has to be released.*

Although the court was not convinced of Mzoudi's innocence, it maintained that his cognisance simply could not be established. Mzoudi was accused of Islamic fundamentalism and anti-Semitism, but even these allegations lost their moral imperative by the fact that Mzoudi was represented by Gül Pinar and Michael Rosenthal, a woman and a Jew, respectively.

## **US interrogation techniques not accepted by courts**

In Mzoudi's case, the prosecution appealed against his acquittal and the Supreme Court is currently examining the appeal. Motassadeq's re-trial, where all witnesses and evidence will have to be heard again, will start on 10 August this year. It is expected that Motassadeq's second trial will also end in acquittal, especially after the interrogation transcripts now passed on to the courts have been termed "useless". According to a report by the *Observer* from 18 July this year:

*[a] senior German intelligence official told The Observer that, although the US Justice Department has now supplied the interrogation records, they would be virtually useless in their present state. "They contain no details as to where Binalshibh and Mohamed were questioned, nor whether torture or other forms of force were used to make them talk," he said. Their contents may be information and they may be disinformation.*

This refers to the fact that the CIA's interrogation methods are known to be "harsh" and would be not inadmissible in German courts because they were possibly obtained under duress. Motassadeq's lawyer, Josef Gräßle-Münscher, told the *Observer* that in:

*Germany, any use of force to produce a statement is unlawful... After Abu Ghraib, if the Americans want to see Motassadeq convicted for 9/11, they are going to have to prove both Binalshibh and Mohammed are in good health, and that they say Motassadeq was a conspirator.*

The Technical College of Hamburg, where Motassadeq studied before his arrest, announced in April this year it had banned him from re-entering after his trial, even if found innocent. In mid-July this year, the Hamburg authorities, in full knowledge of the court's finding of lack of evidence against them, issued deportation orders against Mzoudi and Motassadeq on grounds of "endangering the free-democratic basic order and security of the Federal Republic of Germany". The deportations should be carried out as soon as the trials and appeals have been decided, no matter their outcome.

### **"Test case" for new deportation under Aliens Act**

Hamburg's senator for interior, Udo Nagel (Independent), started promoting Mzoudi's deportation in December last year. In a discussion forum, entitled "Fighting Terrorism through Foreigner Law", at a German lawyers conference in Hamburg on 20-22 May this year, Udo Nagel and Dieter Wiefelspütz, parliamentary spokesperson for home affairs in the Lower House for the Social Democratic Party (*Sozial Demokratische Partei Deutschlands*, SPD), demanded the immediate deportation of terrorist suspects. Wiefelspütz argued that although criminal law stipulates that if in doubt there should be a "presumption of innocence", police and foreigner regulations should stipulate that if in doubt the "security of the country" should come first (*Telepolis*, 23.05.04). The German Lawyers association *Deutscher Anwaltverein* (DAV) has strongly criticised a further restriction of foreigner's rights and its president, Hartmut Kilger, stated that "Germany does not need a Guantanamo, and not in its foreigner's law," referring to the reduced appeal rights and arguing that these measures typically hit second and third generation immigrants and not terrorists.

Meanwhile, the Hamburg authorities have already acted on the principle by refusing the application for extension of a residency permit by Abderrazak L., who was a fellow student and former flatmate of Mzoudi. He was ordered to leave Germany by 23 May this year. If he refuses to leave, the Hamburg authority said it will apply Paragraph 8.1 no. 5 of the Aliens Act, which allows for the rejection of a residency permit on grounds of violating the German "free democratic order". A spokesperson for the Aliens Office declared that the authority is currently examining the possibility to apply this rule to several people. The chief of Hamburg's regional internal secret service (*Verfassungsschutz*), Heino Vahldieck, declared he thought this rule could be applied to all "Islamists", if they had been in an al-Qaeda training camp in Afghanistan, for example. Mzoudi and Motassadeq both admitted to being in training camps in Afghanistan. Nagel's spokesman Marco Haase announced that they were expecting to push this case through all the courts and if they failed "interior ministers will have to come together again and examine their laws." Haase declared this the "test case" for the new anti-terrorism regulations introduced in the latest immigration law (see *Stewatch* vol 14 no 2), which give powers to deport non-citizens under several circumstances (if "facts" prove a threat, suspected support of terrorism, etc.) with reduced rights of appeal.

