statewatch

monitoring the state and civil liberties in the UK and Europe

vol 15 no 1 January-February 2005

Role of new EU Internal Security Committee being decided by the Council - in secret

When the new EU Constitution was being hammered out one of the least contentious aspects (at least amongst those privy to the discussions) was the proposal to create a Standing Committee on operational cooperation on internal security (Article III-261). The first draft of the report by "Working Party X" (on freedom, security and justice) spoke of such a committee dealing with issues "including" policing and judicial cooperation. This then changed to "internal security" – a concept which embraces all the agencies of the state from those who maintain "law and order" and border controls through to the military. Article III-261 says this standing committee is to be setup to:

ensure operational cooperation [by facilitating] coordination of the action of Member States's competent authorities

This text seems pretty explicit as to its role, namely "operational cooperation" and "coordination of.. action". However, a paper circulated by the Luxembourg Presidency of the Council of the European Union (the 25 governments) to the Informal meeting of Justice and Home Affairs Ministers, 27-29 January 2005 says, quite extraordinarily:

The exact nature of the committee cannot be discerned by reading Article III-261

If the "nature" (ie: the job) of the committee cannot be read into the text of the Constitution, where can it?

The Presidency paper asks whether the committee should be a "technical committee with an exclusively operational brief" or should it play a "legislative" role as well. However, the press release from the meeting noted "diverging points of view" on its role.

By early 2005 the new committee had acquired the acronym, "COSI" (Standing Committee on Internal Security). Just prior to this informal meeting the Commission said that operational cooperation had "made least progress" and that:

The COSI should not have legislative tasks (EU doc no: 5573/05, Note from Council General Secretariat to the Article 36 Committee)

By the end of February concrete options on the role of COSI were put forward for discussion in the Article 36 Committee (high-level officials from Interior Ministries). An unpublished "Discussion paper" from the Presidency set out a "definition" of "internal security" by "combining" different Articles from the Constitution. "Internal security should at least include":

· *the prevention and combating of* ***crime****,*

· *the prevention of the terrorist threat*

· ***intelligence exchange***

· ***public order*** *management*

· *the prevention and combating of criminal offences such as* ***illegal immigration and trafficking in persons***

· *the provision of an* ***integrated management system for external borders*** *as a major factor for preventing (certain) forms of crime within the EU*

·*and crisis management with cross-border effects within the EU*

(EU doc no: 6626/05, emphasis added)

COSI's role is not to be:

directly in charge of conducting operational activities but shall ensure that operational cooperation is promoted and strengthened. This could be described as providing the appropriate framework, tools, policy, implementation and evaluation to ***allow/oblige*** *the competent authorities to cooperate in areas of common interest or threat.. (emphasis added)*

COSI should be informed of "shortcomings or failures" (including through evaluations) and have: "a mandate to direct action in order to address these shortcomings"

The paper (6626/05) then sets out three "Options" for the role of COSI. The first "option" would limit COSI's role operational planning and coordination – as set out in the Constitution.

The second "option" would give COSI: "strategic functions" including drawing up an "EU plan for internal security" plus "solidarity clause related functions " (going to the aid of other member states) plus operational cooperation, evaluation and external relations – everything except "legislative functions". Under "option 2" legislative functions would be carried out by working parties but there would still be a need for

IN THIS ISSUE

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

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

a "specialised committee" to coordinate "all legislative work related to "internal security"" to meet "the needs identified by COSI".

The third "option" would see COSI carrying out **all** the functions under "option 2" plus a legislative function.

The paper proposes that the membership of COSI should be "residential", jargon for a single, named, permanent representative from each government. This "standing" committee would then be assisted by "relevant experts" depending on the issue. Earlier ideas as to composition suggested a central role for several agencies – Europol, Eurojust, Strategic Committee on Asylum, Immigration and Frontiers and the Police Chiefs Task Force – their role now looks like being advisory.

Tony Bunyan, Statewatch editor, comments:

"It is quite outrageous that the role of the new EU internal security committee is being decided in secret by the Council. If it becomes a high-level legislative body as well being in charge of operational matters a whole swathe of decision-making and practice will be removed from democratic debate and discussion.

Under the Constitution the European Parliament and national parliaments are only to be "kept informed" of this Committee's work – which means there will be no parliamentary scrutiny of individual proposals or reports, simply very general summaries every now and again. If the Council gets its way we will see an EU Interior Ministry outwith any democratic control"

EUROPE

EU

SITCEN's emerging role

Another indication of the growing executive power of the Council is the role of the Joint Situation Centre (known as SitCen). Last year Mr William Shapcott, Director of SITCEN, gave evidence to the House of Lords Select Committee on the European Union's examination of EU counter-terrorism preparation (14 November 2004). He said that SITCEN "had existed as a sort of empty shell" until 11 September 2001 but that soon after the sharing of intelligence and assessments on external relations started. Later, in 2004, it was decided to extend the scope of SITCEN to cover internal security too especially through national security services (Solana announced as much in July 2004, see *Statewatch* vol 14 no 5).

What is revealing in Mr Shapcott's answers to the committee is the status of SITCEN – it is not as we might have implied previously part of the emerging military structure:

the Situation Centre has always been in the [General] Secretariat. We have been quite careful, even from the beginning, not to formally have it in the Second Pillar. We have played with Solana's double-hatting. He is the Secretary General; we are attached to his cabinet, so we are squarely in the Secretariat General.. [and] Solana has contacts with Justice Ministers which he never used to have. I now go to a host of JHA Committee meetings which I would never have dreamt of a long time ago.

Mr Shapcott also told the committee that SITCEN was looking forward to the new Constitution coming into force as this would give it direct access to the 128 EU missions based around the world. At the moment they are "Commission delegations" but "the Commission does not like us [SITCEN] to task them". Under the Constitution the "External Action Service" will come into being and "we can task them, we can steer their activities". Under the Constitution Mr Solana, currently the Council's "High Representative" common foreign and defence policy, will become the EU Foreign Minister.

The Council is clearly bidding to take over the Commission's current external relations role, though many in the European Parliament are not happy with this idea.

EUSKADI

The "Ibarretxe Plan"

In February, the Spanish Parliament rejected the Basque Parliament's proposed reform the *Estatuto de Autonomía para el País Vasco* (Statute of the Autonomous Region of the Basque Country). The Basque Parliament had approved the *Plan Ibarretxe* (named after the president of the Basque government who presented it) in December 2004 after it received the backing of the three parties that support the government and three votes from the former *Batasuna* (the party that was banned because of its supposed links to ETA).

One of the main limits of the *Plan* is that it only enjoys the support of the nationalist parties. The backing of the *Izquierda Unida* does not change this because, formally, it only permits the plan to be discussed in the Spanish Parliament, (although it appears obvious that this is required of it in return for remaining in the Basque government, alongside the *Partido Nacionalista Vasco* (PNV, Basque Nationalist Party) and *Eusko Alkartasuna* (EA). The partial backing that the plan was given by *Batasuna* (one could call it tactical backing) does not indicate much, other than the fact that it does not represent the entire Basque nationalist community.

Its partial character, that of representing only one of the identities that are present in Basque society, not only makes its progress in the Spanish parliament impossible, but also prevents the possibility of it being adopted by the Basque society as a whole.

For the PNV-EA the Ibarrexte Plan serves several purposes: as an electoral tool to secure votes in the autonomous regional elections in April 2005; it reduces the political space occupied by ETA and by *Batasuna* while simultaneously providing ETA with a route to smoothen and justifying its abandoning the armed struggle. The plan, which is the main driving force for cohesion in the nationalist-Basque world in the last 60 years, contributes to secure the PNV's hegemony over Basque nationalism as a whole.

Its use as an electoral weapon has become all the more evident in the run-up to the regional elections, but the elections also illustrate its limitations, because their result is not expected to significantly alter the parliamentary or regional balance of power. The nationalist and non-nationalist blocs will continue to split society into two blocs and the problem cannot be resolved by discovering which of the two halves is larger. Furthermore, the fact that *Batasuna* will be prevented from participating in these elections gives them a sense superficiality, highlighting the provisional nature of the next Basque Parliament and lengthening ETA's life span. It has been demonstrated that political debate over Basque self-determination remains impossible while ETA continues to exist.

Its recent situation highlights that ETA is in a terminal phase. It seems apparent that ETA no longer represents a serious threat to the stability of the Spanish regime and this substantially affects the credibility of its project. This, alongside its increasing isolation, not just in Spanish society but also in the Basque country, means that any plans, debates or rumours that surface always revolve around the possible routes for laying down their weapons. However, ETA continues to show the ability to renew its ranks, in spite of a ceaseless trickle of arrests and it maintains strong bonds with the *izquierda abertzale* (nationalist left), a very important sector of Basque society.

With its "no" the Spanish Congress has categorically told Ibarretxe that his proposed reforms cannot be a meeting point,

suggesting that an amicable arrangement with the Spanish state against the representatives of the vast majority of the population makes no sense. Moreover, it is argued that Basque nationalism must realise that the fact of placing practically all of its fundamental beliefs, all of the dogmas in its doctrine, inside the Basque statute is not a reasonable manner of achieving its claim for recognition.

However, a more open discussion is gaining ground in response to the row around the Ibarretxe plan, the reform of the Catalan statute and the Zapatero government's promotion of a controlled process of constitutional reform. Unless Zapatero revives this attempt to redefine Spain's constitutional boundaries, he will leave behind the embers of a frustration that is very likely to make the situation worse. He is faced with a dilemma: having to offer a degree of reform that neutralises the dissatisfaction of peripheral nationalisms and, at the same time, to ensure that there is a sufficient degree of control and stability to neutralise or satisfy the fears of the *Partido Popular* (PP).

IMMIGRATION

GERMANY

Asylum seeker burned to death in prison cell

On 7 January 2005, a Sierra Leonean asylum seeker burned to death in a prison cell of the police station at Dessau, Saxon-Anhalt, while his arms and legs were cuffed to the bed. After weeks of silence, and increasing public pressure the state attorney has begun investigating the case.

21-year old Oury Jalloh was arrested and detained for public order offences. He was drunk and on drugs. Before being put in a cell he was searched and his pockets emptied, although nothing was found on him, as police witnesses testified. He resisted detention but the media suggests that this could have been due to the fact that no interpreter was present and that the detainee did not understand was happening to him. Because of his resistance, his arms and legs were handcuffed to a bench he was lying on. The rest of the cell was an empty, tiled room in the basement of the police station. The police claim that his condition was checked every 30 minutes, as is usual in such cases.

However, because of the noise the detainee made, the officer in charge turned off the intercom system, which is meant to alert officers to any unexpected events in the cell. Even more disturbing is the fact that the fire alarm was switched off. Only when police officers went downstairs to check on their prisoner did they discover a fire. By then Oury Jalloh was dead.

The state attorney's investigation has brought to light the following facts:

1. that the detainees mattress was made of almost inflammable material and could only be ignited by lighting the filling.
2. that the hands and ankles of the detainee were fractured.
3. that the police claim that the fire alarm was switched off because of earlier false alarms was false (a test proved that it worked perfectly).
4. that initially, no lighter was found. It was produced only weeks after the fire.
5. that an officer was lying when he told the state attorney that he went down to the basement when the fire alarm went on. A colleague testified that he did not go down to the basement but switched off the alarm.
6. that the officer in charge was suspected of involvement in a similar case in 2002. In the same police cell, another detainee died from a fractured skull and internal injuries. Then, the investigations were terminated. Now charges are to be made.

The questions the state attorney's report raises are the following: Where was the lighter kept after the fire? How could the detainee keep a lighter despite the fact that he was searched and his pockets emptied? How could he possibly have set fire to the mattress whilst handcuffed to the bench? How could an inflammable mattress catch fire so quickly? Why were no attempts made to extinguish the fire and to rescue the detainee?

Opposition in parliament and the media suspect that the authorities have been trying to cover-up the whole incident. They are also critical of the fact that no regret has been expressed. Meanwhile, the officer in charge has been suspended and the state attorney is investigating the police officers for grievous bodily harm with the consequence of death.

DPA, 17.1.05; Süddeutsche Zeitung 18.1.05

ITALY

Gay Senegalese man's deportation rejected

A *giudice di pace** in Turin rejected the expulsion from Italy of a homosexual man from Senegal on 3 February 2005, deeming that the fact that homosexuality is considered a crime in the man's home country which can lead to up to five years imprisonment would lead to the expulsion representing a breach of Article 2 of the Italian Constitution, which states that "sexual freedom must be considered part of the wider right to express one's personality". The man, who has been in Italy since 2003, and who had previously possessed a residence permit which had expired, received an expulsion order in October 2004. He contacted *ARCI Gay*, an organisation that defends the rights of homosexuals, which put him in touch with a lawyer who filed an appeal against the expulsion, arguing that Article 19 of the Italian immigration law decrees that "people who may be persecuted when they return" to their country of origin are among the categories of people who cannot be expelled. The response by the minister for Reforms, Roberto Calderoli from the *Lega Nord* (Northern League), a party whose anti-immigrant views are well documented, was unsurprising: "Poor justice, poor Italy, once praised as a land of saints, poets and sailors, which, on the other hand, has today become a land of terrorists and illegal faggots".

The decision acquires greater significance considering the debate in the Council of the European Union (representing the 25 member states) over the adoption of a list of ten "safe countries of origin" whose nationals are to be systematically denied refugee status on the basis that their claims are "unfounded" because the level of human rights protection in their country is such that persecution severe enough to cause people to flee never occurs. A draft common list of ten safe countries was first released in March 2004, featuring three Latin American and seven African countries. It gave rise to divisions during the consultation process involving delegations from member states and the Commission over whether the countries should be included in an assessment process that was marred by a lack of information and time to make informed, credible decisions, and by a surprising willingness by some delegations to overlook evidence of important human rights breaches to declare a country "safe".

Homosexuality is illegal in all the seven African countries in the draft list, whose inclusion was opposed by the Commission: Senegal (whose inclusion was also opposed by three of the 15 delegations from member states whose responses were obtained by *Statewatch*), Benin (opposed by five member

state delegations), Botswana (opposed by two delegations), Cape Verde (opposed by two delegations), Ghana (opposed by five delegations), Mali (opposed by four delegations), Mauritius (opposed by one delegation) and Senegal (opposed by four delegations). The list was adopted unanimously as an annex to to the draft EU asylum procedure Directive (8771/04), but will now fall within the scope of decisions which will be taken by qualified majority voting in the future. Thus, some countries are likely to be included in spite of opposition from some member states' delegations.

** Honorary "judges of the peace", a figure established in 1995 with competencies for some civil cases and, since 2002 for minor criminal offences against people, such as bodily harm or failure to provide assistance; reputation, such as defamation; or property, such as damaging or entering someone else's property. They were given competence to validate expulsion in September 2004, see above.*

Repubblica, 4.2.05; ILGA International Lesbian and Gay Association (South Africa), "ILGA 2000 Africa Report, "Homosexuality in Africa", available at: http://www.afrol.com/Categories/Gay/index_legal.htm; Afrol News "Legal Status of Homosexuality in Africa", available at: http://www.afrol.com/Categories/Gay/index_legal.htm; EU divided over list of "safe countries of origin" Statewatch calls for the list to be scrapped, Statewatch news online, September 2004, available on: http://www.statewatch.org/news/2004/sep/safe-countries.pdf

Giudice di Pace section on the justice ministry website: http://www.giustizia.it/giudice_pace/indice.htm

SPAIN

Record number of migrant deaths

A report by the *Asociación Pro Derechos Humanos de Andalucía* (APDHA, Andalusian Human Rights Association) entitled *Illegal Immigration in 2004* highlights that last year saw the highest number of deaths of migrants attempting the sea-crossing into Spain that has been recorded in the last ten years.

The figure of verified deaths is 289, although the APDHA estimates that 500 people may have died. The most dangerous points, when the most deaths occur, were either immediately after leaving the Moroccan or Western Saharan coast (103 deaths), or during open sea interception and rescue operations (71 deaths) after the dinghies have been spotted by the *Sistema Integral de Vigilancia Exterior* (SIVE, Integrated External Surveillance System), which includes radar and infra-red camera facilities. These latter deaths are claimed to be a result of the very "philosophy" of early interception that the SIVE is implementing which, furthermore, relies on launches that are unsuitable for open sea rescue operations.

