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More openness or just a drop in the ocean? - the need for Freedom of Information in the EU

Tentative moves have been made to improve openness (access to documents) and transparency (of the decision-making process) in the EU. The European Ombudsman issued a Special Report in October on the Council of the European Union's (the 25 governments) refusal to meet in public "whenever it is acting in its legislative capacity". Meanwhile Mr Kallas, Vice-President of the Commission, is to launch a "Transparency Initiative" which will list recipients of EU funding and "improve the coverage of the existing commission register of documents".

The real question for the Commission however is not to "improve" its register of documents but to actually implement Article 11 of the Regulation on access to documents which came into effect in December 2001. This says that "References to documents shall be recorded in the register without delay" (Art 11.1). In practice the Commission has utterly failed to implement this obligation, instead it has partially implemented Article 12 on legislative measures, meaning that only a fraction of the documents it produces are included in its register. The Commission has an internal central document database covering every aspect of policy-making and evaluation - why is this not the basis of its public register?

For both the Council and the Commission the problem is which documents they give access to and which they does not. For example, the largest category of refusal of access to documents by both institutions is where disclosure would "seriously undermine the institution's decision-making process unless there is an overriding public interest in disclosure". This is the so-called "space to think" for officials and not in a single instance has a "public interest" argument by an applicant been upheld.

In effect this means for example that although final Council and Commission positions are made public few, if any, of the internal discussions leading to the position are available before the measure is adopted. In a democratic EU *all* documents related to a proposed new measure should be made public at the same time as the proposal. Citizens can then see what options and influences were rejected or adopted.

One area in which there is the greatest secrecy are the numerous EU meetings involving the USA on JHA issues. Between 2001-November 2005 a total of 409 documents on the Council register concern "USA" of which only 48.8% are publicly accessible (compared to over 62% in the register as a whole). Sixteen documents are "partially accessible" meaning that the US position is blanked-out.

Most USA documents which are accessible were the subject of parliamentary scrutiny in national and European parliaments. However, of 118 documents that were not, only 20 are accessible (17%) - mainly concerning high-level EU-US meetings and "Informal" meetings covering a range of issues.

Since the Amsterdam Treaty came into force in 1999 the number of documents in the field of justice and home affairs (JHA) has mushroomed and there are now over forty working groups that have to be tracked. Dozens of documents are produced every day by the Council and Commission making the job of monitoring what is being discussed almost impossible even for the most dedicated of researchers (let alone parliaments whose agendas are cram-packed with new measures).

The time has surely come for an EU Freedom of Information Regulation governing all its institutions. As distinct from "access to documents" which require each issue to be tracked down in the plethora of committees and working groups, FOI in the EU would mean that a person could simply request all the documents concerning a specific measure or initiative and it would be the job of the institution to provide them. This should be subject to a new very limited set of exceptions - excluding the "space to think" and the right of third countries to veto disclosure.

It should also have a meaningful "public interest" test. To argue, as the Council and Commission do, that for momentous decisions such as the finger-printing of everyone in the EU (biometric passports and ID cards) and the surveillance of all telecommunications, the "public interest" of disclosure never overrides their "space to think" has no place in a democratic Europe.

A Regulation on FOI for the EU institutions should be accompanied by a Directive covering the member states, the majority of whom do not have national rules that come close to the standards advocated internationally by experts.

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CIVIL LIBERTIES

GERMANY

Attempt to ban pro-Kurdish newspaper fails

On 5 September, interior minister Otto Schily banned two Muslim organisations and the well-known newspaper *Özgür Politika*, the latter allegedly being "close" to the Kurdish nationalist party, the PKK. The same day, police raided 60 sites in eight different regional states. The paper distributes its 10,000 copies Europe-wide from its base in Germany. The ban came only two days after a mass rally in the Cologne Rhein Energie stadium at which speakers demanded the release of PKK leader Abdullah Öçalan. Investigations have also been initiated against another press agency and music distribution company allegedly close to the PKK. The banned Muslim organisations *Yatim Kinderhilfe* and *Islamische Wohlfahrtsorganisation* collect chartable donations and are accused of channelling the donations to the Palestinian Hamas organisation.

The newspaper ban was met with strong criticism for curtailing press freedom. Schily said that although he ranked the principle of freedom of press violated by the decision as "significant":

> *in the present case it had to be subordinated to security interests of the Federal Republic of Germany.*

The German Journalists' Union *Deutsche Journalisten Union* (DJU) called the ban of the paper's publishing house *E.Xani Presse und Verlags-GmbH* "completely excessive" and the Hessian DJU secretary Manfred Moos pointed out that the fact that the paper documented PKK positions, did not mean it was "part of the command structure". He said police actions against newspapers not only threatened to undermine the protection of confidence and therefore informants' trust in journalists but also violated the constitutionally guaranteed press freedom.

The paper largely reports on the attacks by the Turkish military and the far-right against Kurds in Turkey as well as reporting on Kurdish protests. This latest ban illustrates that the EU's move towards criminalising "'promotion of terrorism" is being used to curtail freedom of speech rather than effectively fighting terrorism.

This recent attempt, however, failed as the Federal Administrative court suspended the implementation of the Internal Minister's decision in an accelerated appeal procedure initiated by the paper. Although the main proceedings are still to come, it is expected the court will overrule the ministerial decision. Cemal Ucar, a partner in the newspaper's publishing house, replied to the minister's allegations:

> *We value committed reporting on the events in Kurdistan. This concerns military but also cultural and political developments. This constitutes regular journalism that is of interest to our readers. There is nothing state-threatening about it, even if some people don't like what we write.*

Despite the ban's suspension, Ucar reports on the consequences for journalists and the paper:

> *The interior ministry and the Federal Administrative Authority are now discussing the return of our inventory and our confiscated assets...However, it is not easy to continue straightaway because all our employees are out of work now, all computers, the archive, background documents and the library have been confiscated. It will take time to set it all up again and re-organise, therefore we don't know when we will be able to start publishing again."*

Özgür Politika can, however, also be read on-line under http://www.kurdishinfo.com; Süddeutsche Zeitung 6.9.05; taz 6.9.05; junge Welt 21.10.05.

UK

ID card benefits "exaggerated" by government

In August Tom McNulty, the Home Office overseeing the government's £6 billion ID card project, said that the government had overstated its case in claiming that the cards were a panacea for a range of problems from terrorism to asylum to benefit fraud. McNulty told a private seminar:

> *Perhaps in the past the Government, in its enthusiasm [for the scheme], oversold the advantages of identity cards. We did suggest, or at least implied, that they may well be a panacea for identity fraud, for benefit fraud, terrorism, entitlement and access to public services. (Times 4.8.05.)*

He also suggested that a "change of gear" might see a delay in the scheme and its implementation. The Home Office has predicted that it might not be implemented until 2014 as doubts in the IT industry increase about the 2007 date for launching the database.