### **Contradicting "intelligence" around 9/11 plot**

In the failed attempt to gain hard evidence from secret service intelligence, the current terrorist trials have also thrown up

serious questions with regard to the use of secret service evidence in court. Apart from the fact that the main witness was not present and indeed has not been seen alive for almost two years, the witnesses (not) presented in the 11 September trials have triggered questions about the involvement of the Pakistani intelligence service (ISI) in al-Qaeda and therefore the attacks and the links that exist between the CIA and the ISI, forged during the 1980s, when the CIA mounted its "covert action program" to support Afghan rebels against the Soviets, where the ISI served as the "critical link" (*New York Times*, 29.10.01).

Former ISI chief, General Mahmoud Ahmad and his aide Ahmed Omar Saeed Sheikh, a British-educated Pakistani citizen with links to various Islamic-based terrorist organisations, including al-Qaeda and Harkat-ul-Mujahideen, have both been allegedly implicated by various news reports and FBI statements with al-Qaeda and more directly 9/11, yet they are not available for interrogation. Omar Saeed Sheikh's involvement in 9/11 was first published by the *Times of India* soon after the attacks, when it claimed that he had carried out an order by General Mahmoud Ahmad to transfer \$100,000 to Mohammed Atta in the USA, a claim which was confirmed by the FBI to ABC news soon after the attacks (*Telegraph*, 30.9.01). Omar Saeed Sheikh was later sentenced to death in Pakistan for allegedly killing the American journalist Daniel Pearl in 2002, an allegation which has been increasingly questioned (*Guardian Unlimited*, 22.7.04).

These allegations could implicate the ISI in the 11 September attacks and a *Guardian* report from 22 July says that:

*Daniel Ellsberg, the former US defence department whistleblower who has accompanied Edmonds [translator who claims intelligence cover up around 9/11] in court, has stated: "It seems to me quite plausible that Pakistan was quite involved in this.. To say Pakistan is, to me, to say CIA because.. it's hard to say that the ISI knew something that the CIA had no knowledge of."*

Sibel Edmonds, just as bin al-Shibh and Khalid Shaikh Mohammed, is also forbidden from appearing in the 9/11 trials. *The Guardian* relates this also to a cover up involving the security services CIA and ISI as well as high-ranking US officials:

*[Sibel Edmonds] is a 33-year-old Turkish-American former FBI translator of intelligence, fluent in Farsi, the language spoken mainly in Iran and Afghanistan, who had top-secret security clearance.*

She tried to blow the whistle on the cover-up of intelligence that names some of the culprits who orchestrated the attacks, but is now under two gagging orders that forbid her from testifying in court or mentioning the names of the people or the countries involved. She has been quoted as saying: "My translations of the 9/11 intercepts included [terrorist] money laundering, detailed and date-specific information... if they were to do real investigations, we would see several significant high-level criminal prosecutions in this country [the US]"

The claim that Khalid Shaikh Mohammed could make incriminating or exonerating statements with regard to 11 September is complicated by the fact that there are contradictory reports as to whether he is still alive: one day after the *al-Jazeera* interview was broadcasted, US and Pakistani forces stormed a house in which the interview was allegedly held a few months earlier, and arrested bin al-Shibh. According to *Asia Times Online* (30.10.02), Khalid Shaikh Mohammed was killed during an exchange of gunfire, apparently identified by his wife and two sons, who are allegedly still held by the FBI. On 1 March 2003, however, AP reported he had been arrested in Rawalpindi in Pakistan. Ramzi bin al-Shibh and Khalid Shaikh Mohammed have since been named as the main actors behind the attacks without, however, any detailed information about their interrogations having been made public.