The SIVE's effects on migration flows include an increase in the number of immigrants attempting the sea crossing to the Canary Islands (which is longer and more dangerous), where there have been 137 deaths, rather than the Andalusian coast, where 25 would-be migrants have died. The report highlights that investment into the SIVE is constantly growing, and that it is being expanded to cover increasingly large areas of the coast (both in Andalusia and in the Canary Islands). Investment into the SIVE for 2003 was over 29 million euro, a figure that rose to over 32 million euro in 2004. The figure continues to rise in spite of the change in government, with a planned expenditure for 2005 of over 40 million euro just in Andalusia, with a further 12 million to be allocated for its development and running costs in the Canary Islands.

Expenditure aimed at carrying out repatriations also rose by 120% in 2004, with flights chartered and new repatriation agreements signed with African countries, and the budget for obstructing entry into the Spanish north African enclaves of Ceuta and Melilla is also set to rise, with plans for the extension of the perimeter road and for raising the height of the border fences to over six metres. The APDHA also notes that this increase in investment is not being matched in relation to the means available to the *Guardia Civil* for open sea rescue operations, at the same time as the practice of intercepting and accosting dinghies in the open sea is causing a high number of deaths.

As for the number of vessels and people intercepted during the crossing, the APDHA report notes that the situation is not significantly changing as the figures are only rising slightly (and are certainly not decreasing). It also denounced a "spin" exercise by the PSOE government regarding the "arbitrary" use of different criteria in relation to the presentation of figures on the detention of would-be immigrants to demonstrate the effectiveness of the SIVE.

Other concerns expressed in the report include the violation of the rights of immigrant detainees, and the fact that Morocco, in its new role as a "buffer state", has been praised by Spain for passing a new immigration law that has been widely condemned by Moroccan human rights associations. The EU and Spain are accused of hypocrisy when, simultaneously, they call for the democratisation of Morocco and for the adoption of legislation that expands the repressive functions of the Moroccan state and is likely to restrict the civil liberties of Moroccans and sub-Saharan Africans alike. On a more positive note, the report welcomes the fact that readmission agreements concerning non-nationals between Spain and Morocco that were signed in 1992 and re-affirmed in 2003 are not being implemented, and that the Spanish *fiscal general del estado* (general attorney) has withdrawn an order that called for the treatment of immigrant minors who are over 16 as adults.

Informe sobre la inmigración clandestina durante el año 2004, Asociación Pro Derechos Humanos de Andalucía, Área de Inmigración, Dec 2004.

SPAIN

Migrant regularisation hands power to employers

On 7 February 2005 a three-month period began for immigrants to fulfil requirements to regularise their residence in Spain. The process has been strongly influenced by the government's emphasis on the "underground economy surfacing", in which the objective is not to regularise those migrants living in an irregular condition (1,300,000, according to the government), but rather the regularisation of those migrant workers who are selected by their employers, (everything will depend on the employer because only those migrants with employment contracts will be considered). This situation has made migrant workers dependent in relations with their employers.

Migrant workers are being forced to pay their Social Security contributions rather than their employers. This is particularly the case with those employed in the domestic sector.

The procedure that has been established is undermined by an extremely restrictive interpretation of the norm, particularly with regards to the requirement that the only document that can be used as proof of residence before 8 August 2004 (one of the criteria) is the certificate of inscription in the *padrón* (municipal register of residents).

This has resulted in a much lower number of applications than was expected. In the first month only 118,000 applications were filed, indicating that the final take-up will be low. Several social organisations have asked the government to make the requirements more flexible. There have been demonstrations in support of this goal. On 11, 12 and 13 February, there were lock-ins by migrants in eight neighbourhoods in Barcelona and Santa Coloma (Barcelona), and at the Pompeu Fabra University (Barcelona). More demonstrations are planned.

Immigration - in brief

■ **Italy: Moroccan dies trying to avoid detention**. SZ, a 44-year-old Moroccan father-of-two, died on 12 January 2005 in a hospital in Messina (Sicily) to which he was flown from Lamezia Terme (Calabria) on 9 January. He had been transferred to the detention centre in Lamezia Terme after serving a five-year prison sentence for offences related to drug dealing. He was admitted in hospital on 7 December because he was suffering from strong stomach pains. In the hospital, witnesses claimed that he inflicted wounds on himself and jumped out of a window. *Il manifesto, 14.1.05; Rete antirazzista siciliana, 11.1.05.*

Immigration - new material

Asylum, Immigration & Nationality Law, Alan Caskie. *Scolag Legal Journal* Issue 328 (February) 2005, pp. 29-34. This piece considers "Freedom of Movement", "Human Rights Issues", "Race Relations", "Asylum" and "Procedure".

Per una nuova disciplina della cittadinanza, Ennio Codini & Marina D'Odorico. *Quaderni ISMU* 2004, (Fondazione ISMU Iniziative e Studi sulla Multietnicità), pp. 167, Via Galvani 16, 20125 Milan, Italy. This study examines the granting of citizenship in Italy, calling for a re-assessment of this regime, which is currently based on *ius sanguinis* (blood and nationality of the parents) rather than *ius soli* (where a person is born or resides). The authors note that although Italian legislation in this field is relatively recent (law n. 91/1992), "it was born old", because the focus on *ius sanguinis* is deemed to be characteristic of countries of emigration (as Italy was until very recently) rather than countries receiving immigrants, such as Italy at present. This, and lowering the requirement of ten years' residence to be granted citizenship to five, are seen as crucial to allow migrants to exercise their political rights in the communities in which they live, and to fulfil the principle of "no taxation without representation", whereby certain rights should result from the financial contribution that migrant workers make to the countries in which they live through their work and taxes. The study includes a comparative analysis of regimes for the granting of citizenship in EU countries, and a wealth of documentation, legislation and charts.

Unaccompanied asylum-seekers: making a lawful age assessment, Robert Latham. *Legal Action* January 2005, pp20-24. This piece examines how officials decide whether an unaccompanied, undocumented asylum-seeker is aged 18 or not, an increasingly important issue given the impact of the Immigration and Asylum Act 1999, which excludes asylum-seeking children from the National Asylum-Seekers Support Service Regime.

The detention of asylum seekers in the UK, Margaret S. Malloch & Elizabeth Stanley. *Punishment & Society* Vol. 7 no 1 (January) 2005. pp. 53-71. This article considers the media and political representation of asylum seekers as criminals and the role of detention as "a punitive method to assuage public fears concerning supposed "risk" and potential dangers to "security"."

La regolarizzazione degli stranieri. Nuovi attori nel mercato del lavoro italiano, Eugenio Zucchetti (ed.). *Fondazione ISMU Iniziative e Studi sulla Multietnicità*, pp.443, November 2004. An in-depth study of the regularisation of undocumented migrant workers that was carried out by the Italian government in 2002, which resulted in 701,906 applications being filed involving 705,413 migrant workers, of which 644,083 (91.3%) were accepted and over 50,000 were rejected. A wealth of statistics are provided concerning the cities and regions where the applications were filed, the kind of employment they were involved in (372,454 applications for subordinate work, 189,216 for domestic work, and 140,236 for care work), their nationality and their contractual and wage conditions. The cities where the most applications were filed were Rome (107,226), Milan (87,093), Naples (36,914), Turin (36,038) and Brescia (24,384), and the migrant workers applying for regularisation were mostly Romanian (142,963), Ukrainian (106,633), Albanian (54,075) and Moroccan (53,476) citizens, and over 30,000 citizens of Ecuador, China, Poland and Moldova also applied. The different chapters of the book offer an overview of what is referred to as the "great regularisation", as well as in-depth studies of its effects in four different provinces (Milan, Vicenza, Rome and Naples), which include sketches of the cities' migrant communities, both in terms of their numbers and patterns of employment. Eugenio Zucchetti highlights that periodic regularisations are becoming a central "pillar" of Italian immigration policy* (there were four regularisations from 1986 to 1999), as 60% of the migrants in Italy in 1999 had regularised their position, which means that an extremely high proportion of the migrants working in Italy have been "irregular" at one time or another. *Author's note: although they are usually referred to as "extraordinary".

"Calla o hago que te expulsen", ("Shut up or I'll have you expelled"), Manuel Altozano, *El País*, 20.2.05, p.26. A story that illustrates the defencelessness experienced by many migrant workers who are illegally employed in Spain. An undocumented Bolivian migrant, Carlos Óscar Romero, who was working on a building site installing elevators in Maracena (Granada), fell off an eight-metre-high scaffolding on 14 February 2004 and died. As he was in a coma in hospital, one of the site owners threatened his brother, Agustín Romero, with doing everything in his power to have him expelled if he told anyone of the accident, and the site owners also denied that the man was part of the workforce. Agustín told *El País* about conditions on the site (where he himself had previously worked), with low pay (700 Euros a month) for long working hours (60 a week), and the requirement to hand over his passport to the company, as well as adding that someone with as little experience as his brother had, should have never been made to climb on scaffolding that high. The *Guardia Civil* (Spain's paramilitary police force) arrested the site owners, who are accused of contracting an illegal migrant, failing to provide assistance to him following the accident, and trying to cover up the accident through threats.

LAW

UK

McLibel 2 denied a fair trial - ECHR

On 15 February 2005 the "McLibel two", David Morris and Helen Steel, won their case at the European Court of Human Rights (ECHR) when it found that the British government's failure to provide legal aid meant they did not receive a fair trial. In 1990 the pair were sued for libel by McDonald's for distributing leaflets that questioned the ethical nature of the company's operational practices. The result has been a 15-year legal case that included a 313-day trial, the longest in English legal history. Because libel cases are excluded from legal aid they received no financial assistance throughout this period. This left them ill-prepared and with no choice but to represent themselves in court. In contrast, McDonalds spent an estimated £10 million on legal fees.

In 2000, Morris and Steel brought this disparity to the attention of the ECHR arguing that the UK's libel laws breach both Article 6 (the right to a fair trial) and Article 10 (the right to freedom of expression) of the European Convention on Human Rights. They claimed that in such cases of defamation the law was massively in favour of the rich over the poor who often could not afford to participate on a financial basis regardless of the validity of their claims. Moreover they argued UK libel law is heavily weighted against the defendant because they must prove the veracity of every word of the allegation. In 1997 this meant that despite endorsing their main claims that McDonald's paid low wages, were cruel to animals and exploited children through advertising campaigns, the judge ruled against the two because other parts of the leaflet were defamatory. He awarded £60,000 in

damages (later reduced to £40,000 on appeal); a sum that Morris and Steel have refused to pay.

Largely in response to their case, the 1999 Access to Justice Act provided for the funding of defamation cases in "exceptional circumstances". The pair's lawyers claim that none has yet to be granted. The ECHR found that "denial of legal aid to the applicants had deprived them of the opportunity to present their case effectively before a court". Morris and Steel were awarded damages of 20,000 and 15,000 euros respectively. The government is obligated to comply with this finding and provide legal aid for a greater range of libel cases, but while the Department for Constitutional Affairs claims the government will be re-evaluating the libel laws, Lord Falconer, speaking recently in the House of Lords, made it clear to peers that "on the basis of the judgment in the case, we do not intend to extend legal aid generally to defamation cases", (see *Statewatch* Vol. 3 no. 3, *Statewatch News Online* August 2004).

J. Vidal "McLibel: Burger Culture on Trial" (The New Press, 1997); ECHR: http://www.echr.coe.int/Eng/Press/2005/Feb/ChamberjudgmentSteel&MorrisvUnitedKingdom150205.htm: www.mcspotlight.org

Law - new material

The Freedom of Information Act 2000 explained, Guy Vassall-Adams. *Legal Action*, January 2005, pp. 15-19. The FIA 2000 received the royal assent in November 2000 and came fully into force in January 2005. This article explains the new Act's main provisions and gives examples of how it is likely to work in practice.

State of Exception, Giorgio Agamben. *University of Chicago Press* (ISBN 0-226-00925-4) US$ 12. Agamben draws on the writings of Carl Schmitt and Walter Benjamin to examine the extent to which the rule of law has been replaced by a permanent "state of exception...at the limit between politics and the law." The book contains a useful overview of the development of "emergency powers" within the legal systems of Western democracies, and examines the use of the "fictitious" emergency as a basis for the suspension of the rule of law. Agamben contends that the US Patriot Act and similar legislation in the UK and Europe attempt to "produce a situation in which the emergency becomes the rule", the dominant paradigm of government in contemporary politics.

The Nightmare and the Noble Dream - A Life of HLA Hart, Nicola Lacey. *Oxford University Press* 2004, pp392 (ISBN 0-19-927497-5). Useful and well-researched biography of Herbert Hart, Professor of Jurisprudence at Oxford, and probably the most influential legal theorist in the UK in the post-war period. Hart, in his *The Concept of Law* and subsequently, drew on the works of JL Austin and Ludwig Wittgenstein to propound a theory of law as human artefact, deriving its authority not from God or some metaphysical conception of "natural law", but from its accordance with an agreed criteria for recognition, such as parliamentary enactment or judicial precedent. Hart's originality was in arguing that legal rules and moral standards were distinct - that, for instance, the legal prohibition against killing is not the same as, and derives its validity in a different way from, the moral injunction against killing. Lacey's biography recalls Hart's debates with Devlin, wherein he contended that democratic states are not entitled to enforce moral standards for their own sake, and his interventions in support of the decriminalisation of homosexuality and the legalisation of abortion. At a time when we are best by a government which insists on law as a means of moulding individual behaviour in all aspects of everyday life, it is useful to be reminded of Hart's resistance to political paternalism and his clearminded utilitarianism.

Using FoI, Maurice Frankel. *Free Press* no.144 (January-February) 2005. Frankel provides a guide to using the UK Freedom of Information Act that has recently come into force. He details the correct method of applying for information under the act and offers advice as to how to best yield results. He also explains which information is exempt from disclosure, and suggests a course of action should you feel that the body you have applied to has improperly withheld information from you.

MILITARY

GERMANY

"Abu Ghraib style" abuse in army no isolated incident

Peter Struck, the German defence minister, first insisted that incidents of abuse that were uncovered in German army barracks last year were isolated incidents. Now the Defence minister and the Parliamentary Commissioner for the Armed Forces, Willfried Penner, has condemned the apparently widespread abuse but still insists that the German army should not be put under "general suspicion". On 1 December 2004, in a defence committee meeting in parliament, Struck admitted that preliminary investigations had been initiated in more than ten cases, and according to the national paper S*üddeutsche Zeitung*, the army has begun investigations in at least 17 locations: in Ahlen, Brandenburg, Bruchsal, Coesfeld, Dornstadt, Hamm, Kempten, Mayen, Nienburg, Parow, Sonthofen, Stuttgart, Wildeshausen, Wittmund, Varel, Doberlug and Calw. Around 30-40 army instructors are being investigated. The incidents are being compared to "Abu Ghraib-style" mock interrogations where "interrogators" hooded and beat their victims and applied electric shocks on the neck, stomach and genitals of the victims. Evidence apparently leaked to the media by the state prosecutor's office stated that some torture scenes were videotaped and one soldier was shown naked.

The scandal started after abusive training methods at an army base were reported at the Command of the Army Troops (*Heerestruppenkommando*) in Koblenz on 20 October 2004. The army transferred the case to the public prosecutor's office the same month. At first, the allegations only seemed to be directed at instructors working at the army barracks in Coesfeld near Münster, who took it upon themselves to start "training" army conscripts (compulsory conscription is still in force in Germany) for "real operations". These "real scenarios" included forcing soldiers to do press-ups over an open knife blade; being hooded and shackled for hours; being verbally threatened; being forced to stand in water while electric shocks were administered; having water poured down the throat whilst the nose is held closed, amongst others.

The prosecution has reported that soldiers were ambushed, shackled and taken back to the barracks to suffer "abuse and degrading treatment" during four different night marches between July and September last year. Mostly staff sergeants but also their superiors and captain of the regiment stand accused, five of whom apparently led the team. The allegations were downplayed by defence lawyers who claimed that the soldiers could have ended the "training" at any point with an agreed code word, and that they had not made use of their right to lodge complaints with the Parliamentary Commissioner for the Armed Forces. The allegations only came to light when a soldier, who was transferred after his basic training to the Command for Army Troops in Koblenz, had informally asked colleagues at his new work-place if this sort of training had become standard procedure; an officer who worked in the legal department consequently reported the training methods to the Command. Mock hostage-taking is not allowed during the basic training army conscripts receive after an internal report showed that soldiers had received damage to their hearing during one of these exercises. The practice was removed from the training programme and limited to theoretical classes on hostage situations.

Initially, it seemed the incidents only occurred at Coesfeld,

but at least 17 separate allegations of abuse have come to light since then. On 7 October, a 42-year old army officer from the German Air Force (*Luftwaffe*) was sentenced to six months on probation for physical abuse and degrading treatment. At his trial, 51 cases in which Andreas B. had twisted soldiers arms, beat them, tied them to tables and verbally threatened them on the Wunstorf airbase in Lower Saxony between 2001 and 2003 came to light, (see *Statewatch* vol 14 no 5).