McNulty's comments follow recent remarks by Home Secretary, Charles Clarke, who expressed his doubts about the usefulness of ID cards in preventing a terrorist attack, following the 7 July bombings in London. Asked if ID cards would have helped prevent the attack from taking place, he replied:

> *I doubt it would have made a difference and I've never argued, and don't argue, that ID cards would prevent any particular act.*

Gordon Brown, Labour's "leader in waiting", is also reported to have become disillusioned by the scheme and his former press secretary, Charlie Whelan, told the *New Statesman* magazine that it would get "an early bath" if Blair stood down soon: "Does anyone seriously believe that Brown will back this bonkers idea?" he mused.

The government's ID card scheme has been roundly attacked by all shades of political opinion for its divisiveness and intrusiveness. While there is particular concern that the card will be used to single out black and ethnic groups for unfair treatment there are also fears that this so-called "entitlement" or "opportunity" card will create a health underclass. Thousands of people could be denied access to health care to which they are entitled, because they are unable or unwilling to produce an ID card. In a letter to the *Guardian* newspaper, senior trade union officials castigated the wastefulness of scheme, saying:

> *The number of costly government IT failures is too long to list. The money that will be squandered on this scheme would be far better spent on investment in health and education, or solving the pensions crisis.*

In June a study by the London School of Economics (LSE) claimed that the cards will cost £230 per person and it is taken for granted that, whatever the eventual cost, it will be considerably more than the £95 suggested by the Home Office or the £30 mooted by Tony Blair. The authors of the LSE report also highlighted other serious concerns about the project:

> ** The technology ("no scheme on this scale has been undertaken anywhere in the world")*
>
> ** Civil liberties issues (conflicts with human rights legislation)*
>
> ** The database (which could be accessed by computer hackers)*
>
> ** The burden on individuals and small businesses*

The LSE study, which involved 14 academics and consulted 100 experts and researchers was dismissed as "unfair" by the government.

No2ID, the campaigning organisation opposed to the government's planned ID card and National Identity Register, predicts that hundreds of thousands of people will defy the

government by refusing to carry the cards, despite the risk of imprisonment. The campaign cites the 1987 Australian protests which forced that government to abandon its scheme. No2ID has extended its "Refuse Pledge" scheme, which was launched last July. The organisation has obtained the support of over 11,000 people who have pledged to refuse to sign up to the ID scheme and donate £10 towards a legal fund to protect those the government might prosecute for refusal to comply. It is hoping to get 50,000 people to pledge £10 each to generate a £1m fighting fund.

London School of Economics "The Identity Project: an assessment of the UK Identity Cards Bill and its implications" 2005,

http://is/lse.ac.uk/idcard/identityreport.pdf

The No2ID Campaign - http://no2id.net/

UK/CUBA

Amnesty calls for UK action on Guantanamo hunger strike

Amnesty International and Reprieve, the UK charity that protects the rights of people facing the death penalty, have called on the government to "urgently intervene to help prevent unnecessary loss of life from the ongoing hunger strike at the US interrogation centre at Guantanamo Bay, Cuba." At least six UK residents joined the hunger strike in August; they are among an estimated 210 hunger strikers. Amnesty and Reprieve have called on prime minister, Tony Blair:

> *to make an immediate assessment of the number of British residents on hunger strike, ascertain the gravity of their medical condition, and obtain from the US authorities a guarantee that an independent body is given access to all UK residents on hunger strike.*

Clive Stafford-Smith, the Legal Director of Reprieve and a lawyer who is acting on behalf of some of the Guantanamo detainees, has renewed calls for an independent inspection of the interrogation facility following allegations that at least 20 of the hunger strikers had been force-fed by the US military. Stafford-Smith said that prisoners were being force-fed through tubes in their noses:

> *To have my clients being restrained against their will with a tube forced down their noses, after all they have been through, just makes me sick.*

Also in October US President George W. Bush suffered a rebuff to his policy of extending the parameters governing the use of torture against non-US nationals in Iraq and at Guantanamo when Republican and Democratic members of the Senate insisted on clear rules on the techniques used during interrogation. The Senate voted by 90 to nine to amend a $440 military spending measure to include the restrictions, despite warnings from the White House that it would harm its ability to fight its so-called "war on terror". Bush has said that he will veto the measure.

The UK resident and Libyan citizen, Omar Degahayes is among the prisoners who went on hunger-strike in protest at their continued detention without trial and appalling living conditions. Stafford-Smith informed Omar's family of the action. The men, frustrated at their continued detention in contravention of international law, have said that they intend to starve themselves to death in an attempt to draw attention to their plight, which has been largely ignored by the world's governments. The hunger strike resumes a widespread protest that ended last July and was provoked by new allegations of violent interrogations and desecration of the Muslim holy book, the Koran.

Stafford-Smith's information about the hunger strike came from his client, Binyam Mohammed, a British refugee from Ethiopa. His notes of his conversation with Mohammed are still censored by the American authorities, but have been "partially declassified". Stafford-Smith's gagging speaks volumes. He told the *Boston Globe* newspaper: "This is all that is unclassified for now, but you can imagine that there is much more." He continued:

> *This is very urgent, as you can infer from the statement that if they stopped eating on August 11 or so, this means that some of them could be getting in serious physical problems by the next week or so.*

It is thought that between 200 and 500 prisoners participated in last July's hunger strike, resulting in several dozen people being hospitalised, some requiring intravenous fluids. The US military said that only 100 people participated, but there is no independent verification of this because the US forbids any independent monitoring. The hunger strike ended at the end of July when the military gave guarantees regarding living conditions and promised that the prisoners would receive fair trials.

Reprieve has initiated a picket of the UK's sole handcuff exporter, Hiatt and company which is located in Perry Bar, Birmingham, West Midlands, because it makes the shackles that are used on prisoners at Guantanamo Bay. The firm, whose parent company is Central Industry Limited, has a distribution partnership in the US with businessman Chuck Thompson, which markets a wide-range of Hiatt products worldwide, including many that are banned from export in the UK. Reprieve say that the company produced the so-called "nigger-collar", used to restrain slaves in the United States during the nineteenth century, supplied the apartheid juntas in South Africa and the former Rhodesia in the 1980s, and more recently the Saudi regime.