Although some journalists have attempted to "uncover lies" behind the 11 September plot, this has been difficult as the central problem - which also faced the German courts - remains:

the lack of hard evidence due to the withholding of witnesses and criminalisation of "whistleblowers", allegedly in the interest of "national security", and the fact that secret services, by definition, do not reveal their sources.

Secret service intelligence, however, is not only problematic because it is "secret": in July this year, three official reports - two from the US (secret service and 9/11 Commission) and the Butler report in the UK - documented the failure of security services to obtain accurate information, or any information at all, as was the case with the much-hyped "weapons of mass destruction" in Iraq. With regard to "11 September" as well as Iraq, secret services provided disinformation, and have been partly used, partly supported, by their respective governments to fulfil political aims. Wolf-Dieter Narr (*CILIP* no 78, 2/2004) argues:

*what [these] reports, without intending to, reveal with regard to [monitoring security services], is twofold: on the one hand, that [the report's authors] are incapable of even contemplating legislative control at the level of secret services and their governments. On the other hand, by not naming any institutional bodies or leaders, therefore no accountability, they secretly demonstrate the organised irresponsibility in which secret services and their governments operate.*

### The last minute Iran connection

The prosecution's presentation of evidence in Mzoudi's trial became even more bizarre when in January this year, faced with the court's imminent pronouncement of judgement, the BKA introduced a new "witness", an alleged former double agent for the Iranian security service, Vevak, and the CIA, going under the pseudonym of Hamid Reza Zakeri, who allegedly gave incriminating statements against Mzoudi during a BKA interrogation in Berlin. In February 2003, Hamid Reza Zakeri had claimed in the Arabian newspaper *Al-Sharq al-Awsat* that the "mastermind" behind 9/11 was not Khalid Shaikh Mohammed and had not originated in Afghanistan. It had actually been planned in Iran by the Egyptian Saif al-Adel, a former bodyguard for Osama bin-Laden. The two BKA officers who had interviewed Zakeri and gave a last minute appearance in the Hamburg court thought that Mr. Zakeri "was very convincing" and that he "looked competent". This view was not shared by the presiding judge. Zakeri, the alleged top agent, had given contradictory statements on the plot in different newspapers and the CIA had refused to pay him the \$1.2 million fee he demanded for information he apparently offered them in July 2001 (*Süddeutsche Zeitung* 31.1.04). Zakeri claims to have received the incriminating information on Mzoudi, portraying him as having been responsible for al-Qaeda "logistics", from his "active sources" in Iran through an encoded e-mail in December 2003. This e-mail seemed difficult to translate from Persian as it

was non-sensical and the BKA only received a copy with the sender's address blocked out. Presiding Judge Rühle wondered why the BKA had not kept the original and said it would be "one of the easiest tasks to make the sender legible".

Obscuring the knowledge of secret service evidence on 11 September even further, Walter Wellinghausen, a Hamburg local councillor who was sacked in August 2003 on unrelated corruption allegations, was found in January this year to have failed to return a secret service document detailing what the Hamburg authorities knew about the alleged "Hamburg cell" and its members before the attacks. This would, according to the prosecution's claim, also include Mzoudi and Motassadeq. On being asked to return the document, Wellinghausen maintained the secret file had apparently been lost.

These inconsistencies do not prove or disprove allegations of Ramzi bin al-Shibh's and Khalid Shaikh Mohammed's involvement in terrorism or the 11 September attacks. They merely present irresolvable questions for the legally stipulated truth finding mission of courts. The same restrictions that the German courts had to experience in the disclosure of central evidence to the actual events surrounding the attacks, were faced by the above mentioned US National Commission on Terrorist Attacks Upon the United States, which has been investigating the events since early 2003. The commission's final report, published on 22 July this year, still identifies Khalid Shaikh Mohammed as the "mastermind". Thomas Kean, former Republican governor of New Jersey and chairman of the commission, conceded that if there were any questions left unanswered, it would be down to the fact that "the people who were at the heart of the plot are dead" (*New York Times* 25.07.04).