There is a legal use of this form of "training", in the preparation of troops for war situations and operations abroad; this is carried out by the army corps responsible for the implementation of military operations for crisis prevention, the Command Special Forces (*Kommando Spezialkräfte* - KSK) as well as at army training centres. However, some army training centres responsible for this specialised training, are also being investigated (such as in Calw or Pullendorf). One officer at the Hammelburg Infantry School detailed the training programme that is supposed to prepare soldiers for operations in Afghanistan as follows: soldiers are ambushed, hooded and brought into a room where they are screamed at, they have to kneel in an upright position, they are forced to do push-ups and verbally humiliated, in an attempt to break their will. "In the end you don't know anymore if it is a game or if it's maybe serious after all." The officer said that a psychologist is always present and the soldiers receive a code word with which they can end the exercise. He said that the soldiers are only put under psychological pressure. The training centre does not, however, admit where the limit for training special forces lies.

In the political debate about the allegations, the use of degrading training methods has been ascribed to failing supervision procedures in the army. The recent operational experience of German soldiers abroad and the consequent restructuring of the army and its training methods have also been blamed. Confrontation with "front line" situations is said to have "hardened" the soldiers but also, according to the Defence minister, has instilled a wish to prepare soldiers for "the real thing". Anti-conscription campaigners, however, have pointed out that in the recent history of German army operations abroad, not a single German soldier has been taken hostage or arrested. The campaign asks:

Is the experience of "violent interrogation methods" and torture not rather a way to learn to apply them - for future use?

Others have pointed out that the incidents took place at around the same time that pictures of torture in the US-run Abu Ghraib prison in Iraq appeared in the world press, implying that it had a snowball effect within other armed forces. This theory is substantiated by the similarity in the forms of torture and the fact that similar incidents took place around the same time in other countries, including Austria.

The debate around "legitimate use of torture" is by no means taboo in Germany. In May this year, Michael Wolffsohn, a history professor teaching at the military academy in Munich said in a television interview that: "[a]s one of the tools in the fight against terrorism I believe torture or the threat of torture to be legitimate" (see *Statewatch* Vol. 14 no 3 & 4). The Ministry of Defence then said it was considering disciplinary measures and defence minister Peter Struck reprimanded Wolffsohn for damaging the army's image. The army inspector Hans-Otto Budde commented this year that "[w]e need the archaic warrior and the one who can lead the high-tech war."

The first results of the investigations at Coesfeld also reveal a tolerance towards violent training methods amongst the conscripts themselves: a large number of the army recruits questioned said they did not think anything was wrong with the exercise. Some of them said it was the highlight of their training, others said they thought it was "brilliant". Preliminary investigations in the Coesfeld incidents have now ended and the public prosecutor is preparing indictments for the 38 accused instructors. A trial date has not yet been scheduled.

The German Campaign against Conscription, Forced Service and the Military (Kampagne gegen Wehrpflicht, Zwangsdienste & Militär) provides a list of cases of "abuse and torture" committed by German soldiers and officers in Germany but also by those stationed in the Kosovo against civilians:

http://www.kampagne.de/Themen/BW_Monitoring/Doku_Folter.php

Süddeutsche Zeitung 23, 24, 25, 30.11.04, 2, 9, 16, 17.12.04, 18.1.05.

EUROPE

EU threatens to build own defence market

Rapidly mounting frustration with US restrictions on defence technology transfers appeared in a 17 January gathering in Brussels of EU and NATO officials, industry executives and defence policy experts, organised by the New Defence Agenda conferencing group. EU and industry officials warned that the US Department of Defense (DoD) technology export rules will drive the EU to create its own defence market. Basically, the situation leaves only three choices for European defence firms:

* Establish themselves within the US as second- or third-tier suppliers for the DoD and accept the transfer restrictions.

* Settle into niche positions as sub-suppliers to US industry-led international projects or as sellers of specialised items to fill gaps in the US arsenal such as anti-terrorist equipment and training packages.

* Construct a consolidated EU defence market to boost Europe's bargaining power in getting Washington to liberalise its technology transfer regime, epitomised by the three-year old US International Traffic in Arms Regulations (ITAR).

A senior EADS executive said: "US technology restrictions on foreign defence firms have reached the absurd. Dual-use technology such as ordinary Internet communications protocols that are freely used in civil products cannot be exploited by us commercially if we're involved in a DoD project using the same protocols."

Even companies with privileged access to US technologies such as BAE Systems lament the effects of the restrictions. In 2003 the DoD handed out contracts worth $65 billion to US firms and $1 billion to foreign firms.

The European Defence Agency will hand over its recommendations for a cross-border European defence market to the European Commission in March.

Defense News 24.1.05 (Brooks Tigner)

Military - in brief

■ **UK: Block the Aldermaston Builders**. Block the Builders is a new campaign which aims to nonviolently prevent the building of a new laser facility ("Orion") at AWE Aldermaston. Since April 2001 Aldermaston, which is owned by the Ministry of Defence, has been managed by AWE Management Limited, a consortium of three companies: British Nuclear Fuels Ltd, US arms producers Lockheed Martin and the facilities management company, Serco. The new laser facility will replace the existing HELEN laser and enable the testing of nuclear materials under simulated test conditions. The campaign is concerned that the laser facility, combined with a new hydrodynamics facility, laboratories and supercomputers, will perfect technology allowing a new generation of nuclear weapon to be produced. The campaign plans to nonviolently prevent building through a blockade of the site later this year. For more information: Block the Builders, bib@aldermaston.net

■ **Europe: French military can use Galileo**. A senior French defence official has spoken for the first time about the military applications of Galileo, Europe's planned network of navigation

satellites. In a speech broadcast in French Guyana marking the launch of the Helios 2A military reconnaissance satellite in December 18, French defence minister Michele Alliot-Marie said Galileo "will be available to the armed forces". EU officials normally stress that Galileo is a civil program but France had in the past always held the position that Galileo should be available to the *Gendarmerie*, the French paramilitary police that answers to the ministry of Defence. Andrew Brooks, an aerospace analyst at London International Institute for Strategic Studies said on 22 December: "One of the justifications for Galileo is that it will allow any new Euro defence force to have access to the same space assistance as is provided to US forces by GPS." Brookes said that Galileo could be used for pinpointing the location of weapons and troops on the ground. The first two of 30 satellites that will make up the Galileo constellation are scheduled for launch later this year. *Defensenews.com 30.12.04*

Military - new material

Why I'll refuse to fight in this immoral war, George Solomou. *Independent* 21.1.05. Solomou explains why he is resigning from the Territorial Army because of the "illegal and immoral" war in Iraq. He cites the absence of weapons of mass destruction, which Blair offered as his *reason d'etre* for supporting Bush, and the popular opposition to the invasion as his main reasons. Solomou has since begun working with the Military Families Against the War (MFAW) campaign, which he hopes will be a rallying point for soldiers against the war. He predicts that "there will be more soldiers coming out soon". The MFAW campaign website, http//: mfaw.org.uk/

EU Crisis Response Capability Revisited, International Crisis Group. *Europe Report* no. 160, 17 January 2005

Who polices the peacekeepers, Amnesty International. *Peace News* no. 2457, December 2004-February 2005, pp.26-27. This article documents AI's frequently expressed concerns, both to NATO and the individual governments within NATO, "about instances in which peacekeeping forces in both Kosovo and Bosnia-Herzegovina have failed to abide by international human rights law, particularly in relation to their detention polices and practice." Amnesty is calling for "central mechanisms in KFOR and SFOR, or on a higher level within NATO itself, to be instituted to investigate alleged human rights violations committed by troops in either Kosovo or Bosnia-Herzegovinia, rather than leaving the decision to prosecute to the respective sending state from which the alleged perpetrators came. The organisation is also calling for an end to unlawful detentions by both KFOR and SFOR.

POLICING

GERMANY

Amnesty International criticises police brutality

In 16 November 2004, a 30-year-old was arrested by police in Bonn for drunken behaviour and taken to the police station where he was restrained and consequently fell into a coma, from which he is not expected to recover. A video of the incident led the public prosecutor to initiate a preliminary investigation on grounds of "physical assault in office". A medical report, published in January this year and partially disclosed to the German broadcasting company *WDR*, found the police doctor seriously negligent. Four officers had shackled the drunken man at hands and feet, and turned him onto his stomach and one officer knelt on him in order to take a blood sample. After 30 minutes prostrate on the ground, the doctor said he should be taken to hospital as he had suffered heart failure and stopped breathing, according to the *WDR*. The preliminary investigation has closed but public prosecution spokesman, Fred Apostel, commented that "the admission of those accused is still lacking", on the basis of which the prosecution will decide to press charges or stop proceedings.

The last time occasion police restraint on arrest led to a death was in May 2002, when Stephan Neisius died after having been repeatedly kicked and hit by a group of police officers as he lay handcuffed on the floor of a Cologne police station (*Statewatch* Vol. 12 no 3 & 4). A forensic examination, however, concluded that his death did not result from the beating. Charges of bodily harm resulting in death were filed against six police officers, who came to trial in late June 2003, but although Cologne District Court convicted all of them for bodily harm resulting in death on 25 July 2003, none of the accused were sentenced to periods of imprisonment. Less than two months after Stephan Neisius's death, 30-year-old René Bastubbe was shot dead by police in controversial circumstances in the town of Nordhausen in the state of Thuringia. One police officer, who was charged with René Bastubbe's negligent homicide, was brought to trial in late September 2003 but he was acquitted of the charge in November 2003 (Amnesty International, January 2004).

The failure to prosecute confirms criticism levelled at German authorities by Amnesty International, which published a special report on police brutality in January 2004, finding a systematic failure by German authorities to investigate and bring to justice officers responsible for violence and ill-treatment (see *Statewatch Bulletin* vol 14 no 1). This institutional neglect is summarised as:

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

The "persistent pattern of alleged ill-treatment and excessive use of force by police officers in Germany", Amnesty found, is particularly directed against foreigners, but increasingly against Germans as well. In January this year, the organisation reviewed its one year long campaign and criticised the German government for failing to implement its recommendations, namely, to set up an independent police complaint's commission, to properly investigate alleged police misconduct and to set up a system to maintain and publish uniform and comprehensive statistics that would enable a systematic analysis and proof of institutional failure. With police statistics currently collated by the individual *Länder* (regional states) under varying categories, comprehensive analysis is impossible (see *Statewatch* vol 11 no 2). Amnesty's demands are also shared and have been put forward to the German government by the UN Human Rights Committee, which monitors the implementation of the International Covenant on Civil and Political Rights, and the Committee against Torture. The attempts to introduce control mechanisms for police conduct are accompanied by the campaign against the introduction of torture provisions in German law, which were seriously discussed in the case of police officer Daschner, was legally found guilty of coercion but practically acquitted after having threatened a kidnapper with torture to get information on the whereabouts of a kidnapped child (see *Statewatch* vol 14 no 3/4 and vol 13 no 2). His actions had been judged "comprehensible" by the court and large parts of the media.

Jungle World 16.2.05; http://www.wdr.de, ai-JOURNAL 1.2.05.

Amnesty International "Back in the Spotlight - Allegations of police ill-treatment and excessive use of force in Germany",

(http://web.amnesty.org/library/Index/ENGEUR230012004?open&of=ENG-DEU); "Legally regulated torture - the Daschner case and the political trap".

GERMANY

Refugee killed in police custody

On December 27, Laye-Alama C., 35, from Sierra Leone, was arrested by the police of the city-state of Bremen, on suspicion of drug trafficking and was transferred to the local police headquarters. Two and a half hours later he was dead. Nevertheless, on 4 January, Bremen's Senator for the Interior denied that the refugee's death had occurred, informing the public that the victim was recovering. Only the following day was the killing admitted and the truth revealed.

Laye-Alama was suspected of having swallowed some wraps of cocaine to prevent discovery when the police stopped him. It is relevant to mention, that he was unknown to the police, had no police record, and was a first-time suspect. He was arrested, transferred to the local police headquarters, where the police evidence unit is based. There, he was chained to a bench by the legs and one hand. Present were two police officers, a medic from the Medical Evidence Seizure Service (*Medizinscher Beweissicherungsdients*, a private business that affiliated to the local authority's Institute for Legal Medicine) a body that acts on a fee basis for the police service. He was then forced to drink a dose of Ipecacuana, a medicine that causes vomiting. It is a procedure frequently used to bring up the stomach contents and any suspected drugs. A stomach probe was inserted to speed up the process of vomiting. The detainees condition checked by his blood pressure and blood oxygen level. However, it transpired that the equipment was defective. Only after the patient lost consciousness two hours after the arrest was an emergency doctor called. He failed to revive Laye-Alama and diagnosed "death by drowning".

On 4 January, after the news trickled out that there had been some sort of incident, the Senator for Interior, Thomas Röwekamp (Christian Democratic Union, CDU)) denied the killing and informed the public that the detainee was well. The same day, interviewed on the evening television news, still denying the death, he justified the procedure taken and argued: "he [the victim] only has himself to blame...it is an adequate...and justified procedure,...we must take a hard-line stance against drug dealers and be extremely tough". The following day, the death was finally admitted and the public served with two new explanations: firstly, that the detainee died from poisoning by the drugs that he swallowed (Röwekamp), secondly, that he died due to vomiting that suffocated him (Professor Birkholz). In another interview, Senator Röwekamp argued, "such drug dealers are the most serious criminals, who must reckon with physical disadvantages".

Meanwhile, charges were brought against the police officers and the doctor involved in the incident, and the Chamber of Medicine has brought a further charge against the doctor. Several citizens accused Senator Röwekamp of violating the principal of human dignity and because his comment "who must reckon with physical disadvantage" is covered neither by criminal procedural law (StPO, § 81a) nor constitutional law, but is a violation of the ban on torture. Furthermore, it is felt, that because the Senator argued that drug dealers must take into account such treatment, this appears to be an extra-judicial punishment unforeseen by criminal law. Calls for Röwekamp to resign, on the basis that he lied to the public, that he mislead the public, that he cannot ensure that the police follow the rule of the law and that he - as a constitutional legal expert - undermined the rule of the law, have been dismissed. Laye-Alama C's relatives have brought charges against the Senator for defamation of character. Angry marches and pickets followed.

As yet, the only consequence is that the induced vomiting procedure has been suspended and will be reviewed in six months. For the time being, suspects will be kept on remand until the suspected drugs are naturally excreted. It should be noted that after similar incidents (although not involving the death of detainees) in 1995, Amnesty International intervened and the vomiting procedure was temporarily abandoned. After another similar killing in Hamburg, in 2001, which revealed the full risks involved in the induced vomiting procedures, most police forces stopped the practice. Instead they detain suspects until any possible drugs have left the body naturally. Legal experts point out that since the Hamburg case is well known to the police it is reckless for them to continue treating people in the same way.

Report of the emergency doctor, 31.12.04; Buten und Binnen, 4, 6.1.05; Weser Kurier, 5, 8, 13, 25.1.05; Taz, 7, 25.1.05; Press Release, solicitor Dr. Malaika, 11.1.05

UK

Home Office reports show CCTV fails to cut crime.

In February a Home Office project on the impact of closed-circuit-television, carried out at 14 sites in town centres, city centres, hospitals and residential areas, reported that most of the systems failed to cut crime or make people feel safer. The report says: "the CCTV schemes that have been assessed had little over all effect on crime levels. Even where changes in crime levels have been noted, with the exception of those related to car parks, very few are larger than could be due to chance alone and all could in fact represent either chance variation or confounding factors. Where crime levels went up it is not reasonable to conclude that CCTV had a negative impact."

The study, which was headed by Professor Martin Gill, of the University of Leicester, found only "two schemes that experienced a statistically significant reduction in recorded crime" but in only one of these was CCTV a "significant factor" in the reduction. The study also found that under-staffing of CCTV control room operations was an important factor in the system's failure to detect crime, with half of the centres staffed for less than 24 hours a day. Gill told the BBC that the results would be "disappointing" for proponents of the cameras: "For the most CCTV did not produce a reduction in crime and it did not make people feel safer", he said. The government is estimated to have spent nearly £200 million on around 700 CCTV projects in the five years between 1998 and 2003. A Home Office spokeswoman said that the police continued to believe that CCTV was "essential" to cut crime.