The use of Hiatts products at Guantanamo was observed by Clive Stafford Smith, Reprieve's Legal Director, who saw Hiatt waist shackles being used on British prisoner Moazzem Begg during an interview in 2004. Begg, who was one of nine British prisoners released from Guantanamo by the US, has since said that the shackles were attached to a "three-piece suite" in which "a pair of handcuffs was attached to a to a waist chain which was in turn attached to another chain which led from the waist to the ankle and was then attached to a leg iron." Stafford-Smith has seen the shackles used on 20 other prisoners.

Amnesty International/Reprieve press release 6.10.05; Reprieve, PO Box 52742, London EC4P 4WS

Civil liberties - new material

Revealed: the diary of a British man on hunger strike in Guantanamo, Omar Degahayes. *Independent on Sunday* 11.9.05. As many as 200 detainees are on hunger strike at Guantanamo Bay in protest at US "justice" - a justice that incorporates indefinite detention in deliberately inhumane conditions outside of the Geneva Conventions, regular torture and abuse and the rejection of independent legal advice, culminating in a military tribunal. In these extracts from his diary, which cover the month of July, the British resident Omar Degahayes, who has been incarcerated in Guantanamo since September 2002, describes the current situation and expresses his fears for the future. The British government has made clear that it has no intention of intervening in the case of Degahayes or other British residents incarcerated in Guantanamo.

Torture of Prisoners in US Custody, Marjorie Cohn. *Covert Action,* Spring 2005, pp. 42-46. This article examines the responses to allegations of torture by US forces at Abu Ghraib prison in Iraq by Secretary of Defense, Donald Rumsfeld and President George W. Bush and contrasts them to an account of its origins by the author Seymour Hersch. Hersh argues that the roots of Abu Ghraib can be found "in the creation of the "unacknowledged" special-access programme (SAP) established by a top-secret order signed by Bush in late 2001 or early 2002." SAP was extended to Iraq in 2003 when Rumsfeld personally approved the use of "physical coercion and sexual humiliation to extract information from prisoners." Hersh consulted a military specialist with

close ties to Special Operations about the war crimes who said: "What do you call it when people are tortured and [are] going to die and the soldiers know it?" - "Execution".

Expensive, pointless, dangerous. Who needs these mistaken identity cards? AC Grayling. *Times* 17.10.05. Grayling considers the evidence presented to the Home Affairs Committee on the introduction of identity cards which "overwhelmingly demonstrated that ID cards would be ineffective, costly [estimates range from £5-18 billion] and a gross violation of civil liberties". He writes: "ID cards...carry comprehensive information about you, stored on a microchip connected to an Orwellianly named "National Identity Register". This changes, he says, your relationship with the State entirely. You are no longer a private citizen, but in effect a number-plated unit who can be monitored by the authorities for any purpose. In fact, ID cards would be better named "surveillance" cards, because they provide central authority with a means for monitoring all your activities and give permeant access to all your personal details." Recent trials have indicated that as many as one in 1,000 people could be inaccurately identified by the scans being planned for identity cards. Grayling is the author of a study of ID cards for Liberty, *In Freedom's Name: the case against identity cards*.

Evenin' all. Name, address, DNA sample..., Simon Davies. *The Times* 27.7.05. Davies examines a raft of new police laws and amendments to the Police and Criminal Evidence Act, the Criminal Justice Act and the Serious Organised Crime and Police Act which have "created police powers that would be unthinkable in most democracies." He also considers The Children Act which "provides for the profiling and analysis of all children to detect which infants may be potential criminals" and the Regulation of Investigatory Powers Act "which makes provision for the universal archiving of all communications records (phone, e-mail and internet visits) for possible later use by authorities."

IMMIGRATION

NETHERLANDS

Eleven die in fire at "unsafe" detention centre

On the night of 26-27 October, 11 people died and 15 were injured in the immigration detention centre located near Schiphol airport. The cause of the fire is as yet unknown and broke out in a prison bloc holding 43 undocumented migrants in 24 cells. Guards were unable to open all of the cells due to the rapid spread of the fire. Eight prisoners were able to escape in the commotion, three of whom were captured the next day. Other surviving prisoners were relocated to different detention centres around the country. Wakes for the victims and their families have been held in front of detention centres since the incident.

The private security company Securicor (now "Group 4 Securicor") took over part of the running of the centre; it relies on temporary workers who receive only basic training as "detention supervisors".

Criticism has also been levelled concerning the absence of fire precautions in the prison complex, which was built ad hoc in 2002 but started operating long-term in 2003. It is constructed from prefabricated containers, eleven of which are used as prisons. Experts from the Nibra, the Dutch Institute for Fire and Emergency Management (*Nederlands Instituut voor Brandweer en Rampenbestrijding*) say that the building would not have passed their fire regulations as the fire spread too rapidly for a fire-secure building. Nibra had carried out an inspection of the detention centre after a fire had broken out in November 2002. The institute issued recommendations, but as it does not monitor implementation it could not tell if these were followed. Mr Wevers, deputy chief of the regional fire brigade at Haarlemmermeer, denies the allegations and claims the building was safe and met Nibra standards. He added that an inspection had been carried out only last September.

Nibra, as well as the Dutch Refugee Council *VluchtenigenWerk Nederland*, had insisted that the cells and their doors be made fire-proof as none of the materials used in construction was fire resistant. They also wanted the introduction of a central electronic locking system so as to be able to open all doors in the event of an emergency. This was rejected by the justice ministry with the argument that a power failure would mean prisoners could escape.

The centre has three different types of detention. First, so-called foreigner detention (*Vreemdelingenbewaring*) where undocumented migrants, those declared "unwanted" and failed asylum seekers who are "not cooperating" in their deportation are held. There is a legal maximum period of six months for this type of detention. Secondly, the complex acts as a 'deportation centre' (*uitzetcentrum*), where undocumented migrants and failed asylum seekers are held to be deported in the near future. Officially they can only be held here for a few weeks, a period which according to migrant and refugee support groups is regularly extended. If deportation is unsuccessful, people are either put out on the streets or placed in foreigner detention. Finally, there is the border prison, euphemistically called "border hospitium", which holds those who are rejected entry at the border. International news reports after the fire repeated the police service's standard reply that the predominant use of the prison was to imprison "drug smugglers", referring to people held at the border who are suspected of having swallowed drugs.

The main function of these deportation prisons, however, is to facilitate the accelerated mass deportation of unsuccessful asylum applicants and undocumented migrants arrested in large-scale stop and search operations. The Ukrainian, Taras Bilyk, who died in the fire was arrested at a raid on a mushroom farm near Utrecht a few weeks earlier, for example. He was planning to marry his Polish partner whom he met in the Netherlands, who said that he was treated "like an animal" and had not been the given medical help which he had asked for. Deportation centres have their own courts and public prosecutors office on site, as well as "speed gates" to special deportation aircraft. These systems exist in Schiphol as well as Rotterdam airport. Schiphol has a capacity of 400 people.