Despite the fact that Mzoudi was and Motassadeq probably will be found innocent by the courts, they have been denied access to their universities, they have been publicly denounced as "top-terrorists" and they can be deported on grounds of security regulations under the Immigration Act that coexist (*Statewatch* vol 11 no 5) with the principle of presumption of innocence.

*Telepolis* 5.2.04, 5.3.04, 14.4.04, 23.5.04, 20.7.04;

*Süddeutsche Zeitung* (20/21.12.03, 16.1.04, 2, 8.4.04, 27.5.04, 14, 19.7.04; *New York Times* 25.7.04;

<http://www.adhamonline.com/News/Fouda.html>

<http://www.forum-innenpolitik.de/archives/000031.html>

<http://www.broeckers.com/scheichegal.htm>

Michael Meacher "The Pakistan connection. There is evidence of foreign intelligence backing for the 9/11 hijackers. Why is the US government so keen to cover it up?" *Guardian Unlimited*, 22.7.04

Virginia court information site for the Zacarias Moussaoui case: <http://notablecases.vaed.uscourts.gov/1:01-cr-00455/>

New German immigration law:

<http://www.aufenthaltstitel.de/stichwort/zuwg.html>

## Viewpoint

### Beyond September 11

New preface by Phil Scraton to "*Beyond September 11 - an anthology of dissent*" (Pluto Press)

*Beyond September 11* was conceived, written and edited in the immediate aftermath of that one fateful day. It was completed as allied forces proclaimed the 'liberation' of Afghanistan from Taliban rule, as over 600 men and boys were flown to be caged in Guantanamo Bay, as thousands of Afghans picked their way through the rubble of their former homes, and as a buoyant US Administration flexed its military muscle for the next phase in its self-styled 'war on terror'. The text captures that moment. It records George W. Bush projecting the war from the "focus on Afghanistan" to a "broader" battlefield. It concludes with a passage on the rewriting of history, the degradation of truth and

the pain and suffering "of death and destruction heightened by the pain of deceit and denial". Finally, it proposes that unleashing the world's most powerful military force against relatively defenceless states, resulting in thousands of civilian deaths, would promote recruitment to the very organisations targeted for elimination. There was little doubt that next in line after Afghanistan would be Iraq; a target made more poignant by the belief among US hawks that Saddam Hussein's regime represented the business unfinished by George W. Bush's father.

Barbara Lee, the lone Democrat congresswoman who voted against the military offensive in Afghanistan, exposed the

dangerous reality masked by the rhetoric of freedom and liberation:

*I could not ignore that it provided explicit authority, under the War Powers Resolution and the Constitution, to go to war. It was a blank cheque to the President to attack anyone involved in the September 11 events – anywhere, in any country, without regard to nations' long term foreign policy, economic and national security interests and without time limit.[1]*

### National security and “just wars”

Her fears were soon realised. In September 2002 the White House published the US Administration's new national security strategy.[2] Penned by Condoleezza Rice, it reflected the confidence of an administration committed to strengthening the power and authority of its military-industrial complex at the expense of the declining influence of an ineffectual United Nations. In his Foreword the US President affirmed that the “great struggles of the 20th Century between liberty and totalitarianism” were over, the “victory for the forces of freedom” had been “decisive”. The conclusion of the Cold War had left “a single, sustainable model for national success: freedom, democracy and free enterprise”. [3] There had been no compromise. Advanced capitalism, serviced by social democratic governments committed to the management of inherent structural inequalities, had defeated the communist alternatives. A new, grave danger had emerged at the “crossroads of radicalism and technology”. [4] ‘Radicalism’ was code for ‘Islamic fundamentalism’ and ‘technology’ for ‘weapons of mass destruction’.