Martin Gill, Jeena Allen, jane Bryan, Deena Kara, Ross Little, Sam Waples, Angela Spriggs, Javier Argomaniz, Patricia Jessiman, Jonothan Kilworth & Daniel Swain, "The Impact of CCTV: fourteen case studies" Home Office Online Report 15/05; Martin Gill and Angela Spriggs "Assessing the Impact of CCTV" Home Office research and development Department (February) 2005: http:\\www.homeoffice.gov.uk/rds/pdfs05/hors292.pdf

Policing - in brief

■ **UK: Ex-RUC chief new Chief Inspector of Constabulary**. Sir Ronnie Flanagan, the last chief constable of Northern Ireland's discredited Royal Ulster Constabulary (RUC) police force before it became the Police Service of Northern Ireland, is to become the new Chief Inspector of Constabulary. Flanagan, who has been an Inspector of Constabulary in England and Wales since 2002, will succeed Sir Keith Povey who was appointed in 2002. Flanagan will earn £189,000 annually. His appointment has caused dismay in nationalist areas of Northern Ireland where he is remembered firstly for his work at the head

of the Special Branch, which stands accused of being involved in organising and covering-up the murder of civil liberties lawyer Pat Finucane. Flanagan also played a key role in combined loyalist/RUC assaults on the Garvaghy Road in the mid-1990s. Recently, Flanagan has been strongly criticised over the police investigation into the Omagh bombing, which the Special Branch is said to have known about in advance. Sir Ronnie received his knighthood in the New Years Honours List in December 1998. *Appointment announced in Home Office press release 029/2005, 8.2.05.*

■ **UK: Police probe officer for anti-Muslim comments.** An internal inquiry has been initiated after Superintendent David Keller of the Greater Manchester police force was alleged to have made "inappropriate remarks" about Muslims during a security meeting at Longsight police station last November. Keller has not been suspended from duty and the exact words used in his remarks have not been repeated. However, the *Guardian* newspaper reports that the comments called "for the setting up of machine guns to stop the Muslims flowing into the city centre to celebrate *Eid Al-Fitr*". The Police Superintendents Association, which supports the officer, told the paper that Keller did not believe that his comments were racist or anti-Islamic. In June 2004 the newspaper revealed that Greater Manchester was one of 14 police forces found by the Commission for Racial Equality to have broken race relations laws. In 2003 it was one of several police forces whose officers were filmed by the BBC making racist comments that were described as "truly shocking". *Guardian 9.12.04*

RACISM & FASCISM

GERMANY

Planners of bomb attack on Jewish cultural centre on trial

In 2003, chief public prosecutor Kay Nehm initiated proceedings against several members of the Munich based neo-fascist organisation *Kameradschaft Süd* ("Comradeship South") on grounds of forming a terrorist organisation. In a raid on 10 September 2003, the police found 14 kg of explosives that the group had planned to use in a bomb attack on a Jewish community centre in Munich (see *Statewatch* Vol. 13 no 5). The attacks were apparently planned by a sub-group of the around 40-strong *Kameradschaft Süd*, which called itself *Aktionsbündnis Süddeutschland* ("Action Alliance South Germany"). Two separate trials have now started against nine of the group's members in the Munich regional court.

Martin Wiese and other members of the organisation had been under observation by the Bavarian regional secret service branch, which had deployed an informant and discovered the group's link to the Polish explosives market. However, research by the investigative television journal *Kontraste* has shown that the secret service was apparently unaware that Wiese and his colleagues had actually obtained explosives in May 2003 and started constructing a pipe bomb. It was to be used at the laying of the foundations of the Jewish cultural centre in Munich on the 65th anniversary of the *Reichskristallnacht*. The group had also compiled a "hit list" with several possible targets, including a Munich synagogue, asylum seekers' homes, the local MP Franz Maget (*Sozialdemokratische Partei Deutschlands*, SPD), journalists and anti-fascists. The list was found together with hand grenades, pistols and 14 kg explosives, including 1.7 kg TNT, during the police raid.

On 6 October 2004, a first trial started against three men (aged 18, 22 and 37) and two women (aged 18 and 19), members of the *Aktionsbüro Süd*. Their trial is still taking place in closed court because some of them were still juveniles at the time of the accusations, which range from combat training, procuring weapons and explosives and compiling hit lists. A second trial against Martin Wiese (28) Alexander Maetzing (28) and two other men, on grounds of forming a terrorist organisation started on 24 November 2004. Wiese is the main focus in this trial and he has previously been involved in racist attacks, fascist demonstrations and networking amongst skinhead groups in Germany. He is seen as the ringleader of *Aktionsbüro Süd*, which he allegedly set up in 2002.

Last year it emerged that a secret service informant had infiltrated the *Aktionsbüro Süd*, which Wiese's defence lawyers are trying to use as a mitigating feature: the informant Didier Magnien was the leader of the far-right *Parti Nationaliste Française et Européenne* in 1997 and according to the indictment, he was involved in buying weapons for Wiese's group in eastern Germany. According to Wiese's defence lawyer Anja Seul, he also "inspired" Wiese in the attacks (see *Statewatch* volume 13 issue 5). During the first trial days, Wiese's "comrade" Alexander Maetzing tried to downplay the group's intentions, calling the group's weapons and combat training a "jamboree" and declaring that "none of us can be called an anti-Semite". He claimed Wiese had been the driving force behind the planned bombing of the ceremony on the Jakobsplatz in Munich.

Police and Bavaria's interior minister Günther Beckstein (*Christlich Soziale Union* - CSU) have been criticised for having ignored and withheld information from the targets of the fascist group - the Jewish community, left-wing politicians and anti-fascists - whose details and whereabouts had been systematically compiled by group members for the purpose of a serious attack. A female member of the *Kameradschaft Süd* who worked at the Post Office had gathered information on a Munich based Peace Bureau as well as the socialist party (*Partei des Demokratischen Sozialismus* - PDS) through their bank accounts, finding out names of bank representatives, board members and payers. Neither the PDS nor the Peace Bureau were informed about this by the relevant authorities and only heard about the threat through the newspapers. Similarly, the group's "anti-anti-fascist activities", where fascist groups seek out, publish details of and consequently attack anti-fascists, were never officially condemned and left-wing "targets" have not been contacted by the authorities to inform or warn them about the skinhead group's activities.

Further, Wiese and his network have been able to operate relatively freely. During Wiese's birthday party in January 2001, a Greek citizen was nearly killed in a vicious racist attack but investigations into Wiese were halted. However, the then leader of the *Kameradschaft Süd*, Norman Bordin, was sentenced to 15 months imprisonment for the attack. Wiese was also acquitted in another trial in August 2002 for having attacked a black man; on grounds of contradicting witness statements, his punch was judged as self-defence by the court. When Bordin went to jail in 2002, Wiese took over the leadership of the group and it is said that now Wiese is on trial, Bordin, who is out of prison again, has taken over the leadership once more. Since September 2004, Bordin has also been a member of the far-right *National Sozialistische Partei Deutschlands* (NPD) which fosters strong links to the German fascist skinhead scene (see *Statewatch* vol 14 no 6).

Wiese and other skinheads from the region are also active in the Munich based association Democracy Direct (*Demokratie Direkt*), which was formed in the beginning of 2003. This association holds meetings on "regional themes" such as "the building of mosques or asylum seekers' homes" and "favouring big capital" and carries out anti-anti-fascist activities. Newsletters published in Munich inform their readers about left-

wing politicians, critical journalists and anti-fascists through pictures and biographies. Other networking activities of Kameradschaft Süd include contacts to the *Kameradschaft Fränkische Aktionsfront* (FAF), which combines six regional "comradeships" in Bavaria and various individuals, where network members attend each others' demonstrations and exchange information. The FAF also carries out anti-anti-fascist work and is suspected by anti-fascists to be responsible for several attacks in and around Nuremberg. These include attacks on the homes of two liberal teachers, assaults on left-wing bookshops, the office of the alternative publication *raumzeit* as well as an arson attack against a car belonging to a local anti-fascist.

The current trial is expected to uncover more links between the skinhead scene in Germany and the far-right NPD, which was successful in recent regional elections in eastern Germany. The NPD won a court case against the government coalition 2003, which wanted to ban the party on grounds of unconstitutionality (see *Statewatch* Vol. 13 no 2). Only on 20 January this year, the Munich far-right local councillor Johann Weinfurtner (*Republikaner*) organised a "political new year's gathering", where neo-Nazi Bordin and fellow skinheads were responsible for security speakers included deputy chairman of the NPD, Holger Apfel, who recently offended the Jewish community when he held a speech in the regional parliament of Saxony, comparing the bombing of Dresden to the holocaust. On grounds of the far-right election successes in Germany, there is currently a parliamentary debate on a renewed initiative to ban the NPD but it is unclear if it has enough support after the last failed attempt. A verdict on the planned bomb attack in Munich is expected this year.

Jungle World 1.12.04; The Independent 7.10.04; Alpha Press (no 10, October 2003); haGalil online: http://www.klick-nach-rechts.de/ticker/2003/10/muenchen.htm (22.10.03). Süddeutsche online: http://www.sueddeutsche.de/muenchen/schwerpunkt/907/16891/ (overview of the Munich trials); Anti-faschistisches Informations-und Dokumentationsprojekt (adip) Nürnberg/Fürth: http://web6.rom036.server4you.de/index.php; Antifaschistische Informations-, Dokumentations- und Archivstelle München e. V.: http://aida.open-lab.org/

GERMANY

Dresden Nazi demonstration countered

On 13 February, around 5,000 fascists demonstrated in Dresden on the 60th anniversary of the bombing of the city by the allies, an event which is traditionally used by German neo-Nazis to ally itself with nationalist forces and to revise Germany's history by portraying it as a victim of foreign aggression during world war II. Their favourite slogan compares the bombing of Dresden and the holocaust. The day was marked by an official anniversary commemoration, a large fascist demonstration and a 1,500 strong anti-fascist demonstration, which countered the fascist slogans with banners stating "No Tears for Krauts", "Granddad was a Nazi" and "Against Historical Revisionism".

Throughout the day, neo-Nazi groups continued to attack left-wing gatherings and anti-fascists. Some anti-fascists were beaten up and several information stalls destroyed. Eye witnesses reported that groups of neo-Nazis shouting "Nigger" were able to chase black people through the streets in the presence of police, whilst anti-fascists reported arbitrary arrests and physical attacks by police. Police officers were also accused of failing to protect a rally organised by anti-fascists and members of the Jewish community in front of the Dresden synagogue, which has been target of fascist attacks in the past. Ellen Mertens, spokesperson of the anti-fascist alliance, which was set up to stop the fascist demonstration but was also critical of the official commemoration, said:

> *There were three attacks. The first two could be fought off ...only the third was stopped by police around 100 metres before the rally...If the citizens of Dresden perfidiously wear "White Rose" stickers and attend [the official commemoration] at the church whilst letting the neo-Nazis march through the city without batting an eyelid, then something is wrong. We do not want to mourn over those who carried national socialism for years, for those who profited from the extermination of the Jews in Europe, for those who took part in the annihilation campaign in the armed forces and the SS. The 13 February reminds us of the liberation from national socialism, and this is why it is a day of joy. Because of the bombardment, Jewish people were able to flee their otherwise inevitable death. Because of the bombardment, important war infrastructures of the Nazis were destroyed.*

http://venceremos.antifa.net/13februar/2005/index.htm
http://www.de.indymedia.org/2005/01/105403.shtml

Racism and fascism - in brief

■ **UK: BNP condemned as member gets 5 years for racist attacks:** A member of the British National Party, Terry Collins (27), from Eastbourne in Sussex, was jailed for 5 years at Lewes Crown Court in March. Collins, a former Territorial Army soldier, was found guilty of a string of attacks on the properties of several Asian families in a year-long campaign in the seaside resort where he lived. The court was told that he had put fireworks through the letterboxes of his victims' homes, smashed their windows and attacked their cars; one family was forced to move away because of his campaign of violence. Collins was eventually caught by police as he threw a concrete block through one family's front window. In one of the most serious incidents he set fire to a house as its occupants slept. Fortunately, Ali Rostam heard shattering glass and alerted, was able to extinguish the fire before it took hold. In his defence Collins alleged that he was targeted and bullied by "one or two very forceful and extreme" BNP members into carrying out the attacks. He claimed that he had now turned his back on those individuals and the organisation. Sentencing Collins, Judge Guy Anthony, said: "In this country you are entitled to hold whatever views you like, however repugnant they may be. What you are not entitled to do is to turn those views into the actions you did.". The BNP has also caused anger in West Lothian, Scotland, where it has formed a branch. The BNP presence has caused alarm among the local community and has been met with condemnation. The leader of West Lothian council said: "They are a fascist, racist party that has no place in a tolerant multi-cultural society". Steve Nimmo, for the Scottish National Party, said: "The BNP is not welcome in West Lothian."

■ **Germany: Nazi websites hacked on anniversary of Dresden bombing**. On time for the Nazi demonstration on 13 February commemorating the bombing of Dresden, an anti-fascist hacker group, *Katjusha - Information Warfare* hacked a series of websites belonging to neo-Nazis in and around Saxony. The group declared their action, which replaced several websites' home pages with the group's declaration, was intended to stop the historical revisionism of the far-right. But the hackers also retrieved sensitive information from a password protected web forum, apparently demonstrating collaboration between militant fascists of the *Skinheads Sächsische Schweiz* (SSS) and the far-right NPD (*Nationaldemokratische Partei Deutschlands*). The SSS is still active despite having been banned. Members have been prosecuted for racist attacks and their collaboration with local far-right politicians is well documented (see *Statewatch* Vol 14 no. 3 & 4). *Spiegel online* is speculating that this recent disclosure could lead to legal procedures against the regional NPD group in parliament in Dresden. See *www.heimatschutz.net*

for the hacked site. More information on anti-fascist activities in Germany: aag.antifa.net, venceremos.antifa.net, www.antifa.de, aak.antifa.de, www.left-action.de

Racism & Fascism - new material

Anti-Muslim racism and the European security state, Liz Fekete. *Race and Class* Volume 46 no 1, 2004, pp.3-29. Across Europe the "war on terror" has led to new legislation, policing and counter-terrorist measures that cast Muslims as the new "enemy within". "Islam is seen as a threat to Europe, which is responding not only with draconian attacks on civil rights but also with moves to roll back multiculturalism and promote monocultural homogeneity through assimilation. Hence `integration measures` - like France's banning of the hijab - became an adjunct to anti-terrorist law. This is not just Islamaphobia but structured anti-Muslim racism."

European Race Bulletin, no 50 (Winter 2005), pp.28. The latest issue of the bulletin highlights a feature by Liz Fekete on the killing of Theo van Gogh in the Netherlands.

CIVIL LIBERTIES

ITALY

CIA kidnaps Imam and hands him over to Egypt

The Milan prosecutors' office is investigating the kidnapping in Milan on 17 February 2003 of Nasr Osama (aka Abu Omar), a 42-year-old Egyptian Imam who was under investigation, suspected of being a member of an *Al Qaida* cell. Prosecutors have uncovered evidence pointing to CIA involvement in the operation, including documents used to hire a vehicle that was used in the kidnapping. They were aided by the lack of discretion with which the operation was apparently conducted, including the use of ordinary mobile phones to communicate. The prosecutors' reconstruction suggests that the operation may be part of the CIA undercover operation "Rendition" (involving the capture of terrorist suspects abroad and their handing over to countries where torture is practised for questioning), which has also resulted in criminal investigations for similar incidents in Sweden and Germany. In Milan, Abu Omar was bundled into a van after he was sprayed in the face on his way to a mosque. He was then transferred to the US airbase in Aviano (Pordenone, north-east Italy) and flown out before being handed over to Egyptian security forces. Abu Omar alleged that he had been tortured in Egypt in a phone call that he made to his wife from an Egyptian prison in April 2004.

Corriere della Sera 25.2.05; El País 14.3.05

IRAQ/UK

Small fry sentenced

In February three British soldiers from the Royal Regiment of Fusiliers appeared at a military court martial in Osnabruck, Germany, accused of assaulting and sexually abusing Iraqi prisoners as part of Operation "Ali Baba" on 15 May 2003 at Camp Bread Basket, Basra. The evidence against the men was contained in a series of "trophy" photographs taken by Fusilier Gary Bartram; Bartram was arrested after he took the pictures to be developed at a photographic shop and an assistant reported the contents to the police (see *Statewatch* vol 14 nos 3/4). He was sentenced to 18 months at a youth detention facility at a court martial in Hohne in January.

At Osnabruck, the court martial, comprising a panel of seven senior officers and Judge Advocate Michael Hunter, sentenced Cpl Daniel Kenyon, to 18 months imprisonment and L/Cpl Mark Cooley was jailed for 2 years. They were found guilty of mistreating Iraqi prisoners. L/CPl Darren Larkin pleaded guilty to assaulting an Iraqi prisoner and was sentenced to 140 days imprisonment. All three men were dismissed from the Army. No sentences were brought in relation to the photographs that showed Iraqi prisoners being forced to sexually abuse one another.