The deportation prison at Rotterdam Airport (Zestienhoven), for example, saw its first charter deportation one week after it came into operation on 27 June 2003: on 2 July, 100 Bulgarians, who had been arrested during a workplace raid were deported. Other deportation centres exist in Roermond, Rotterdam (city), Zeist and Heerhugowaard. As is common practice with immigration detention, many refugees and migrants are held unlawfully. Dutch newspapers interviewed several asylum seekers whose claim had not been assessed but who were arrested and imprisoned nonetheless. Asylum lawyer, Bernadette Ficq, also reports a client who, having spent seven months in detention, suddenly received a residency permit. She says "it is common that the IND locks up people because they think: "that [claim] is not going to be successful"". Two days after the fire she still did not know if her clients had survived. She says the bureaux responsible for placing people in detention is disorganised and cannot give precise information on the whereabouts of prisoners:

> *When I start the day with ten case files, in three cases I will hear: he's not here anymore, he's either in Rotterdam now or in Zeist.*

The authorities' inability to swiftly verify the identity of the victims and the fact that many detainees were transferred to other detention centres without being told where they were being sent led to much suffering on behalf of friends and family members.

One woman said it took her daughter hours to find out whether her husband-to-be was dead or transferred to another prison. When they learned he had been transferred to the detention centre in Zeist they were stopped at the gates of the centre and told they should phone on Monday. "We were treated as if we wanted to see a criminal. But he is only illegal and was supposed to fly to Nigeria on Friday to get the relevant marriage papers. Now he has to stay in prison".

The whereabouts of most of the 350 transferred prisoners was unknown for days to family members and lawyers alike. The Utrecht based immigration lawyer, Elisabeth Derksen, reported "Friday morning a client phoned me and was upset and asked me to call and tell his family that he was still alive. He was unable to tell me where he was being held". The authorities have made it clear that survivors would not be treated with clemency. In Zeist detention centre, the only leniency permitted was to allow the portholes to be open at night. A mental health centre worker said that psychological support was difficult because "often there is a threat of deportation and a fire like that is a considerable traumatic experience".

An independent investigation into the fire and possible misconduct has been initiated by the newly created Investigation Council for Security (*Onderzoeksraad voor Veiligheid*), an independent body responsible for investigating disasters and serious accidents. Although minister of Justice, Jan Piet Hein Donner, said that no conclusions could be reached before an investigation had taken place, Immigration Minister, Rita Verdonk, was quick to claim after visiting the prison the day after the fire that its personnel had reacted "adequately". She was criticised for her statement in parliament on 27 October, Lousewies Van der Laan MP, from the social-liberal party D66 said.

When 22 people die, then there was by definition no "adequate" reaction.

De Volkskrant 27-29.10.05; CNN News 27.10.05; The Press Association 28.10.05. The Autonoom Centrum has published a book on deportations in Holland which provides background information on deportation prisons: http://www.xs4all.nl/~ac/overdegrens/3/index.html. Photos from the wake held for the victims and their families are published under http://www.indymedia.nl/nl/2005/10/31337.shtml.

UK

Asylum seeker found hanged at Yarl's Wood

On 15 September 35-year old Angolan asylum seeker, Manuel Bravo, was found hanged at Yarl's Wood Immigration detention centre, Bedfordshire. Manuel, and his 13-year old son, had been snatched from his residence in Armley, Leeds, by immigration officials the previous day. According to the *Independent* newspaper, Manuel, whose father was a leader of the Association of Youth Democracy which was founded in 1988 to challenge President Jose Eduardo do Santos, arrived in the UK in October 2001 after fleeing civil war. Manuel and his father had been arrested before - his parents were murdered in August 2001. Fearing for his life Manuel fled in disguise arriving at Heathrow in October 2001.

Manuel was insistent that he had not received a decision on his asylum claim when he and his son were removed to Yarl's Wood by immigration officials. He told the Rev. Alistair Kaye that he did not understand why he and his son were to be deported the following day. His last words to his son were to "be brave, work hard and do well at school". Antonio Bravo is being looked after by Bedford Social Services and supporters are asking that he be quickly placed with foster parents from the church that the family attended. The Home Office has said that he will not be deported before his 18th birthday, allowing him to finish his education. A vigil was held outside Yarl's Wood to remember to commemorate Manuel and other victims of the government's detention policies and another was held by members of his church. They have called for a public inquiry into the circumstances surrounding Manuel's death and have been supported by campaigners and human rights groups. Deborah Coles of INQUEST, an organisation that provides free, independent advice to the families and their friends on the Inquest system, said:

This death once again raises fundamental concerns about the treatment of asylum seekers in the detention centre system. What's needed is a full and independent inquiry into all the deaths because unless action is taken lives will continue to be at risk."

The Institute of Race Relations News Service has recorded the deaths of 31 asylum seekers in detention (immigration removal centres and prisons) and living in the community.

IRR *http://irr.org.uk/2005/september/ha000021html; Independent 16-17.9.05; National Campaign of Anti-Deportation Campaigns website; http://www.plcosearch.com/cgi-bin/ts.pl; INQUEST - http://www.inquest.org.uk*

Immigration - in brief

■ **UK: Zimbabwean asylum seeker wins test-case.** A Zimbabwean asylum seeker fighting deportation from the UK won an important test case at the Asylum and Immigration Tribunal (AIT) in October. The man, who has only been identified by the initials AA, "had a well-founded fear of persecution" and would face a "a real risk of serious harm" if he were forcibly removed to Zimbabwe the tribunal ruled, halting his deportation. The tribunal also personally rebuked Home Secretary, Charles Clark, for his "alarming" lack of interest in the fate of Zimbabweans returned home. The government has long held the position that, on the one hand Zimbabwe is a bloody dictatorship, while on the other it is not quite bloody enough to prevent fleeing Zimbabweans being returned. The AIT chairman, Mark Ockleton, said he was "exceedingly surprised" that the Home Office had failed to monitor the safety of those returned. At least 210 Zimbawbeans were forcibly removed between November 2004 and July 2005. Then many Zimbabwean asylum seekers held in detention centres staged a hunger strike to protest at the deportations. The AIT ruling was welcomed by refugee support groups which said that failed asylum seekers from Zimbabwe could now feel "reasonably secure". *For background see Bulletin for Immigration Detainees No. 11 on http://www.biduk.org/pdf/bulletins/bulletin11_zimbabwe_10_00_05.pdf*

Immigration - new material

Control of Immigration: Statistics, United Kingdom, 2004, Jill Dudley, Mike Roughton, James Fidler and Simon Woollacot. *Home Office Statistical Bulletin*, 14/05, 23.8.05, pp. 44.