The strategy stated that “freedom and fear are at war”. [5] In this context US foreign policy would prioritise “defending the peace, preserving the peace and extending the peace” in the “battle against rogue states”. These states “brutalize their own people”; “reject international law”; “are determined to acquire weapons of mass destruction”; “sponsor global terrorism”; “reject basic human values”. Most significantly, they “hate the United States and everything for which it stands”. [6] They would be reminded that the “United States possesses unprecedented – and unequalled – strength and influence in the world”. This would be reflected in the US National Security Strategy “based on a distinctly American internationalism that reflects *our* values and *our* national interests”. [7] For, the “war on terror is a ‘global’ war” with the United States “fighting for *our* democratic values and *our* way of life”. [8]

With the ‘justification’ established, the programme for further military action against rogue states was revealed. The use of pre-emptive offensives was an imperative, but unacceptable in terms of the UN Charter. The “United States can no longer rely on a reactive posture as we have done in the past”. [9] While previously in international law the legitimacy of pre-emption was predicated on evidence of offensive mobilisation, “we must adapt the concept of imminent threat to the capabilities and objectives of today’s adversaries”. [10] What was proposed, however, was not adaptation but a change of definition, including other states’ capacity to threaten:

*The greater the threat, the greater the risk of inaction – and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy’s attack... the United States cannot remain idle while dangers gather.[11]*

Even Henry Kissinger was concerned; “It is not in the American national interest to establish pre-emption as a universal principle available to every nation”. [12]

The US Security Strategy established four key elements to its “broad portfolio of military capabilities”: defending the US homeland; conducting information operations; ensuring US access to “distant theatres”; protecting “critical US infrastructure and assets in outer space”. [13] In providing a framework for

action beyond the globe, its reach had become truly universal. According to Bush, the “moment of opportunity” had arrived. [14] What was this opportunity? To secure the “battle for the future of the Muslim world”. To succeed in “a struggle of ideas... where America must excel”. [15] The US objectives to “meet global security commitments” and to “protect Americans”, however, would not be “impaired by the potential for investigations, inquiry or prosecution by the International Criminal Court, whose jurisdiction *does not extend to Americans and which we do not accept*”. [16]

Having reconstituted the internationally agreed conditions for pre-emptive military action against nation-states, the US Administration formally placed itself and its citizens beyond the reach of international criminal justice. There was one further dimension to be inscribed in the new Security Strategy. How would the US Administration respond to dissident former allies within the Western democratic power base? Bush responded by demanding loyalty to its project: “all nations have important responsibilities: Nations that enjoy freedom must actively fight terror”. [17] If they refused to give the US the mandate for military action it sought, the consequences would be direct: “we will respect the values, judgement and interests of our friends and partners [but] will be prepared to *act apart* when *our* interests and unique responsibilities require”. [18]

There could not have been a more unequivocal rejection of the United Nations and of US allies’ independent political judgement. The 2002 National Security Strategy revoked the conditional basis of a ‘just war’ by rewriting the defence of pre-emption. As with other internationally agreed Conventions and legal restraints, it rejected outright the International Criminal Court. Finally, it delivered an uncompromising declaration of unilateralism. If its military might was to be mobilised, it would be on its own unconditional terms – regardless of legal restriction or the political judgement of its allies and the United Nations. While weapons inspectors travelled the length and breadth of Iraq and debate raged over the interpretation and legitimacy of UN Resolutions regarding Saddam Hussein’s regime, the US Administration prepared to invade. As far as the US hawks were concerned, the military offensive was not about establishing Iraq’s capacity to mount a serious and imminent threat.

From the outset, whatever the games played with Hans Blix, as head of the weapons inspectorate, and the UN Security Council, the invasion was a *fait accompli*. France and Germany, cornered in the Security Council, failed the ‘loyalty test’. In representing the case for the military offensive, the US Administration had freed itself from the unambiguous boundaries of self-defence laid down in the UN Charter. Pre-emption was now ‘anticipatory action’. In its mission to ‘secure the future of the Muslim world’, regime change – informed and supported by Iraqi exiles whose political credentials and judgement were dubious – was the sole objective.