The photographs showed Iraqi victims being sexually humiliated, abused and beaten as part of Operation Ali Baba, a project designed by Major Dan Taylor to capture and punish "looters" at Camp Bread Basket in May 2003. The pictures ranged from those depicting an Iraqi tied to and hanging from a forklift to others showing two Iraqis simulating anal sex and gesticulating to the camera. Some photographs appear to depicted Iraqis being physically assaulted (although the courts were assured that these were also simulations).

The 22-day court martial heard that the Royal Military Police had spent considerable time attempting to track down the Iraqi victims, but were unable locate any. After the trial it took the *Independent* newspaper 48 hours to track down five of the abused Iraqis, all of whom lived within a mile of the base where the assaults took place. None of them was aware that the court martial was taking place and none had even seen the photographs taken by the soldiers.

The men found and interviewed by the *Independent* newspaper are:

Ra'aidh Hassan Abdulhussein: Mr Abdulhussein (33) told the newspaper that, rather then being a looter, he was a warehouse worker at Camp Bread Basket when he was arrested. He says that was beaten so badly with a metal rod, that his arm was broken. Mr Abdulhussein is the figure depicted hanging in a net from a fork lift truck in one of the photographs. "I do not know why I was arrested", he told the newspaper.

Ali Rahdi Kassim and **Ra'aidh Attaya Ali:** Mr Kassim (24) and Mr Ali (29) were working at Camp Bread Basket when they were arrested. The claim they were forced to simulate a sex act that is captured on one of the photographs. Mr Kassim told the *Independent*: "They made us do things that were bad. We refused but they hit us."

Hassan Kardham Abdulhussein: Mr Abdulhussen (23) was arrested outside Camp Bread Basket and identified himself in several of the photographs. He said: "We were not treated in this way under Saddam. I was in the army and I deserted but the punishment was not this kind of humiliation."

Muthannar Jaseem Mahmoud: Mr Mahmoud (23) had gone to Camp Bread Basket with his friend Ra'aidh Attaya Ali and arrested at the same time. He claims that he was kicked unconscious and had his arm broken. He said: "They kicked me on the head and I was frightened. Then one of them began to hit me with a metal rod and broke my arm at the elbow...". No one told us about this trial. I want the soldiers who did this punished severely."

The Ministry of Defence (MoD) is reported to be launching a new inquiry into the claims made by the Iraqis. It should also investigate the failure by the Royal Military Police to track down a single Iraqi eye-witness against the soldiers. An MoD spokesman has reassured the newspaper that "the information is not being ignored." Army prosecutors have said that further charges could follow a new investigation and have acknowledged that British forces were not adequately trained on human rights and the Geneva Convention. At the end of court martial Judge Advocate Michael Hunter acknowledged that it was possible that more Iraqis were hit and assaulted during Operation Ali Baba. He added that:

The officers of this court did not fully accept the evidence given in the court by every officer and every warrant officer and it may be that there are some of those that gave evidence whose behaviour warrants scrutiny, to say the very least.

His comments raise another flaw at the Osnabruckk court martial. The court heard evidence that Camp Bread Basket was "infected" with high-ranking soldiers who permitted the abuse to take place. The Osnabruck accused alleged that senior officers had encouraged soldiers to give the Iraqis "a good kicking" and to "work them hard." No senior officer has been held accountable for their role in this affair.

The government, for its part, has invoked the traditional mantra of "a few rotten apples" besmirching the good name of the British military forces. However, a quick look through the British military's record of invasion and occupation shows that from Aden to Kenya to Northern Ireland there is a consistent history of torture, sexual humiliation and execution.

There are more than 160 allegations of abuse by British troops in Iraq and the scale of the problem has prompted calls for a full and independent inquiry into the conduct of the occupation forces in the southern part of the country.

Independent, 25.2.05.

Civil liberties - new material

Esculca, *Observatorio sobre dereitos civís.* no. 7, December 2004, *http://www.esculca.net* . This issue of the Galician-based civil liberties observatory's bulletin looks at two new laws that are in the process of being implemented: the law on domestic violence, which is deemed to continue along the expansion of repressive trends that were prevalent during the last government, and the law on the criminal responsibility of minors, against which an appeal has been filed criticising the absence of educational measures and the harshness of the disciplinary measures it contains. It also focuses on worsening conditions in *A Lama* prison, and includes an overview of legal proceedings involving the ill-treatment of inmates by prison officers in Galicia (in north-west Spain), an analysis of the use of minor offences occurring during demonstrations or protests by members of social movements to criminalise individuals and groups, and of the "indispensable" role played by judges in this process plus reports of the *Terra Lliure* case that resulted in Spain being found guilty of failing to adequately investigate torture claims by the European Court of Human Rights, and of court proceedings involving the left-nationalist Basque organisations that are accused of being part of the infrastructure of ETA.

Torture: from Algiers to Abu Ghraib, Neil MacMaster, *Race and Class,* Volume 46 no 2, 2004, pp. 1-21. MacMaster examines the US policy of torturing detainees at Abu Ghraib prison in Iraq and considers the "self-serving" arguments used to justify such methods. He concludes that the history of such counter-insurgency techniques "owed much to French warfare in Algeria" and notes that: "while the lessons of the torturer have been assiduously learnt, what has been ignored is the recent open debate in France on the profound damage done by such institutionalised barbarity both to the victims and to the individuals and regimes that deploy it."

PRISONS

UK

Youth deaths "a measure of our failure"

The relentless toll of deaths in prison has continued into 2005. Gareth Price, aged 16, took his own life at HMYOI Lancaster Farms, on 20 January. Two days later Karl Lewis, 18, killed himself at HM YOI Stoke Heath. Of these deaths, the former Chief Inspector of Prisons, Sir David Ramsbotham, was moved to comment:

I hope that these tragic deaths will act as a wake up call to all those in this country who consider themselves civilised. What more visible way for a nation to prove its virtue than by the way it treats and nurtures its children? We should not regard increasing numbers of anti-social behaviour orders, or large numbers of young people in custody, as a virility symbol but as a measure of our failure.

Victoria Robinson took her own life at HMP New Hall on 2 February 2005.

The inquest into the death of Sarah Campbell (18) at HMP Styal in 2003, heard from Prisons Ombudsman, Stephen Shaw, that he was shocked to find that three women deemed at risk of self-harm were in the segregation unit at the time of his investigation of the deaths of six women at the jail in 12 months. He confirmed that he was deeply uncomfortable with the practice, and stated further that screening at reception to determine risk of suicide/self-harm was poor. Sarah took her own life through an overdose of drugs she had smuggled into the prison one day after her conviction for manslaughter, having been placed in segregation, despite prison staff being informed that she was deemed a suicide risk. The inquest jury ruled that contributory factors in Sarah's death included

* ability to smuggle drugs easily into the prison
* failure of duty of care by the prison
* lack of urgency at the prison in formulating care plans
* lack of communication between health care professionals and disciplinary staff

The jury commented that "More emphasis was put on auditing at HMP Styal than on prisoners' welfare."

BBC News 20, 22.1.05, 2.2.05; Guardian 2.2.05; INQUEST

UK

Still no justice for Ray Gilbert

Ray Gilbert has been in prison for 23 years, convicted of the 1981 murder of betting shop owner John Suffield, a crime he did not commit. Ray, in 1981, was a young, poorly educated man with a speech impediment and the scars of a violent childhood. He confessed to John Suffield's murder after two days and nights of police interrogation without legal representation. There is no forensic evidence to link him to the crime, he was never identified and his initial verbal admission bore little relation to the facts of the murder, suggesting that his written confession was "coached." Ray's co-defendant John Kamara has long since been freed by the Court of Appeal.

Ray has served eight years over the 15 year tariff set by the trial judge. There are two reasons for this. He continues to fight the conviction - and so is deemed to be "in denial" of his offence and therefore still at risk. Ray has also been a keen advocate of his rights as a prisoner and the rights of others, and is labelled a "difficult" prisoner as a result.

In 2004 Ray was moved from Woodhill Close Supervision Centre to HMP Grendon. This seemed to represent a real breakthrough. The CSC was established to contain dangerous/disruptive prisoners and it was clear that Ray had been labelled as such and dumped at Woodhill indefinitely. HMP Grendon claims to offer a "therapeutic community... where a dedicated interdisciplinary team of staff work together with prisoners in an atmosphere which would not normally be tolerated in prison." Grendon says it is committed to "therapeutic dialogue" and appeared to represent a chance for Ray to break the cycle of confrontation which he'd been dragged into by a prison system that refused to accept he had the right to pursue the "rights" the system claimed to extend to him.

Ray has now been given three reasons why he will not be

allowed to remain at Grendon.

1. Reluctance to be challenged in a therapeutic community.
By the prison's own admission, Grendon is not a typical prison environment and it can take prisoners some time to adjust to the way it works. Ray Gilbert is being denied that time. In any event, Ray says while he has been at Grendon he's been open to challenge and has tried to engage positively with the regime there.

2. Anxiety and defensiveness leaves Ray prone to become involved in his own and others' causes.
Ray was elected wing chairman and staff complained he was taking issues up with them on other prisoners' behalf. This was the role Ray was elected to, and suggests he was engaging with the community structure on the wings at Grendon. He also offered to act as a "Mackenzie friend" for another prisoner at an adjudication. Yet again, Ray is being punished for standing up for his own rights and those of others.

3. An open, honest and democratic therapeutic community is not the right place for Ray at present, as he would become involved in other issues on the wings.
It is not clear where Ray will be shipped to next. His prospect of release seems as far away as ever. Ray Gilbert has been buried within the prison system not for the crime for which he was jailed (he is eight years over tariff and has always fought to prove his innocence.) He has been thrown into the CSC regime because he defends the rights of himself and others. For that "crime", it appears the prison system will try to make "life" for Ray Gilbert really mean life.

You can write to Ray: Ray Gilbert H10111, HMP GRENDON, Grendon Underwood, Aylesbury, Bucks HP18 OTL and write to Dr Peter Bennett, governor at HMP Grendon, asking him to review the decision to remove Ray from HMP Grendon.

SPAIN

Moroccan prisoner found hanged in isolation cell

Mustafá Zanibar, a 41-year-old Moroccan prisoner who was sentenced to 29 years in prison for murder in April 1994 and was accused in 2004 of belonging to a cell that was planning the bombing of the *Audiencia Nacional* (a special court with exclusive competence for trying terrorist offences) in Madrid, was found hanged with his belt in an isolation cell at Zuera prison (Zaragoza) on 24 February 2005. In March 2004, prison officers in *A'Lama* prison in Pontevedra (Galicia) had reported that Zanibar had invited other prisoners to tea and coffee on 14 March to celebrate the 11 March bombings in Madrid. Nine prisoners died of unnatural causes in Zuera prison in 2004. *El País 24.2.05.*

PORTUGAL

Prison suicide and alarming prison death statistics

Jorge Manuel da Conceição died in a punishment cell in Sintra prison on the night of 5-6 February 2005, after committing suicide by hanging himself. He was a drug addict, and his family argue that negligence by the prison services may have played an important part in his death. Conceição, who had escaped from Sintra prison years earlier and had been on the run for four years, was found and arrested by the Portuguese judicial police at the start of February. In the police station, he reportedly tried to jump out of a window, but was prevented from doing so. Once back in Sintra, he was placed in solitary confinement as a punishment. Solitary confinement has to be authorised by a doctor, and should have been refused if the doctor had been informed of the suicide attempt. A statement by the *Associação Contra a Exclusão e pelo Desenvolvimento* (ACED, Association Against Exclusion and for Development) criticised the state's silence on this and similar cases "which allow an absurd impunity" to exist.

Official figures published on 2 December 2004 by the ministry in response to questions asked by the Green Party MP Isabel Castro indicate that there were 42 deaths in Portuguese prisons from 1 January to 31 May 2004. Thirty-five of these were recorded as suicides. Thirty deaths occurred in central and special prisons, whereas 12 took place in regional prisons. Twenty-eight of the deceased were in preventative detention, awaiting trial. The rate of deaths per 10,000 prisoners over this period was a 31.6. Council of Europe Statistics from 2001, relating to prison death figures from the year 2000, showed that the rate of prison deaths in Portugal per 10,000 prisoners (60) was only lower than the figures for Armenia (95), Moldova (93), Ukraine (74), Slovenia (68), and Northern Ireland (61).

Associação Contra a Exclusão e pelo Desenvolvimento website:
http://home.iscte.pt/~apad/aced01.html;
Prison death statistics charts:
http://home.iscte.pt/~apad/ACED/ficheiros/obituario.html

SECURITY & INTELLIGENCE

ITALY

Rising number of interceptions set to exceed capacity

An official from the security department of *Tim* (the leading Italian mobile telephone service provider, with a 43% share of the market) faxed a letter to the justice ministry and to prosecutors' offices all over Italy on 19 February 2005, to let them know that the constant increase in the "activation of telephone interceptions", has meant that the maximum number of lines that it can use for interceptions (5,000) are already being used. Telephone service providers are obliged by law to execute interception orders, and *Tim* thus informed justice officials of its inability to do so if the current trend of rising numbers of interception orders continues. Delays will be inevitable, and interception orders will be executed in chronological order once some lines are freed up. Twenty lines have been reserved for the *Direzione Nazionale Antimafia* (DNA), to be used in emergencies or particularly serious cases. The company has begun a feasibility study to increase the number of lines that can be intercepted by 2,000, reaching a total of 7,000. Although the problem currently affects one mobile telephone service provider, albeit the largest one, two other companies (*Wind* and *Vodafone*) have also warned that they are reaching the limits of their interception capacity, and some authorities argue that this practice is out of control. The justice minister, Roberto Castelli from the *Lega Nord* (Northern League), explained that "I have figures that show that there is an explosion in the number of interceptions" and that "the number of interceptions doubles every two years", as they have passed from 32,000 in 2001 to 77,000 in 2003, and may have approached 100,000 in 2004. Nonetheless, Castelli argued that limiting interceptions is a very delicate issue as it interferes with the constitutional principle that criminal investigations are compulsory when an offence is reported or discovered. The cost of telephone interceptions for the Italian state in 2004 is estimated to be 300 million euro.

CiberPaís 10.3.2005; Il Sole 24 ore, 20.2.2005; Rai news 24, 19.2.2005; Repubblica 19.2.2005.

ITALY

Inspection finds breaches of CCTV surveillance rules

A cycle of inspections carried out by the Italian data protection authority and a special unit of the *Guardia di Finanza* (customs police) to check whether video-surveillance regulations issued in April 2004 are being implemented threw up mixed results. Checks concerning the legality of the systems that were in place, data collection procedures, the period for which images were stored, and whether the public was duly informed of the presence of CCTV, were carried out in 12 different areas (including tube stations, airports, shopping centres and boarding points for ferries) in which thousands of people pass on a daily basis.

Three of the sites were run by public bodies, while nine were privately run. The inspections found instances in which citizens were not informed of the presence of CCTV systems, such as in the metro stations in Rome and Milan, and in some buildings run by the finance Ministry. The personnel in charge of the treatment of personal data did not appear to be aware of their responsibilities, even in places where greater attention was paid to privacy regulations. Sometimes legal and illegal video-surveillance installations coexisted, as in Florence, where the systems that are under the control of the head of the local police (*polizia municipale*) were deemed to comply with the regulations issued by the data protection authorities on 29 April 2004, while systems that are supervised by other bodies do not.

On the Milan metro, the issue of shared access to CCTV footage was thrown up by the fact that the company managing the service shares its footage with the police. While low-definition footage, which does not raise any data protection concerns, is sufficient to monitor areas for loading and unloading, and for embarking on trains, the police want high-definition footage for security reasons and to pursue criminal offences. This raises the issue of the scope for which surveillance systems gather data, and the ends for which they are used, as well as the issue of proportionality between the objective of the surveillance and the form which it takes in practice.

Italian Data Protection Authority newsletter 31.1-6.2.05.