Asylum - Blair offensive, Nadine Finch. *Labour Left Briefing* September 2005, p10. Finch considers the Immigration, Asylum and Nationality Bill 2005 which, together with the government's Five Year Plan on Asylum, "seeks to make real inroads into the type and length of protection the UK will offer asylum seekers." She concludes: "The story behind the new legislation is an immense unfolding personal tragedy for vast numbers of people. We must campaign on behalf of the individuals and we must unite the labour movement in opposition to the draconian laws which New Labour seeks to impose."

La salute degli immigrati in Lombardia (The health of immigrants in Lombardy), Nicola Pasini (ed.), ISMU, Milan, December 2004, pp.249, and **Salute e immigrazione** (Health and immigration), Nicola Pasini and Mario Picozzi (eds.), ISMU, Franco Angeli, Milan 2005, pp. 269. Two

books focusing on the issue of immigration and health. The first one offers an overview of the health conditions of immigrants in Lombardy, with a special emphasis on women and children, analysing the problems and prospects for improvement as well as presenting some field research carried out in different medical centres in the northern region of Lombardy. The second book seeks to set guidelines for the development of a transcultural medical model in response to the presence of people from diverse cultural backgrounds in Italian society. Includes essays on the experiences of nurses and on the different issues giving rise to communication problems between doctors and immigrant patients, from linguistic to cultural concerns. Both available from: Fondazione ISMU, Via Copernico, 1 -20125 Milan, Italy.

We want to live a fair and equal life. Refugees take to the streets. Bavarian Refugee Council (BFR) *Infodienst*, no4, Aug-Oct 2005, ISSN 1611-8138, pp39. This issue of the BFR bulletin focuses on refugee protests in Bavaria, against their quasi-internment and the food package system for asylum seekers as well as against their social isolation and deportation. Interviews with asylum-seekers highlight the political persecution in counties of origin as well as the degrading living situation refugees in Germany are forced into. Whilst the acceptance rate of asylum applications in Bavaria continues to remain under 1%, those interviewed, waiting for their claim to be assessed, report their lives are made unbearable by being forced to lead a non-cash existence in prison-like accommodation systems. On 24 September Germany saw nationwide demonstrations against and demand for inspections of refugee prisons (*Lager system*) and self-organised refugee groups continue to demonstrate and bring legal cases against restrictive asylum laws, the latest of which was a demonstration in Neuburg initiated by the refugee group *Karawane Munich*. Available from: bfr@ibu.de, tel:0049-89-762234.

Asylum Statistics: United Kingdom 2004, Tim Heath and Richard Jeffries. *Home Office Statistical Bulletin*, 13/05, 23.8.05, pp. 94.

Immigration Law Update, Alan Caskie. *SCOLAG Legal Journal* issue 334 (August) 2005, pp. 178-180 & 182. Review of significant cases from Scotland and England in the fields of asylum, immigration and law.

La situación de los refugiados en España (The situation of refugees in Spain), Report for 2005 by the *Comisión Española de Ayuda al Refugiado* (CEAR), Catarata, 2005 ISBN 84-8319-228-4, pp. 285, Euro 18. This annual report is a useful resource to examine the situation of asylum seekers in Spain, containing a wealth of statistics and analysis. It is structured into chapters which follow different stages in the quest to be granted asylum and to be recognised as a refugee. Starting from the reasons for which refugees flee their countries (with articles on Colombia, Nigeria, Russia, Algeria and Equatorial Guinea), it runs through the difficulties of the journey (including glances at existing camps for refugees in the Spanish enclaves in North Africa, and EU plans to establish camps for refugees outside the EU), and the enduring problem of the denial of access to asylum procedures in Spain which is causing a steady decline in the number of applications that are filed. This happens both at the border and as a result of proceedings introduced a decade ago to dismiss applications that are deemed "manifestly unfounded". A ten-year study of this phenomenon is included, with data showing that 76.53% of asylum applications filed in 2004 suffered this fate. Other aspects that are covered in the report include the development of a common asylum regime at an EU level, from Tampere to the EU Constitution, the impact of the government change in Spain in 2004 on asylum policy, and the social policies and services that must be provided for refugees (including psychological assistance). The report's assessment is that in spite of the situation being worrying and of the failure to comply with international refugee protection norms, certain improvements have been noteworthy, including the current government's agreement to automatically grant work permits to applicants whose submissions have been admitted to undergo scrutiny, the fact that competencies have been transferred from the interior ministry to the ministry of employment and social affairs, and the improvement of legal assistance in certain areas thanks to local lawyers' guilds (like the Strait of Gibraltar and Las Palmas), which is severely lacking in others (such as the North African enclave of Ceuta). Available from: CEAR, Avda. General Perón, 32-2_ Dcha., 28020 Madrid, Spain.

Fit to be detained? Challenging the detention of asylum seekers and migrants with health needs, Sarah Cutler. *Bail for Immigration Detainees*, May 2005. This BID publication is based on the findings of a report by Medicins Sans Frontiers, which carried out free medical assessments of 13 adults and three children being detained under the Immigration Act. The MSF were "concerned about the health status of the individuals they medically examined, and the apparent lack of mechanisms in place to ensure that members of this vulnerable population are afforded the medical care and protection they need" (see "The Health and Medical Needs of Immigration detainees in the UK"). BID's report examines what happened to the 16 detainees after their medical assessment and responds with a number of recommendations that "place the issue of the health of detainees in the broader context of recent developments in detention and asylum and immigration policy." The report is available from: BID, 28 Commercial Street, London E1 6LS, email: info@biduk.org

Violence and Immigration. Report on illegal sub-Saharan immigrants (ISSs) in Morocco. *Médecins Sans Frontières*, 30.9.05, pp24. In this report the international humanitarian aid organisation *Médecins Sans Frontières* (MSF) reveals escalating violence against immigrants crossing from Morocco to Spain. MSF reports that up to a quarter of its patients are seeking medical treatment as a result of persecution and attacks and is concerned that these findings reveal systematic violence and degrading treatment which only serve to increase the suffering and marginalisation of people who are already exposed to extremely precarious and often inhumane conditions: http://www.msf.org/source/countries/africa/morocco/2005/morocco_2005.pdf

Recent developments in immigration law - parts 1 & 2, Jawaid Luqmani & Ranjiv Khubber. *Legal Action* August/September 2005, pp. 26-30 and pp11-14. Considers developments since the radical changes brought about, from April 2005, with the replacement of the previous appellate structure with a one-tier process.