### The invasion of Iraq

On the eve of the invasion, George W. Bush attempted to justify the offensive on the grounds of Iraq’s weaponry and the imminent threat it posed. In his address to the nation, the well-rehearsed script was delivered. He stated that 90 days after the UN Security Council passed Resolution 1441 requiring Saddam Hussein to make a full declaration of his weapons programme he had not done so and had failed to co-operate in the disarmament of his regime. He had never accounted for a “vast arsenal of deadly, biological and chemical weapons” and had pursued an “elaborate campaign of concealment and intimidation”. [19] The Iraqi regime not only possessed the “means to deliver weapons of mass destruction” but also harboured a “terrorist network” headed by an Al-Qaida leader. The connection of the regime to Al-Qaida was central to the US Administration’s position. It provided a direct line back to the events of September 11. Bush

concluded:

*Resolutions mean little without resolve. And the United States, along with a growing coalition of nations, will take whatever action is necessary to defend ourselves and disarm the Iraq regime.[20]*

As the key ally of the US the UK government was compromised. It had no reconstructed security strategy through which pre-emptive military action could be mobilised. It had to abide by the United Nations Charter while supporting the US Administration's determination to affect regime change in Iraq. The only possible justification for a military offensive was self-defence and for that to apply it needed evidence of the unambiguous, imminent danger posed by Iraq. However it attempted to re-interpret UN Resolutions back as far as 1991, the UK government sought an emphatic statement derived in independent sources. The United Nations Inspectorate had not produced substantiating evidence. Indeed, Hans Blix requested more time. And so the UK government looked to its intelligence and security sources to produce the necessary evidence. The dossier duly arrived. In his foreword to the dossier, Prime Minister Blair wrote:

*the assessed intelligence has established beyond doubt... that Saddam has continued to produce chemical and biological weapons, that he continues to develop nuclear programmes, and that he has been able to extend the range of his ballistic missile programme. I am in no doubt that the threat is serious and current... [Saddam] has made progress on WMD [Weapons of Mass Destruction]... the document discloses that his military planning allows for some of the WMD to be ready within 45 minutes of an order to use them.[21]*

Flying in the face of mass protest against the 'war' in Iraq, Tony Blair used this seriously flawed intelligence to legitimate his determination to support the US Administration. He later revealed that the dossier had been drafted by the Joint Intelligence Committee chairman and his staff. They were also the source of the 45 minutes estimation and had drafted the foreword, signed off by the Prime Minister.[22]

Reflecting on the deployment of UK forces, Tony Blair stated that "we went to war to enforce UN Resolutions".[23] It was a judgement based on the UK Attorney General's association of UN Resolution 678 (1990) and UN Resolution 1441 (2002). UN Resolution 678 authorised the use of "all necessary means" to remove Iraq's forces from Kuwait. It included the "restoration of international peace and security" throughout the region and the destruction of weapons of mass destruction throughout Iraq.[24] It was directed towards the 1990 allied coalition to achieve these ends. What followed was a series of further UN Resolutions culminating in 1441. In itself, 1441 sought the Iraq regime's compliance with the weapons inspectorate but its wording could not be interpreted as providing authorisation for invasion or war. As Lord Archer, former UK Solicitor General, stated: "1441 manifestly does not authorise military action".[25]