UK: Stop & search: Ethnic injustice continues unabated

Black people are nearly seven times and Asian people over twice as likely to be stopped and searched as white people. Over the longer term, taking all stops and searches together, the Asian community has experienced the the largest increase, followed by the black community and the white community the least

Last month the Minister responsible for counter-terrorism in the UK, Hazel Blears, appeared before the Home Affairs Select Committee, which was considering 'Terrorism and Community Relations'. During the course of her evidence, she made the extraordinary statement that the new anti-terrorism legislation would be disproportionately used against the Muslim community. No Minister before has publicly admitted that certain laws will be used in a discriminatory manner contrary to the Race Relations Act and the other equality legislation in force in the UK. Not since the introduction of the Special Powers Act in Northern Ireland in 1922, has any government on these islands shown such disdain for the impartial and fair administration of justice. This is what is she said:

Dealing with the counter-terrorist threat and the fact that at the moment the threat is most likely to come from those people associated with an extreme form of Islam, or falsely hiding behind Islam, if you like, in terms of justifying their activities, inevitably means that some of our counter-terrorist powers will be disproportionately experienced by people in the Muslim community. That is the reality of the situation, we should acknowledge that reality and then try to have as open, as honest and as transparent a debate with the community as we counter the threat, because the threat at the moment is in a particular place, then your activity is going to be targeted in that way.[1]

The reaction from the Muslim community was immediate and forthright. Massoud Shadjareh, chair of the Islamic Human Rights Commission, said: "She is demonising and alienating our community. It is a legitimisation for a backlash and for racists to have an onslaught on our community."[2] Blears' words will also give the green light to the police that the targeting of specific communities, rather than individuals, is acceptable and will lead to an even greater disproportionate use of the stop and search powers between the white population and ethnic minorities.

Since the MacPherson Report and the claim that the Metropolitan Police force was institutionally racist, the Home office has developed a number of initiatives to try and prevent the current inequalities in the use of stop and search powers. The police must now make a record of each stop and search. In April 2004 the Home office issued an implementation guidance on stop and search and in July it set up a Stop and Search Action Team to ensure that police forces use the stop and search power fairly and as effectively as possible. Blears' statement runs counter to all these initiatives.

In March the government issued the latest statistics on Race and Criminal Justice System for the period 2003-2004. A careful reading of the statistics show that the disproportionate use of stop and search powers against ethnic minorities has worsened.

As discussed on previous occasions (*Statewatch* vol 14 no 3/4), there are three main powers in use for which the police are required to record details of any stop and search: Section 1 of the Police and Criminal Evidence Act 1984, Section 60 of the Criminal Justice and Public Order Act, 1994 and Section 44 of the Terrorism Act 2000. The use of the first two powers over the last year has shown a decline of 15% and 9% respectively. The use of section 44, the anti-terrorist power, has increased by over 36%.

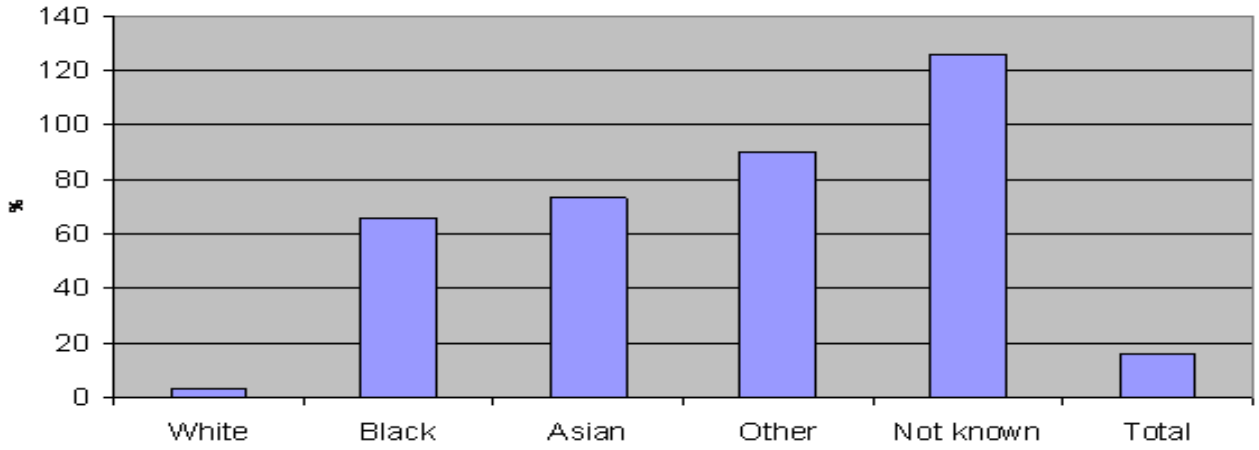
Examining changes over a single year, however, is misleading. During her evidence to the Home Affairs Select Committee Hazel Blears did just this to convey the impression that section 44 stop and searches had not increased as sharply for the Asian community as for others. She pointed out that overall the numbers had increased from 21,500 in 2002-03 to nearly 30,000 in 2003-04. She went on to say:

Those are very recent figures. Of those, the searches of white people increased by 43%, searches of black people increased by 55% and searches of Asian people increased by, I say only, 22%, so a much lower increase of searches of people from Asian backgrounds than searches of white people or black people in terms of the anti-terrorism powers there, which may be of some reassurance.

Instead of examining the increase over a single year, it is more sensible to consider the figures over a longer period. The most obvious base year to take is 2000/2001, the year before 9/11. By taking a much longer period which starts before the new anti-terrorism powers were introduced it is then possible to assess the overall impact of the legislation on police behaviour.

As there is some evidence to suggest that the police record some anti-terrorism stop and searches as section 60 stop and searches (*Statewatch News Online*, January 2004), we begin by looking at the changes in the total use of all stop and searches

Figure 1: Percentage increase in the total number of stops and searches under various legislation shown by ethnicity, 2000/2001 to 2003/2004



over the period.

The number of stop and searches has risen from 697,317 to 807,616 – an increase of 16%.

Figure 1 shows the increases for different ethnic groups. Stop and searches of white people have increased by less than 4% compared with 66% for black people and 75% for Asians. Taking a longer period and considering all stop and searches together, shows the very opposite trend than that reported to the Home Affairs Select Committee by Hazel Blears. The Asian community have experienced the largest increase in the use of these powers, followed by the black community with the white community experiencing the least impact.

It is important to emphasise that the largest of all increases have been experienced by those who are classified by the police as 'Other' (90%) and 'Not known' (126%). Why there should have been such staggering increases in these two categories is most odd. The most obvious explanation notwithstanding all the efforts to obtain more accurate statistics on police practices is that these two categories are being used by the police to disguise the actual characteristics of those being stopped and searched.

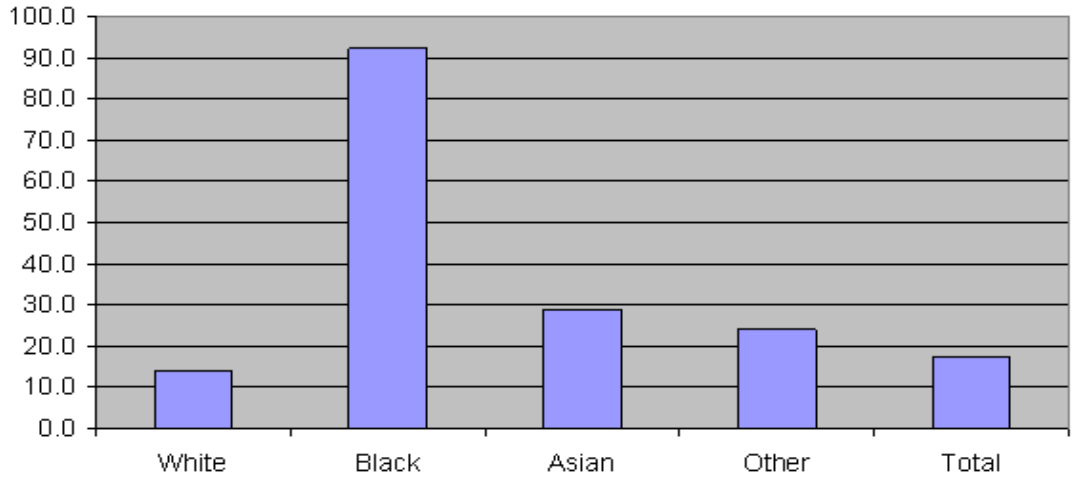
These differential increases in the use of these powers have further compounded their disproportionate use against the ethnic minority communities. Figure 2 shows the total number of stop and searches per 1,000 of population for each ethnic group in 2003/2004. As can be seen, 14 per 1,000 of the white population are subject to stop and searches compared with 93 per 1,000 of the black population and 29 per 1,000 of the Asian population. In short, black people are nearly 7 times and Asian people over twice as likely to be stopped and searched as white people.

These overall figures disguise some large differences within individual police forces. For example, the Greater Manchester police stop and search 121 black people per 1,000 compared with 2.5 per 1,000 in Cumbria. Similarly, South Yorkshire stop and search 35 Asians per 1,000 compared with 5.5 per 1,000 in Surrey. In three police forces Dorset, Essex and Wiltshire the Black on white stop and search ratio is at least 7 times greater.

Blears' comments coupled with the continuing disproportionate use of the stop and search powers can serve only to reduce ethnic minorities confidence in the fair and partial administration of justice in the UK and lead to alienation from the institutions of the state. Moreover, evidence from Ireland and around the world suggests that the partial administration of the rule of law can led to young men and women seeking social justice by violent means. The very real possibility that anti-terrorist legislation may actually be counter-productive and lead to greater threats of violence is not a position which the security services, politicians or some academics working in the terrorism field are willing to consider. By remaining silent on the issue and constantly drawing attention to preventive successes their powers and resources expand.

[1] Home Affairs Select Committee, Uncorrected Minutes of Evidence, 1 March, 2005, HC 156-v.; [2] The Guardian 2 March, 2005.

Figure 2: Total number of stops and searches under various legislation per 1,000 of each ethnic group, 2003/2004



EU: Schengen Information System II - *fait accompli?*

After four years of secret negotiations, construction of SIS II is underway. Incredibly, the Council is yet to consult parliaments and the public on the new "functionalities" and consequences

Introduction

In September 2004 the European Commission signed a €40 million contract with a consortium of IT specialists to build two sprawling new EU law enforcement databases: the 'second generation' Schengen Information System (SIS II) and the new Visa Information System (VIS). SIS II and VIS have very serious implications for the people who will be registered and will provide EU law enforcement agencies with a powerful apparatus for surveillance and control. In reality, SIS II and VIS will be a single system that is scheduled to go online early in 2007.

The Council has agreed on the scope, function and system architecture of SIS II after four years of secret discussions but – incredibly – has still to consult the European or national parliaments or the wider public on these issues. With the new functionalities already being built into SIS II, the question now is whether there is any possibility at all for democratic input, or whether instead the system is now a 'fait accompli', with the prospect that the Council will try to 'bounce' the European Parliament into a quick decision on the long awaited draft legislation.

This article analyses the development of SIS II, the new functions, the implications for groups and individuals that will be registered, and the decision-making process.

Background: the SIS

The Schengen Information System went online in 1995 between the first seven Schengen member states (France, Germany, Belgium, the Netherlands, Luxembourg, Spain and Portugal). Italy, Austria and Greece joined in 1997 and the Nordic EU states of Denmark, Sweden and Finland, together with non-members Norway and Iceland, joined 'SIS 1+' in 2000. By this time, the SIS had been incorporated into the EU Justice and Home Affairs framework under the Amsterdam Treaty. The UK and Ireland are the only EU member states not yet participating, though the UK is to be incorporated later this year, with Ireland to follow. SIS II will incorporate the ten new EU member states.

Conceptually, the SIS can be seen as a kind of EU-wide version of the UK's Police National Computer, alerting police officers, border guards and customs officials across the Schengen area to persons and items of interest to one another. Indeed, the incorporation of the UK into the SIS is a direct extension of the PNC – every routine PNC check will automatically check data against the SIS (but because of the UK and Ireland's limited application of the Schengen agreement and refusal to lift internal border controls the two states will not have access to the immigration data in SIS).

Though the SIS and UK PNC both allow persons of 'interest' to be 'flagged', there are crucial differences. The UK PNC contains detailed historical information and identification data, including criminal record data and fingerprints, which maybe used for investigative purposes, whereas the SIS contains only basic information and works on a 'hit/no hit basis'. SIS II is to change all this.

At present, the SIS contains six kinds of alert (record):

- *people wanted for arrest and extradition (Article 95)*
- *people to be refused entry to the Schengen area(Article 96)*
- *missing and dangerous persons (Article 97)*
- *people wanted to appear in court (Article 98)*
- *people to be placed under surveillance (Article 99)*
- *lost and stolen objects (Article 100)*

Since 1995 more than 15 million records have been created on the SIS. The vast majority of records concern lost or stolen items (Article 100), and the vast majority of these are lost and stolen identity documents. The latest figures available (June 2003) show that more than one million records have been created on persons (877,655 plus 386,402 aliases). The vast majority of these – 780,922 – are alerts on people to be refused entry (under Article 96), with another 96,663 registered in the other four categories (14,023 (art. 95) + 32,211 (art. 97) + 34,413 (art. 98) + 16,016 (art. 99)).

There are serious concerns about the SIS, particularly the broad grounds under which people can be registered as "illegal aliens" to be refused entry (art. 96) or for "discreet surveillance" and "specific checks" (art. 99). The data protection framework is also cause for concern because there is no guarantee that people can even find out if the SIS contains a record on them (the authorities are given wide-ranging discretion to refuse such requests). If people can not access their data files, then the 'right' to have information corrected or deleted, or to seek compensation, is meaningless. These concerns and others have been well-documented by *Statewatch* and other organisations over the past ten years.

SIS II – a summary

The plans for SIS II are based on a complex series of decisions agreed by the EU Council, its sub-groups and working parties (these are explained below). Together they provide for five critical new functions in SIS II:

(i) the addition of new categories of alert;

(ii) the addition of new categories of data, including 'biometric' data;

(iii) the interlinking of alerts;

(iv) widened access to the SIS;

(v) a shared technical platform with the Visa Information System.

These new functions, it is worth stating again, *are already being built into SIS II* and will fundamentally transform the SIS, requiring wholesale amendment of the Schengen Convention. This raises various legal and political issues that should surely have been resolved (or at least debated!) *before* the development of the SIS II got underway, but, as we shall see later, the Council and Commission have conspired to prevent any wider discussion.

SIS II – new categories of alert

SIS II will be "a system that can be expanded progressively with additional functionalities", which means that new categories of alert may be created at will. Four new functions have been discussed by the officials developing SIS II, though more may be planned. The member states have already agreed that one new category of alert will be children to be prevented from leaving the Schengen area. This would presumably apply in kidnap and parental separation cases and is relatively uncontroversial. Not so the new category of "violent troublemakers", which is among the definitive list of new functionalities despite apparent disagreement among the member states. Alerts in this category would be used to prevent 'football hooligans' *and protestors*

traveling to events in other Schengen countries where there is a "risk" that they may cause disorder (this would also depend on national legislation to based on the travel bans currently issued to 'hooligans' by several member states). A third potential new alert would cover "suspected terrorists", possibly creating a "restricted access terrorist database". However, there is already plenty of scope for including suspected terrorists in the SIS (under articles 96 and 99) and individuals on the proscribed 'terrorist lists' have already been registered. Finally, the common platform with the Visa Information System (described in detail below) raises the possibility that alerts on all 'overstayers' (visa entrants who have not left the Schengen area) will be automatically issued on SIS II. This was discussed in 2001 and reported by *Statewatch* but apparently not discussed since. From an immigration control perspective this a logical use of the two systems and will be a simple technical step (see further below).

SIS II – new categories of data

The personal data that can be held on the SIS is expressly limited under Article 94(3) of the Schengen Convention to six basic fields – (a) name/surname, (b) distinguishing features, (c) initial of second forename, (d) date and place of birth, (e) sex and (f) nationality – together with four categories of information for police officers – whether the person is (g) armed or (h) violent, (i) the reason for the report, (j) the action to be taken. The "progressive expansion" of SIS II will also allow new categories of data – fields within the alerts/records – to be added at will.

The member states have already agreed that 'biometric' data - digitised photographs and fingerprints – are to be included as soon as SIS II is launched. This must be seen in the wider context of future mandatory biometric registration of the European population. The EU has also agreed that all passport holders, residence permit holders and visa applicants will be photographed and fingerprinted using harmonised technology; something that has long been the case for all asylum applicants (whose data is held in the Eurodac database). Those EU citizens who do not have passports face biometric profiling in national ID card schemes. The upshot is that biometric data for anyone being registered on the SIS/SIS II will soon be available for inclusion in the database. Moreover, it has been agreed that in a second stage a biometric search facility will be introduced into SIS II, allowing fingerprints or photographs from crime scenes or suspects to be checked against the database. This will fundamentally transform the role of the SIS. At present the system is used to verify that individuals entering an EU member state, or caught up in that state's criminal justice system, are not banned or wanted by another member states. The new functionalities will allow SIS II to be used as an investigative tool, enabling speculative searches (so-called 'fishing expeditions') in which people registered on the SIS form a key suspect population.