The deportation machine: Europe, asylum and human rights, Liz Fekete. *European Race Bulletin* no 51, 2005. This issue documents the "ever-increasing pressure, spearheaded by populist media and electioneering politicians, to reduce the numbers of those seeking asylum, to raise the bar for successful claims and return those whose claims have 'failed'." Fekete argues that "Europe's deportation programme serves to undermine not only the Geneva Convention, but also international conventions on human rights and children's rights." Available from the Institute of Race Relations, 2-6 Leeke Street, London WC1X 9HS

Der Krieg gegen die trikontinentale Massenarmut - Migration, Flucht und die Rückkehr der Lager [The war against Third World mass poverty - migration, flight and the return of Lagers]. Thomas Hohlfeld and Dirk Vogelskamp, 17.3.05. This article analyses the strategy and logic of internment camps ("Lager") in Germany and EU Member States' and international migration and refugee politics. The term "Lager" helps to identify and conceptualise the techniques of denial of rights, internment, deterrence and punishment, which serve the violent perpetuation of global injustice. Despite many discontinuities, contradictions and analogies in the empirical development and application of Lager techniques, the authors conclude: the "return of the Lager system" in public and political discourses as well as practice, is an indication of the erosion of human rights - a development which is deeply disturbing, particularly in view of Germany's history:

http://www.grundrechtekomitee.de/ub_showarticle.php?articleID=150

Refugees and Development in Africa: the case of Eritrean Refugees in the UK, Petros Tesfagiorios. 2005. This report, which is supported and sponsored by the Royal African Society, Joint Council for the Welfare of Immigrants, Eritrean Education Trust, Eritrean Elders Welfare Association and Migrant and Refugee Communities Forum, documents "the horrific situations that Eritrean Refused Asylum Seekers have to face as a result of UK immigration policy." It is based on interviews with more than 400 people that document "destitution, homelessness, illegal work and depression". However, the author

argues that there is "an alternative": "Let all asylum seekers work, including refused asylum seekers. Let them contribute to society both in the UK and in their home countries. Abolish *"Prohibited to work"* from their photo ID card and put an end to a senseless policy which only causes immeasurable pain." *The author can be contacted at: EEWA, 2 Thorpe Close, London W10 5XL, ptesfa@hotmail.com; Available online at: http:www.irr.org.uk.pdf/eritrean_refugees.pdf*

LAW

UK

RAF officer refuses to serve in unlawful war

In October a serving RAF medical officer who has refused to fight in the war on Iraq was served with court martial papers and now faces jail for "refusing to obey a lawful command." Flight-Lieutenant Malcolm Kendall-Smith, a medical officer based at RAF Kinross in Morayshire, Scotland, has been decorated in previous operations in Afghanistan and Iraq, but decided that the war was manifestly unlawful and that it would be wrong for him to return. Speaking for Kendall-Smith, his lawyer, Justin Higheston-Roberts said:

> *When he first went to the Gulf in 2003, his awareness of the legal position was far less than it is now. He is now in no doubt that the war was illegal and that the government has spun its position on the evidence. He takes the view that this is something which is worth going to prison for.*

Kendall-Smith's opinion on the legality of the war is supported by many international lawyers who have argued that there was no legal justification for invading Iraq as the US and Britain had failed to wait for the United Nations to pass a second resolution sanctioning military force. The recently retired law lord, Lord Stein, has declared it illegal and said that the government had "scraped the bottom of the barrel" to find a justification for it. He added that Saddam Hussein posed no threat to the UK or the US before the war. General Sir Michael Walker, the chief of defence staff, has conceded that army was having difficulty attracting new recruits "because people saw the armed forces as guilty by association with Tony Blair's decision to attack Iraq."

Kendall-Smith's court martial is expected to begin in March 2006.

Guardian 19.10.05; Sunday Times 22.10.05

SPAIN

Concern over proceedings in Basque youth association trial

Euskal Herria Watch (EHWatch), an observatory composed of lawyers from different countries, was established to monitor judicial proceedings against members of Basque organisations charged of ETA membership or collaboration with ETA as part of the ongoing judicial proceedings against the *izquierda abertzale* (nationalist left) scene which is accused by prosecutors of being part of ETA's network. The charges in the mammoth case 18/98+, launched by judge Baltasár Garzón, affect over 100 people involved in different organisations. The trial against 42 members of the Basque youth organisations *Jarrai*, *Haika* and *Segi*, (cases 18/01 and 15/02), was the first of the large-scale trials to be held. On 20 June 2005, it resulted in sentences being passed against 28 persons (16 received three year and six-month prison sentences, eight received two years and six-month sentences, with four acquittals; charges against the remaining defendants were withdrawn). The court also found that the youth organisations were of an illegal nature although they were not deemed to be terrorist. They were included in the EU list of terrorist organisations as part of ETA at the behest of the Aznar government in December 2001 before any sentence against them had been passed. The next large-scale trial involving former case 18/98+ (which was later broken up), sees 59 defendants face terrorist charges. It has been scheduled for 14 November 2005.

The EHwatch report on the trial claims that there have been limits on the right to a defence, as defence lawyers and defendants faced difficulties resulting from the short notice that was given before the trial began, the dispersal of prisoners to jails all over Spain, the fact that police witnesses are automatically deemed protected witnesses and thus cannot be recognised by defendants, other than by a number [a measure applied to prevent them from being targeted for revenge attacks], and that there was little contact between the accused and their lawyers in court as the former have to participate from a cage. As for the charges brought against the defendants, the report notes that there was a lack of allegations or charges concerning specific criminal acts carried out by individuals against which they could defend themselves. Rather, the focus is seeking to prove their involvement in the banned organisations involved in criminal activities (such as the *kale borroka*, street violence). A thread is strung back to links between ETA and the *Coordinadora Abertzale Socialista* (KAS), which *Jarrai* participated in "at some point", and through to the organisations that followed *Jarrai* (*Haika* and *Segi*).

The report also describes the use of pre-emptive detention of defendants for up to four years as an "illegitimate" and "disproportional" repressive measure (some defendants have already served a longer time in prison than the sentences passed against them). It notes that claims that some statements were extracted through torture were not investigated and yet they were used as evidence. Further concerns expressed in the report relate to evidence used, including irregularities in telephone interceptions, inadequate checks, the excessive weight given to "suspicions, assumptions and speculation" by the police, the use of "ambiguous" penal types and "expansive" interpretations to criminalise "legal, public and transparent activities". The sentences passed against the defendants are described as "excessive", and the fact that the defendants were acquitted of charges of terrorism is considered a ground for the next trials of the 18/98+ case (involving ETA's "network)" to be under the jurisdiction of an ordinary court rather than the *Audiencia Nacional* (a Madrid-based court that has exclusive competence for hearing cases involving terrorist offences), which is deemed to be subjected to great political and media pressure.