Despite this opinion, shared by many eminent legal academics and practitioners, the US and UK governments continued to overstate Iraq's military capacity and threat while persistently undermining the credibility of Hans Blix and the weapons inspectorate.[26] On the eve of the invasion, the most recent intelligence doubted the veracity of the 2002 dossier's claims. Its concern was that no evidence had been produced to verify that Iraq posed a serious or imminent threat. Lord Boyce, the UK Chief of Defence Staff, was so troubled that he demanded "unequivocal" legal opinion in support of military action.[27] What he received was the Attorney General's assertion that "on the balance of probabilities" Iraq possessed weapons of mass destruction and posed a real and serious threat. More recently, Blair has stated that: "in fact everyone thought he [Saddam] had them [weapons of mass destruction]". In remarkable double-speak that recasts his certainty at the time as inference, he commented:

*The characterisation of the threat is where the difference lies... we are in mortal danger of mistaking the nature of the new world... the threat we face is not conventional. It was defined not by Iraq but by September 11... September 11 for me was a revelation... The global threat to our security was clear. So was our duty: to act to eliminate it... If it is a global threat, it needs a global response, based on global rules.[28]*

The argument presented throughout the US Security Strategy document is implicit in Blair's few sentences. Because the world beyond September 11 has changed, military invasion of sovereign nation-states is acceptable whether or not a 'threat' is real. His conceptualisation of 'global' is instructive. There is no indication as to who are, or should be, the definers of 'global'. These are sweeping assertions from a Prime Minister without the capacity alone to deliver global security. Given its determination to operate unilaterally if necessary, there is no question that the US Administration regards itself as the principal definer.

### **Guantanamo Bay and Abu Ghraib**

This has been demonstrated in the decision to hold prisoners at Guantanamo Bay. Despite criticism from other states, NGOs and human rights organisations, the US Administration has denied the checks and balances of international Conventions. Because soldiers captured in Afghanistan did not wear the uniforms of a recognised army, they were "undistinguishable from the general population". Redesignated 'unlawful combatants', Article 4 of the 1949 Geneva Conventions could not be applied as they did not qualify as 'soldiers in action'. Yet Article 5 of the Third Geneva Convention states that, should there be any ambiguity regarding a detainee's status, they should be held as a prisoner of war until a competent tribunal determines their status.

Once again, the White House Press Secretary demonstrated how the 'global rules' have been written to suit US priorities. In a strident response to persistent criticism over the unlawful detention, without legal protection or due process of the law, of over 600 men and boys he stated: "The war on terrorism is a war not envisaged when the Geneva Convention was signed in 1949. In this war global terrorists transcend national boundaries".[29] Donald Rumsfeld, US Defence Secretary, had already established the guilty status of the captives: "These people are committed terrorists. We are keeping them off the streets and out of airlines and out of nuclear power plants".[30] And so, with the Military Order, issued on 13 November 2001 and entitled *Detention, Treatment and Trial of Certain Non-citizens in the War Against Terrorism*, a new form of stateless detention of the 'enemy' was born.

As the UK brokered a 'special favours' deal to release several UK citizens, it became clear that many of those held at Guantanamo Bay were being held in appalling conditions; enduring abuse and intimidation in the interrogation they received.[31] Their stories preceded the release of photographs of US soldiers, men and women, humiliating and degrading prisoners in Iraq. As was the case in Vietnam thirty years earlier, the much-proclaimed 'most efficient' and 'best disciplined' army in the world, was exposed as brutal and sadistic. US soldiers, the recipients of relentless post September 11 propaganda before leaving for Iraq, considered those in captivity to be beneath contempt. Why were politicians, the media and the public surprised? When the enemy is dehumanised, stripped of human identity, it is a small step to strip their clothes, to force them to simulate sexual acts and to coerce them into masturbating for the camera. The degradation inflicted on the body reflects denigration assumed in the mind. Photographs become a visible manifestation and record of subjugation. For all time, they represent the institutional power of personal abuse. In the photographs, the pleasure enjoyed by the captors increases in proportion to the pain endured by their captives. Why the surprise? Perhaps it is because of the pornography of

representation; the overt expression of absolute power without responsibility and with assumed impunity.