And there are to be more categories of data. European Arrest Warrants (EAWs) will be issued by the member states as alerts under Article 95 of the Schengen Convention (the SIS has in fact long acted as a *de facto* arrest warrant system). All the information from the EAW form is therefore to be included in SIS II, with the result that at a number of new data fields will be created – maiden name (where applicable); residence and/or known address; languages that the person understands; information relating to the warrant, judicial proceedings and type of offence (ten categories); other information relevant to the case; and information on related search and seizure orders.

At present, 'supplementary information' such as that in an arrest warrant is exchanged in "standard forms" through the "Sirene Bureax" *after* a hit on the SIS (Sirene is a dedicated communications system designed for this purpose; the Sirene bureau in the UK is located in the National Criminal Intelligence Service (NCIS)). The inclusion of this additional information *within* SIS II raises two important questions. Firstly, will these additional data fields (and others that may be created for the new categories of alert) apply to all the SIS records by default? What little can be gauged about the design the system suggests that they will. This would expand significantly the amount of personal information held in the SIS. The second question concerns the related issue of including data exchanged through the Sirene bureaux within the SIS database. The terms of reference for the final feasibility study on SIS II were actually expressly amended, *post facto*, to include this possibility. Given that detailed and highly personal information can be exchanged through Sirene, is it at all proportionate to add this data to SIS records? This step would see SIS II more closely resemble the UK Police National Computer, in which historical data allows assists the police in 'keeping tabs' on suspects.

It is also worth considering the link between SIS II and other planned law enforcement databases. The agreed new functionalities refer expressly to other of biometric data – likely DNA – which could see the EU return to long-standing ambitions for an EU DNA database. Then there is the proposed EU criminal records database, though this has been shelved at present in favour of a mechanism for the exchange of such data. The fact is that should these should these ambitions find favour in the future, it will apparently be a simple technical step to include them in SIS II.

SIS II – the interlinking of alerts

The interlinking of SIS alerts, which is not currently possible, may appear uncontroversial and even logical. A wanted kidnapper (Article 95) may be linked to a missing child (art. 97), or an arrest warrant on a suspected car thief (art. 95) to a stolen car (art. 100) for instance. However, the discussions in the EU have much wider implications. One intention is to link 'family members', 'gang members' and even 'suspected gang members' to one another. Another is to link 'illegal immigrants' to be refused entry (art. 96) with their suspected 'traffickers' (art. 99). And another is to create links between persons subject to discreet surveillance (art. 99) and wanted persons (art. 95) or those to be refused entry (art. 96). The Council's list is exhaustive (often providing implausible justifications such as "*96-99: husband convicted criminal to be refused entry + wife suspected terrorist*"!) with the result is that supposition and 'intelligence' will creep steadily into SIS II – 'criminal gangs', 'crime families', 'illegal immigration networks' and, presumably, 'terrorist networks' may even be registered *en masse*. This is another significant extension of the 'investigative' powers of the SIS and, needless to say, greatly improves the chances of innocent people suffering serious repercussions as a result of being 'associated' with criminals (or even suspected criminals) and/or specific crimes (even criminal phenomenon).

SIS II – widened access

Access to the SIS is currently 'restricted' to police officers, border guards, immigration officers and customs officials who can *only* check the data relevant to the exercise of their duties. Nevertheless, there are currently a staggering 125,000 access points to the SIS among the 15 participating states – so many that EU officials can only estimate. Not only will the ten new EU member states plus the UK and Ireland participate in SIS II, but five new user groups will have access. The negative relationship between data security and the number of people that have access to that data should be cause for concern.

Dedicated legislation on access to the SIS for four new user groups has already been agreed by the Council (though awaits formal adoption). These are: (i) vehicle registration authorities, (ii) 'Europol', the European police Office, (iii) 'Eurojust', the EU prosecutions agency, and (iv) national and judicial prosecuting authorities. In addition, access for the security and

intelligence services has been agreed *and implemented* informally. With the exception of vehicle registration authorities, who should logically have access to the data on the one million or so stolen vehicles registered in the SIS, the decision to widen access to the SIS is highly controversial.

Europol has long sought access but this had been blocked by several member states until 2003 (the idea of having Europol run the SIS was even floated though now looks highly unlikely). Europol argued initially that it needs the data for its analysis work on 'organised crime', something that clearly falls *outside* the Schengen Convention. The ultimate justification for Europol's access to SIS data is that this is necessary in accordance with Europol's role as a police "information broker" for the member states. However, with 125,000 access points to the SIS, it is surely beyond any credibility to suggest that an EU-level information broker is needed. Europol clearly wants the information in the SIS to use in conjunction with its own extensive *investigative* database. Eurojust and national prosecuting authorities' will also use SIS II for investigative purposes; it is worth stating again that *the use of the SIS is currently limited to police and immigration checks*. SIS II will be an altogether different proposition with a host of law enforcement and 'security' functions.

The decision to give the security and intelligence services access to the SIS was apparently implemented following an informal agreement in the EU SIS working party in the aftermath of 'September 11' 2001. Rather than amend the Schengen Convention, which clearly limits access to the SIS to police, border control and customs agencies, it was decided instead to *reinterpret* its provisions. Since the purpose of the SIS under Article 93 is to "maintain public order and security, including State security" it was decided to ignore Article 101 which expressly precludes widened access to the SIS, and grant access to those authorities with a "responsibility to combat terrorism". This is can be seen as either a clear breach of Article 101 (which is part of the EU legal order) or a *de facto* amendment of that provision. Either way it is certainly a matter upon which the European and national parliaments and data protection supervisors should have been consulted.

Just in case anyone else should need access to the SIS, the design of SIS II is such that it will be possible to add new users at a stroke, including "*the possibility to give partial access with a purpose different from the original one set out in the alerts*". This is a flagrant breach of one of the fundamental principles of data protection – that data may only be used for the purpose for which it was collected – and also clearly prohibited)in Article 102(1) of the Schengen Convention).

SIS II and the Visa Information System

The EU Visa Information System is already controversial. EU officials took the decision to develop the VIS in 2002 and in early 2003 decided that it would share a "common technical platform" with SIS II. However, the European Parliament was not consulted until February 2004, and then only on primary legislation that would authorize the Council and Commission to develop VIS from the EC budget (there was no mention of the planned scope and function of VIS or its link to SIS II). Unsurprisingly, the EP voted to reject the proposal but the Council simply ignored it (as it often does where justice and home affairs (JHA) policies are concerned) and went on to adopt the VIS Decision in June 2004, in time to award the contract for the development of SIS II and VIS in September.

The Council adopted the VIS decision by *qualified majority vote* (QMV), taking advantage of the changes to EU decision-making procedures in the JHA structure that came into affect on 1 May 2004 (under QMV votes are weighted so larger member states have a bigger say). However, the EP should then have had "co-decision" and the power to throw out the proposal (this is the *primary* condition under which QMV is introduced). The VIS Decision was then an outrageous manipulation of the decision-making procedures set out in the Amsterdam Treaty: neither the European nor national parliaments could feasibly intervene (the EP was only consulted (and ignored) and member states with parliamentary scrutiny reserves (or other reservations) could simply be outvoted). The legal basis for the development of VIS is very shaky indeed.

VIS will contain all the data from every visa application to every EU member state – whether the application is successful or rejected. All visa applicants will have to provide the two forms of biometric data – digitised photos and fingerprints – and this too will be stored in the VIS. This is one of the motivations for developing VIS and SIS II together, the Commission Working Party on SIS II having decided in March 2003 that this would:

> *provide for one secure location, one Business Continuity System (BCS) and one common platform. Moreover, it could yield a two digit million € saving. The biometrics platform (which is expensive) could be paid for under VIS. Some other synergies might be found at end-user level, planning, maintenance & support, efficient use of systems and networks interoperability.*

The Council maintains that that 'the VIS and the SIS II will be *two different systems* with strictly separated data and access'. This is sheer 'spin'. A "centralised architecture" and a "common technical platform" is a deliberately convoluted way of describing a single computer system. "Interoperablility" between databases (more spin) is institutional speak for the integration of those databases – either the data sets, or access to them. The Council has already agreed that there will be broad law enforcement access to VIS (including access for the security and intelligence services), providing, in conjunction with SIS II, an EU-wide fingerprint database of wanted persons, suspects and *all* visa entrants.

It is worth remembering here that 'biometrics' are also to be introduced into *all* travel documents – EU passports, residence permits as well as visas – and that this data too is to be stored in future in a central EU database. What price then a "common technical platform" and "interoperability" with SIS II/VIS for the future biometric EU population register?

The Decision-making process

The SIS II is beginning to resemble a 'dream come true' as far as law enforcement is concerned – a dream that will be a technical reality in a little over a year – and this is a suitable description of the decision-making process. The design of SIS II began in earnest in 2000 with the Article 36 Committee's decision to draft a 'wish list' of all possible "future functionalities". The mandate for the EU Working Party (WP) on the SIS, which drafted the list, expressly provided for *requirements not agreed upon by all delegations*. The representatives of the interior ministries and national police forces that sit in the SIS WP took three years to finalise the list, taking full advantage of their mandate. The JHA Council of June 2003 adopted the list of "new functionalities for SIS II" in the form of binding Council Conclusions – meaning no consultation of the European or national parliaments. The 'wish list' (which was dissected in the analysis above) was then divided into three categories (i) agreed new functions, (ii) "functions on which full to wide-ranging agreement exists" and (iii) functions in which "a certain interest exists". Despite the evident *disagreement* among the member states, the list was considered a "definite list of functionalities" and *all* were to be included in the call for tender to build SIS II. In June 2004, more Council Conclusions added more new functionalities and these were included along with all the others in the detailed blueprint for SIS II given to the contractor.

With the development of SIS II now well underway it is staggering that the European and national parliaments, the Schengen Joint Supervisory Body on data protection and the

wider public have not yet been consulted on the new functionalities. Both the EP and JSA have protested – rather meekly it has to be said, though such are the limitations of their powers – but both have been ignored. The Council first promised to conduct a "legal review" of the proposed new functionalities in 2001 but is yet to produce anything; the same is true of the Commission – despite the fact that wholesale amendment of the Schengen Convention is necessary to implement the new functions. To justify the exclusion of the EP, JSA and other interested parties, EU Council officials have invented the wholly untenable concept of "latent development", meaning the "technical pre-conditions" for all the new functions on the Council wish list will "be available in SIS II from the start, but those functions would only be activated once the political and legal arrangements are in place". This of course is entirely prejudicial to future decision-making – what if the European or national parliaments or data protection commissioners object to the new functionalities? They can hardly be un-built.

Last Autumn the European Commission promised that it would propose the substantive legislation on SIS II the end of the year (2004): this is now three months late. What little time that remains for what passes for 'democratic debate' in the EU clearly prejudices the decision-making process. The Council now has little alternative but to 'bounce' the European Parliament into a quick decision on the legislation if it is to meet its own schedule for the implementation of the new system. It might even be argued that the actual development of new functionalities in SIS II amounts to a breech of the express limitations on the scope and function of the SIS set out in the Schengen Convention (therefore breaching the EU Treaties). Regardless, its development should surely not have been authorised until the EP had been consulted on the new functions and the crucial legal and political arguments had been resolved (or at least discussed!).

At the time of writing, it also remains to be seen if the long awaited legislation will be 'substantive' and set out in detail all those new functions and data sets discussed above. Discussions on the future "strategic management" on SIS II propose that this responsibility should fall to a Management Board in the Council framework and deal with such issues as "how to integrate new functionalities". It is quite possible then that some of the new functionalities will remain "latent" until such a framework is contrived to allow them to be implemented in future by the Council subject only to minimum standards of accountability (such as the consultation procedure).

Executive powers

Finally, it must be pointed out that it is the European Commission which is responsible for the development of SIS II under the 2001 Regulation authorising funding from the EC budget. In practice however, the Council has restricted almost all of the Commission's executive powers over SIS II, taking all the key decisions and imposing an extremely restrictive and unusual form of what the institutions call "comitology". The dual "regulatory" and "management" procedures involved mean that the same small group of police and interior ministry officials representing the member states in the Council framework take all the key decisions in the Commission's SIS II Committee. The dual procedure is a clear breach of the EU's "comitology" rules and a highly questionable way of implementing EC Acts. The same procedure is being used to develop VIS.

There is nothing unusual about the Council restricting the Commission's powers and extending its own where justice and home affairs matters have been transferred from the (EU) "Third Pillar" to the (EC) "First Pillar". The same thing happened with the Schengen Border Manual and Common Consular Instructions, which, like the SIS, have a clear legal basis in Title IV EC ("Visas, Asylum, Immigration and other Policies related to Free Movement of Persons"). The justification is that these are politically "sensitive" issues for the member states that can not be entrusted to the Commission. This is often presented as a matter of principle relating to 'national sovereignty'.

However, the executive powers that should arguably be the preserve of the Commission have simply been granted instead to the General Secretariat of the EU Council – the issue of 'sovereignty' is a 'red herring'. In the case of SIS II, it is clear that this body, headed by Mr. Solana (the Secretary-General), has played a huge part in shaping the informal decisions on SIS II that bring us to this point.

Another one of these informal decisions appears to have granted the Council General Secretariat itself access to the SIS with no apparent justification! More recently, a situation has arisen in which the power for the General Secretariat to add names to the SIS, following agreement in the Council, is a distinct possibility. The justification is the EU 'terrorist lists'. These have been agreed by the EU but the individuals named in the lists can not be added to the SIS by the EU, since only the member states have the power to create records (and because the legal liability for incorrect or inaccurate records must rest with the state that created them). In another informal decision Germany has simply added all the names on behalf of the other member states (a single alert covers the entire Schengen territory); in future it is proposed that the General Secretariat should be given the power to add names on behalf of the EU.

The way in which the Council has, aided faithfully by the Commission, managed to develop SIS II without any democratic debate whatsoever is a formidable achievement. It also demonstrates, so convoluted is the five-year conspiracy, that the Council itself – i.e. the General Secretariat – appears to have exercised at least as much influence over SIS II as any single member state. Access to the SIS, the power to add records to the SIS, and formal responsibility for the "strategic management" of SIS II (something it already enjoys in practise) will consolidate this role.

Conclusion

This analysis required painstaking research into the activities and the Council and the Commission, neither of which are at all clear from the information made public by these institutions. The deliberate shielding of this information has prevented parliamentary scrutiny and public debate around the development of SIS II and flies in the face of the EU's commitment to openness, democracy and human rights. Instead, the equally deliberate circumvention of the democratic process now threatens the human rights of those individuals who will be registered in SIS II/VIS. This system will be used to exclude millions from EU territory, to exercise surveillance and controls on the suspect population (mainly immigrants), and to create a biometric register of *all* entrants to the EU, not dissimilar to the "US Visit Program" (if much less well known).

In 1999, Thomas Mathiesen's seminal study on the SIS (published by *Statewatch*) concluded:

> *The likely development towards a more or less integrated, totalised registration and surveillance system in Europe implies a development towards a vast "panoptical machine" which may be used for registration and surveillance of individuals as well as whole categories of people, and which may well become one of the most repressive political instruments of modernity.*

The "latent development" of SIS II is testimony to this prescient warning.

This report with a detailed chronology and bibliography will appear on: http://www.statewatch.org/news/2005/apr/sis-II-report.pdf

UK: The Prevention of Terrorism Act 2005

People subject to "control orders" limiting their rights and freedoms will not hear the evidence against them

In just 13 working days parliament agreed on the Prevention of Terrorism Act (PTA 2005). With a timetable "guillotine" imposed by the government (and agreed by a majority in the House of Commons) the Bill ended up being passed to and from the Commons to the House of Lords for the last three days. A majority in the Commons rejected amendments by the Lords, who in turn reimposed their amendments.

The opposition in the Commons came from the Conservative, Liberal and nationalist MPs and (depending on the vote around 30 Labour backbench MPs). In the Lords the opposition came from the Conservative and Liberal peers and, most importantly, what are known as the "cross-benchers" - peers not belonging to a party group including many ex-high level civil servants, judges and lawyers. The government found itself in a mess because the Parliament Act, which allows the them to over-rule the Lords, does not apply where a Bill has not been through the normal procedures - that is, for example, where the parliamentary timetable is subject to a guillotine.