Final Report by the Comisión Internacional de Juristas contra la Criminalización de Ideas en Euskal Herria, 21.7.2005.

http://www.ehwatch.org/index.html

Reports by the Commission members,

http://www.ehwatch.org/docs/informes_mesa.htm

Full-text of the sentence available (in Spanish) at:

http://www.ehwatch.org/docs/sent20050620.pdf

SPAIN

Access to information: a case from Galicia

An essay in the journal of the Galician civil liberties observatory *Escula* highlights the distance between the formal recognition of the right to information and the difficulties of exercising this right, using a local incident in the Galician town of Mondariz as an example. In relation to the planned construction of a ring road around the town, a group of people who decided to find out more

about the plan, most notably its environmental impact, found there were limits affecting their right to know, although they continued their struggle leading to the temporary suspension of the project.

There were two kinds of obstacles. On the one hand, the attitude of civil servants faced with the uncommon event of a group of citizens wanting information about an action by the government (surprise, uneasiness, mistrust and a lack of assistance). On the other hand, the physical conditions in which the information was found (huge piles of documents), the absence of public advisors to consult, and the impossibility of making photocopies. "It is as if we were told that the right to education consists in making textbooks available to students...", notes the author. Another problem compounded these: the deadline to present submissions concerning the ring road project was approaching. A request for its extension was denied using the argument that "the initial one-month deadline was more than adequate for any citizen to be able to gather information and make a submission".

Through their work and with the help of advisors, the neighbours were eventually able to discover the characteristics of a project that initially seemed very advantageous for the town of Mondariz. This information, once examined, was shown to be very harmful, with implications including: the cancellation of the local communication network between populated centres, a decrease in the forecast for the creation of new industrial facilities, the degradation of the river Tea (a protected area) and of listed areas of historical and artistic importance. A joint submission was filed to oppose the project and the relevant local council committee withdrew it and began proceedings to come up with an alternative.

The Galician civil liberties observatory Esculca is launching a campaign on access to information in Spain, and has organised a conference on this issue in Vigo in November 2005 (website: http://www.esculca.net). The essay "O acceso à información: unha experiéncia prática" (Access to information: a practical case) appeared in Esculca Bulletin no. 9 (2nd quarter 2005), pp.4-9.

Law - in brief

■ **Germany: Anti-discrimination bill fails.** Despite having been reprimanded by the Commission in April this year for failing to implement the EU's guidelines against discrimination on grounds of race, ethnicity or gender (see *Statewatch* Vol. 5 no 2), Germany has still failed to agree on an anti-discrimination law, the first in the country's history. The mediation committee of the Upper and Lower Houses of the German parliament were unable to reach a conclusion on the Act in time for the election, which had been passed by the Lower House but rejected by the Upper House. According to the EU guidelines, the law should have been passed at national level by 19 July 2003, but due to the German national elections all pending legislation lapses. The anti-discrimination bill is one of ten white papers that have expired since the election. *Süddeutsche Zeitung 6.9.05.*

■ **UK/Israel: War crimes suspect evades detention**. The former head of Israel's defence forces in Gaza came close to being arrested in Britain in September 2005. Major General Doron Almong was tipped off that a warrant had been issued for his arrest on suspicion of war crimes carried out during his country's occupation of the Gaza Strip. Under his command 59 Palestinian homes were bulldozed in 2002 and a one-tonne bomb was dropped on a Hamas leader's house killing him and 15 civilians, nine of which were children. Under Article 146 of the Geneva Conventions Act 1957 (which enshrined the Fourth Geneva Convention 1949 into English law), Britain has "universal jurisdiction" under which it is obliged to "seek out and prosecute" suspected war criminals, irrespective of their nationality. Israel's military attaché to London phoned the General and told him not to leave his plane. This incident prompted Israel's former Chief of Staff, General Moshe Yaalon, to cancel a trip to London for fear of arrest. And later in the month Israeli Prime Minister and former General in the Israeli Defence Force, Ariel Sharon, snubbed a personal invitation from Tony Blair to visit London citing similar concerns: "I have heard that the prisons in Britain are very tough. I wouldn't like to find myself in one." *BBC News 12.9.05; Times 16.9.05, 17.9.05, 4.10.05*

Law - new material

Legislation and the democratic deficit, Ed Cape. *Legal Action* August 2005, pp. 9-10. This article considers the implications of recent criminal justice legislation, such as the Serious Organised Crime and Police Act 2005 and the Criminal Justice Act 2003. Cape argues that Part 3 of SOCPA "contains, in just two sections, the most dramatic and constitutionally important overhaul of powers of arrest for more than 20 years." One leading commentator recently noted that the provisions give the police "virtually unlimited powers to arrest citizens without warrant on suspicion of trivial offences."

The Rules of Law, Louise Christian, Nony Ardill & Tom Wainwright. *Red Pepper* Issue 133 (September) 2005, pp. 26-30. This article examines how "Public access to justice is in crisis as legal aid budgets are squeezed and legal aid lawyers spend more time dealing with government bureaucracy than defending their clients."

Access to Information in Bulgaria 2004. Report. Access to Information Programme Foundation (AIP), 2005, Sofia, pp84. This annual report is based on monitoring Bulgaria's Access to Public Information Act and includes recommendations on legal developments in access to information and data protection, geared to decrease identified negative practices. AIP also provides legal assistance to specific cases of information refusal, detailed in this report. Monitoring is based on information from AIPs network of coordinators, cases referred to AIPs office for assistance and the problems AIP encounters when appealing information refusals in court. In addition, AIP has participated in a *Global Freedom of Information Monitoring Survey* which was carried out in 16 countries in 2004 and the results of which (on Bulgaria) are presented in the report. The *Global Monitoring Pilot Survey* started in 2003 and was held in five countries, based on a methodology developed by the Open Society Justice Initiative.

The UK's duty to "universal jurisdiction", Daniel Machover & Kate Maynard. *The Times*, 4/10/05. Article defending a recent decision, by a British court, to issue a warrant for the arrest of an Israeli General accused of war crimes in the Gaza Strip. It argues that because such violations are routinely ignored in Israel where the military often acts within a climate of impunity, and Israel has refused to sign up to the International Criminal Court, "Only the under-used principle of universal jurisdiction can deliver justice to such alleged victims and potentially save future victims." Therefore the UK must fulfil its obligation under Article 146 of the Fourth Geneva Convention to "seek out and prosecute" suspected war criminals.