The torture, degradation and human rights violations at Abu Ghraib prison cannot be dismissed as the shameful acts of a small clique of cowboy soldiers. The techniques used by military intelligence officers were institutionalised. Brigadier General Janis Karpinski, now relieved of her command, was clearly implicated. Her weak, implausible defence was that senior officers frustrated her attempts to exert control on interrogators. The International Red Cross was excluded from visiting the interrogation block and announced that torture, inhuman and degrading treatment were endemic throughout the holding centres for prisoners. At the time of writing, the war crimes before an internal US investigation include cold water treatment, phosphorous liquid from broken lights poured on naked bodies, beatings with broom handles, constant threats of rape and actual rape with instruments.

And the abuses are not confined to soldiers. Private contractors, now working in Iraq, are above the law. Two US companies, Caci and Titan, are contracted to conduct interrogations of prisoners of war. Titan's current 'analytical support' contract is worth \$172m, its employees are on salaries in excess of \$100,000. There are plans to build two privately run prisons in Iraq. Each will house 4,000 prisoners and the cost of building and staffing is estimated at 400 million dollars.

Military personnel can be held accountable for their abuses and crimes. In theory, they are subject to military discipline and military courts. Not so for private contractors. They are not governed by military rules. Iraqi law is in disarray and civilians in Iraq are outside US jurisdiction. Even if they were subject to local law their contracts give them exemption. And, as has been shown, the US explicitly rejects the use of the international criminal court against its citizens. What has happened in Iraq is a situation in which private contracts are running at over \$10 billion per year and the military service industry has legal immunity.

### **Demonisation and destruction**

For over a decade the West's demonisation and destruction of Iraq's people and its infrastructure have been relentless. It is 13 years since the appalling massacre of retreating Iraqi troops on the Basra Road. It was a vengeful bombardment of extermination. Since that time, and until the 2003 invasion, over 70,000 tonnes of bombs were dropped on Iraq. Over half a million civilians died as a result of disease, malnutrition and poor medical care. Many were children. Sanctions on essential foods and medicine were maintained alongside indiscriminate and persistent bombing.

The 2003 invasion of Iraq was retribution. It was the final act, the final solution to unfinished business. Of course there was no defence for Saddam Hussein's regime; the brutalisation of his own people and his attempted mass extermination of Kurds and his other opponents. Yet, prior to the 1991 Gulf War, these acts had been implicitly condoned, supported financially and politically by Western states. The 2003 self-styled coalition of liberation was, without question, a coalition of oppression. Effectively, the Alliance's preconditions on inspection; its language of pre-emptive military strikes; its demand for immediate regime change; its deceit over weapons of mass destruction; its propaganda of nuclear capability; its commitment to unilateral action; its vilification of France and Germany amounted to a catastrophic end-game. All credibility, any hope of reason and resolution in the context of growing terrorist cells, has been sacrificed in the rubble of Afghanistan and Iraq. As civilian casualties and deaths mount, redefined as unfortunate mistakes, as 'collateral damage' or as necessary sacrifices in a bigger picture, a new generation of armed activists and suicide bombers is recruited. In the UK and USA alike, to be Muslim is

to be suspicious and the ideology of 'otherness' that underpins and promotes punitive military offensives abroad, underpins and infects punitive policing and rights abuses at home.

It is appropriate, in the search for the ideological roots of people as 'other', dehumanised and demonised as 'monsters', that the last word is with the late Edward Said:

*Burning in the collective US unconscious is a puritanical zeal decreeing the sternest possible attitude towards anyone deemed to be an unregenerate sinner. This clearly guided US policy towards the native American Indians, who were first demonised, then portrayed as wasteful savages, then exterminated, their tiny remnant confined to reservations and concentration camps. This almost religious anger fuels a judgmental attitude that has no place at all in international politics, but for the US is a central tenet of its worldwide behaviour. Punishment is conceived in apocalyptic terms... Sinners are condemned terminally, with the utmost cruelty regardless of whether or not they suffer the cruellest agonies.[32]*

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