In the end two issues remained on the table. The opposition's demand that the Bill include a "sunset clause" and that the standard of proof to impose "control orders" should be on "the balance of probabilities" (more than fifty per cent) rather than the lower standard of "reasonable grounds for suspecting" (that a person had been, or was, engaged in "terrorist-related" activities). The normal standard of proof in the criminal justice system is that a person is presumed innocent unless proven guilty "beyond reasonable doubt" by a jury.

On Friday, 11 March, these two issues were being "batted" back and forth. By early afternoon a "deal" was in the air, not on the standards of proof, but on the demand for a "sunset clause".

Opponents of the Bill were calling for a "sunset clause" - as had been put into the Anti-Terrorism Crime and Security Act 2001 (which allowed the 17 men to be held in Belmarsh prison). The ATCS 2001 is thus to expire in November 2006. The government, under pressure, said it could agree to an annual "review" - which as everyone knows is meaningless because an Act of Parliament cannot be amended through an annual review, it can only be accepted in full or rejected.

The government "compromise"that was finally agreed is a bit complicated and is not in the Act itself. The government, in the form of the Home Secretary, said that they intended to present a new Counter-Terrorism Bill to set out "preparatory" offences for terrorist-related activities. This would be published (after the general election) in the autumn and would be discussed in parliament at the same time as the first annual review of the PTA 2005. Moreover, MPs and peers would be given parliamentary time to seek to amend the PTA 2005. The "compromise" is based on a "promise".

The Act's provisions

Article 1.3 of the Act sets out the powers "to make control orders". The "Secretary of State" (ie: the Home Secretary) is empowered to make an order against an individual and set out the conditions (eg: tagging) for suspected "terrorist related activity". Article 1.4 list the sixteen "conditions" which include restricting a person's work or occupation, banning them from using the internet, restricting movement (to a city or area) and getting permission for friends to visit - the "conditions" could affect a person's family too. Control orders (of both kinds) can be imposed for 12 months and can be renewed on "one or more occasions". There is nothing to stop control orders from becoming virtually permanent. If a person breaks the conditions of an order they can be sent to prison for up to five years without there being any further judicial examination of the case against them - they can be sent to prison without a trial taking place.

These sixteen conditions are termed "non-derogating" though Ben Emmerson QC argues that a combination of control orders would constitute a breach of the Convention. A "derogating control order" (from the ECHR) is where a person is placed under "house arrest" (1.5).

Much debate took place in parliament over whether the decision to issue a control order should be made by a politician, a government minister (in effect the Home Secretary), which the government wanted or by a judge, which the opposition called for. The government did concede a "role" to judges in both categories of control orders but that is all it is. The decision to issue a control order still lies with the Home Secretary who will decide on the basis of a "intelligence assessment" presented by MI5 (the internal security agency, the Secret Service).

The issuing of "non-derogating" control orders is simply based on "reasonable grounds for suspecting" a person is involved in terrorist-related activities. The judiciary then has to confirm the order but within very restricted conditions which are a far cry from a judge made decision. The government is only obliged to show the judge sufficient "intelligence" to convince them of the need for a control order (not the whole intelligence dossier). The role of the judges is defined as being governed by the rules of a "judicial review" which is not at all the same as a full hearing of all the evidence and then the judge making the decision.

In effect the judiciary will be asked to confirm the decision of the minister and can only overturn both the decision and the conditions imposed if they are: "obviously flawed"

In other words the judiciary can only reject the minister's decision if there is absolute evidence that it is wrong. It is no wonder that the judiciary are concerned that they will be caught up in a process for which they will take part of the blame.

At the initial hearing - when a non-derogating or derogating order has been issued by the minister - the court can hear the application without the suspect being present (3.5.a), without the suspect even having been notified (3.5.b) and without the accused being given the "opportunity.. of making any representation to the court (3.5.c).

For derogating control orders the initial hearing - on a application by the minister - only has to agree that there are "reasonable grounds for believing" it is necessary. Also at this initial hearing the hands of the judges are also tied because a control order can be issued where:

> *there is material which (if not disproved) is capable of being relied on by the court as establishing that the individual is or has been involved in terrorism-related activity (4.3.a).*

It is very hard to see how the "material" could be "disproved" as the person will not be present, will not know the evidence against them and will not be represented.

It is only at the first full hearing that the judgement will be based on the "balance of probabilities".

A new power of arrest was introduced during the passage of the Bill. Under Article 5 a person can be arrested and detained for up to 48 hours where the Home Secretary has made an application to the court for a "derogating" control order. The person can be held for a further 48 hours if the court orders it. So the person is being held in police custody while the court decides whether the decision by the Home Secretary is "obviously flawed" or not.

Responding to critics the Act says that before authorising a control order the Home Secretary must "consult" the police as to

whether there is enough evidence to "realistically" bring charges leading to prosecution in court (Article 8.2).

The Act provides for an annual renewal (Article 13); a report on the use of control orders has to be prepared every three months (Article 14.1); and a "person" is to be appointed to review the Act after nine months, then annually (Article 14.3) - under the Anti-Terrorism, Crime and Security Act this was carried out by Lord Carlile.

The "rules of court"

The Schedule to the Act sets out the details of the court proceedings. A judge must ensure that:

disclosures of information are not made where they would be contrary to the national interest (Section 11.2).

The "rules of court" will be drawn up by the Lord Chancellor (Section 11.3). These "rules of court" include "the mode of proof", enabling of requiring proceedings to be determined without a hearing (Section 11.4.1).

Most crucially the "rules of court" can makes provisions for control order proceedings or appeals:

to take place without the full particulars of the reasons for the decisions to which the proceedings relate being given to a relevant party to the proceedings or his legal representative (Section 11.4.2a)

The proceedings can also take place in "the absence" of the person concerned and their lawyer (Section 11.4.2b). The person will only receive a "summary of evidence taken in his absence" (Section 11.4.2.d). This "summary" is to be prepared by the Home Secretary. The Home Secretary is to give the hearings all "relevant material" - which, of course, may only be that necessary to convince rather than the full "intelligence assessment" provided by MI5 on which the initial decision was taken.

The "interests" of the "suspect" are to be "represented" by special advocates, appointed by the Attorney-General, who will not be allowed to communicate with the "suspect" or their lawyers (Section 11.7).

"encouragement" and EU practice

"Terrorist-related" activity is defined in Article 1.9 as the "commission, preparation or instigation of acts of terrorism" (which it might be thought would already be criminal offences) or "conduct which gives support or assistance to individuals who are known or believed to be involved in terrorist-related activity" or:

*conduct which gives **encouragement** to the commission, preparation or instigation of such acts, or which is intended to do so" (emphasis added).*

The term "encouragement" is not defined. The scope of the term "encouragement" is compounded by the overall provision for Clause 1.9 which says it is:

immaterial whether the acts of terrorism in question are specific acts of terrorism of acts of terrorism in general

The proposed offence of "encouragement" for "acts of terrorism generally" is suspiciously close to the highly contentious concept of "apologie" being proposed in the Council of Europe draft Convention on Terrorism which could endanger free speech and freedom of the press.

Under the PTA 2005 all meaningful proceedings will take place *in camera* (press and public excluded) without the defendant being present - who will thus not know the evidence against them nor will their lawyer.

The differences between judicial scrutiny and normal criminal procedure are important. If an individual is formally charged with terrorist offences the trial would be before a judge and jury and the defendant would know the evidence against them. Some evidence may be presented in camera with the public excluded and witnesses may appear by video link or give evidence from behind a screen to protect their identity. On the other hand, "independent judicial scrutiny" means a hearing before a judge(s) but no jury. The defendant and their lawyers will not hear or see the evidence. The only people to hear the evidence will be the judge and "special advocates" appointed by the Attorney-General to try and put forward the views of the defendant ? and they are not allowed to tell the defendant what the evidence is against or ask them for their views to contradict the "evidence".

One of the arguments advanced by Charles Clarke, the Home Secretary, and by John Denham, ex-Home Minister and chair of the Home Affairs Select Committee, is that other countries in the EU can hold people suspected of terrorist activities for up to four years. This is a disingenuous argument. It is true that countries like Spain and Germany, for example, can hold people in "preventive detention" usually for up to two years in Germany and three years in Spain. In Spain people may be held where: 1) there is a danger that the person may flee, 2) or that they may destroy evidence or 3). that they may repeat the alleged offence the same goes for Germany where people can also be held for suspected participation in a terrorist organisation. But, and this is the crucial difference, in both countries:

a) "preventive detention" can only be ordered by a judge

b) the defendant can appoint a lawyer of their choice

c) the state has to present sufficient evidence in court to justify detention - the defendant knows the evidence against them d) the defence can question the evidence and the grounds for detention (eg: fleeing)

This is a judicial process, in a court with evidence presented to the defendant which can be questioned and the defendant has full rights - not a decision by a government Minister.

The full-text of the Precention of Terrorism Act is on:
http://www.statewatch.org/news/2005/mar/pt-bill-8-March.pdf and see:
G8 and EU counter-terrorism plans including preparatory offences: http://www.statewatch.org/news/2005/mar/exceptional-and-draconian.pdf

Comment: A stampede against justice

In a plea to parliamentarians, lawyer Gareth Peirce spells out the dangers of control orders

This week, our future and our liberties are in your hands. We cannot forgive you if you betray us, and you betray us if you compromise. You betray us if you do not see the excesses of a totalitarian state in what you are asked to endorse.

Any person who has a control order imposed upon him is from that moment branded, forever, as an individual "involved in terrorism-related activity". He can never disprove that label as he will never be told why the order is being made against him. And not only is the man or woman who becomes the subject of the order branded, so too are their entire family, their friends and associates. The children of anti-apartheid activists in South Africa speak of the scars that still remain because they grew up, just as much as their parents, under house arrest.

The children and grandchildren of those witch-hunted by McCarthy in 1950s America lived thereafter branded as the families of traitors. And before we have even had the opportunity to cure the serious mental illnesses caused not just in the men detained under the 2001 act, but in their families also,

we are being plunged into new nightmares, unconscious of the lessons of history.

In order not to frighten parliamentarians, it is at present claimed that control orders do not require any individual to remain in his home 24 hours a day. In every fundamental way, however, his life can be destroyed. If he disobeys any aspect of an order, he will be imprisoned. He can be prohibited from possessing specified articles, he can be prohibited from specified activities, he can be restricted "in respect of his work or his business", he can be restricted in his association with specified persons or, open-endedly, "with other persons generally". He can be restricted as to where he lives or who lives with him, where he goes and when. He will be required to give access to "specified persons", to allow those persons to search his place at any time of day or night, to be tagged, to comply with his movements and communications being monitored and, chillingly, to provide information to a specified person if demanded.

We remember the requirement imposed upon hundreds of Americans by McCarthy to provide information on demand, and the heroic stance of those who took the fifth amendment and were sent to prison. "Naming names" will be the order of the day here in just the same way; the individual will be branded, and then, on pain of imprisonment, be required to brand others. Anyone from the Muslim community in Britain, or who has any knowledge of their experience, will have heard the terrified reports, in particular of those who have no safe immigration status, of being repeatedly approached - outside their homes, in supermarkets, with their children - by intelligence agents to provide "information" in exchange for regularisation of their immigration status or face the consequences if they refuse.

Can future recipients of control orders anticipate them and modify their behaviour accordingly? Based upon the experiences of those detained under the 2001 act, the answer is firmly no. Far from becoming clearer with time, those detained are, after three years, even more confused as to the basis for their detention. What is asserted by the home secretary in March 2005, in relation to each detainee to justify his continuing detention, is that each remains wedded to his extremist jihad ideals. How can this assessment have been made? Of those about whom it is made, three are in Broadmoor hospital and have had access only to their doctors (who proffer their view that no such ideas or behaviour have ever been manifested throughout the years they have been there). Another, driven into madness and under house arrest has had no visitors or communication with anyone other than his wife, children and lawyers for nearly a year. The others, all in Woodhill or Belmarsh, have had no one come near them to make any such assessment since all were thrown into prison in 2001.

All that has happened in the past three years (and now is being redesigned for relegislation for the future) is the antithesis of any criminal justice system. It is a delusion to think that imposing a judge at any stage in the process, whether it be at the outset or further down the unjust line, can remedy the fact that all of this construct is created to avoid our constitutional protections of fair, public and open trial, by a jury of your peers, in which the most important aspect of all is that your accuser tells you at the earliest possible moment what the accusation against you is, so that you have the opportunity of replying. None of this construct can be improved or affected by amendments since the very purpose of the new legislation is to avoid these central obligations. Once the individual is branded, any information to justify the branding is considered behind closed doors.

What do we know of the origins of that information? Enough to disturb us greatly. Only because he was forced into the answer, did the home secretary acknowledge that the government uses information obtained from torture and that the only caveat to its use is what weight to give it. I remain astounded that no parliamentary debate followed to question this most extraordinary admitted breach of our every international and domestic treaty obligation. Nor do I understand why, within this present legislative stampede, there is no serious questioning of what has openly thereby been admitted, that the government's assessment of threat, is erected, to a significant degree, upon information extracted around the world from torture.

As each new wave of British detainees emerges from Guantánamo Bay, individual accounts of horrifying ordeals have one common denominator: from the first days of unlawful capture of each, whether in Pakistan, the Gambia, Zambia or elsewhere, British intelligence agents were there. What those agents wanted was information demonstrating a threat in this country; what they did not want was evidence that there was not.

The same predetermination to find particular answers is not only to be found in the behaviour of our intelligence agencies in Guantánamo Bay. The most extraordinary proof that this was the only approach ever intended was clear from the first moment of arrest of all of those interned under the then 2001 legislation. Were they ever arrested, interviewed by police or indeed anyone to discover what they had to say before they were taken to Belmarsh? No. Have they ever been spoken to since that time? No. The question that ought to inform parliament above all, is "Why not?" Is it that no one in authority wanted to know the answers to the questions that might have been put?

Is it really sane, let alone lawful, to try to discover whether there is a threat to this country by frightening individuals unofficially in the aisles of supermarkets, or by obtaining the byproducts of coercive interrogation and torture abroad and yet deliberately to forgo the opportunity of engaging in official processes of inquiry? Fairness to those accused is not dissonant in any way with the interests of society. The interests of society collectively, as well as of the individual, demand that criminal accusation be precise and foreseeable and communicated. How otherwise can members of society determine in advance whether they risk offending against the law? These fundamental questions demand the clearest possible debate as to what is and what is not acceptable in society, what is banned and what is not.

What the government asks for here is the ultimate demand of any totalitarian regime: the executive is the accuser; the moment of accusation is also the moment of the imposition of the penalty. Wherever in the process a judge comes to be involved, the executive has already pre- determined that the individual will be stigmatised and punished on the basis of suspicion - that suspicion backed only by secret "information". This is a stigma that is intended to attach itself to the accused wherever he moves (if he can) nationally, and conveyed onwards, internationally. It is, of course, open-ended. It will destroy his family for generations.

The accuser, the executive, invokes a judge for one reason alone, to give its procedure a spurious cover, to safeguard it against any future judgment of the law lords or the European court of human rights. However, in a sense it matters not to the executive if in three or four or five years it comes to lose the legal argument once again, since those accused under any new law will have been been immobilised. The government's only preoccupation now is to force this legislation through parliament.

Without protection for the individuals who make up society, society itself founders. Nor is there a balance to be struck between the rights of individuals and national security: national security depends upon every individual in this country having inalienable rights. We have not voted for you as our representatives for you to throw these away.

Gareth Peirce is a solicitor representing detainees under the Anti-Terrorism Crime and Security Act 2001. This article appeared in the Guardian on 8 March 2005 just before the final vote on the Prevention of Terrorism Bill

Statewatch's

new searchable database

Statewatch has launched a new searchable database on its main website:

www.statewatch.org

The database contains:

- **all the material from the Statewatch bulletin (since 1991)**
- **all the stories, features, analyses and news in brief from Statewatch News Online (2000)- including preservation of all the links to documents**
- **all our archived material since 1991**

Subscribers to the bulletin get free and unlimited access (historical material is only available to subscribers)

The database has over 23,000 entries and will be updated regularly

If you do not have a username and password please send an e-mail to:

office@statewatch.org

with your name and address.

CONTENTS

Statewatch website

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

Contributors

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

Statewatch's European network of contributors is drawn from 12 countries.

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

Statewatch bulletin
Subscription rates: 6 issues a year: UK and Europe: Individuals and voluntary groups £15.00 pa; Institutions and libraries: £30.00 pa (outside Europe add £4 to the rate)

Statewatch does not have a corporate view, the opinions expressed are those of the contributors.

Published by Statewatch and printed by Russell Press, Russell House, Bulwell Lane, Basford, Nottingham NG6 0BT

ISSN 0961-7280

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