Judges and terrorism after the 7/7 attacks, Eric Metcalfe. *Legal Action* September 2005, pp. 7-8. This piece calls on the judiciary to "uphold its constitutional responsibility to protect the UK's democratic values in the face of government's 'well-meaning but misguided' counter-terrorism measures."

Gypsy and traveller law update, Marc Willers & Chris Johnson. *Legal Action* September 2005, pp. 18-23. This update considers the Select Committee report on *Gypsy and Travellers Sites* (13th report of the session 2003-04, HC633-1) and the government's response to it. It notes the inflammatory campaigns against Gypsies and Travellers in the tabloid media and by the Conservative Party, before commending the work of the Gypsy and Traveller Law Reform Coalition (GTLRC) who continue to campaign for the provision of more sites and against the discrimination that Gypsies and Travellers suffer. The GTLRC website: www.Travellerslaw.org.uk

MILITARY

UK/IRAQ

Families fight to force independent war inquiry

On 17 August, the families of 17 British soldiers killed in Iraq went to the High Court in London, to demand an independent inquiry into the legality of the war. Documents were lodged at the court by lawyers seeking a judicial review of a ruling last May that refused to order an inquiry into the invasion. The family members argue that under the Human Rights Act the government is obliged to establish such an inquiry - however, their call has already been rejected by government lawyers and prime minister, Tony Blair. The families are now relying on the advice given by the Attorney General, Lord Goldsmith, to ministers in the run up to the invasion. Goldsmith's advice only became public after it was leaked to the media during last year's general election campaign and it raised questions as to why he abruptly changed his mind from the equivocal position he held a few days earlier. The families also want the inquiry to examine the basis upon which the former chief of staff, Lord Boyce, was given an unequivocal assurance that the invasion was legal.

Among those who attended the court were Reg Keys, the father of Tom Keys, who was killed near Basra on 24 June 2003 and Rose Gentle, whose son Gordon was killed in Basra in June 2004; Gordon Gentle was 19-years old at the time of his death. Mr Keys said:

> *I would say that Rose [Gentle] and I would not be here today if weapons of mass destruction had been found in Iraq. We most strongly feel that our sons were sent into conflict not backed by international law or the United Nations.*

The Prime Minister says that Britain took part in the invasion of Iraq because of the danger of Sadam's weapons of mass destruction, although it was widely acknowledged by experts in the field that they did not exist. He failed to persuade the United Nations to issue a mandate for an attack on Iraq, but proceeded on the basis of an earlier, equivocal, resolution, despite substantial opposition at home.

The families' lawyer, Phil Shiner, said:

> *Why were these soldiers sent out to Iraq when it appears from everything that is in the public domain that the Iraq war was illegal and that, therefore, the sons and daughters of these families died for no good reason.*

In a letter to the families, government solicitors argued, among other points, that military action was not "the immediate and direct operative cause" of the soldiers' deaths.

Times, 18.8.05; See Military Families Against the War website, http://www.mfaw.org.uk

SPAIN

Military jet crashes into house, killing three

On 2 September 2005, a C-101 military aircraft (made by Spanish consortium EADS-CASA) crashed into two houses in the town centre of Baeza (in the province of Jaén, Andalusia) when its pilot, air force captain José Francisco Cabezas, lost control after doing a pirouette and narrowly avoiding the town's cathedral. He was in an area that lay outside the flight plan for his training flight. The pilot died in the accident, as did a woman and her nine-month old baby. Neighbours claimed that it was not the first time that Cabezas, from San Javier air force base in Murcia, flew at low altitude carrying out acrobatic exercises over his hometown. They said that the tragedy "was foreseeable and could have been avoided". Defence minister José Bono confirmed that Cabezas had "acted contrary to regulations" and had "paid with his life", adding that a file had been opened on the pilot for flying at a low altitude over inhabited areas in 1998.

As a result of the crash, four houses will be demolished and the families living in them will be re-located. A representative for the family of María Lorenza López, the woman who died in the accident, blamed the air force for the crash: "the responsibility for this event does not just belong to the person who caused it, but also those who tolerate and accept it as normal" that such exercises take place over towns. The family's lawyer has asked for documents, including the deceased pilot's flight plans, in order to decide whether to sue the air force.

On 16 September, the defence minister presented a draft reform of the armed forces sanction regime and the military criminal code that envisages prison sentences of between one and six years for air force pilots who fly over inhabited areas contravening orders from their superiors or existing regulations. The reform also envisages that pilots who place a population or an aircraft at risk may face extraordinary sanctions under which they could be stripped of their flying aptitude certificate, be suspended, or be demoted or excluded from the armed forces.

El País, 2-6, 13, 17.9.05.

Military - in brief

■ **EU: EU agrees to open up defence markets**. European Union defence ministers meeting in England at RAF Lyneham (home base of the British air tanker fleet) have agreed on a plan to open up Europe's arms industry to internal competition. The plan involves a voluntary code of conduct drawn up by the European Defence Agency (EDA) which would see defence contracts worth more than EUR 1 million advertised on a single electronic portal, so companies could tender for them. The aim is to restrict the working of Article 296 of the EU legislation that exempts the military markets from normal internal market rules on the ground of 'national security'. At the moment about half of the defence deals are covered by Art. 226. EDA head Nick Whitney has said that the code of conduct will take about six months to be operational. Countries could sign up when they are ready. At an earlier meeting of the EDA Steering Board, Whitney had made the provision that the plan would foresee in protection of classified information, security of supply between member states and opportunities for smaller specialised companies. Defence spending of the 25 EU members amounted to around 170 billion euro in 2004. *Jane's Defence Weekly 5.10.05 (Guy Anderson); AFX News 13.10.05*

■ **Germany. US military base to be extended.** The US defence ministry has decided to extend its main European air force base Ramstein, according to MP Elke Leonard (*Sozialdemokratische Partei Deutschlands*). The military bases in Mildenhall, UK and Aviano in north-eastern Italy are to be dissolved and 500 soldiers will be transferred to Ramstein. The SPD politician welcomed the decision as a positive sign that Germany's differences with the US over the Iraq war had no negative impact on north America's deployment policy for Germany. *Süddeutsche Zeitung 25.8.05.*

■ **Europe: Ex-Nato generals accuse Europe of military failure**. Two high ranking retired Nato generals have condemned the lack of European military capabilities. General Joseph Ralston, the US Supreme Allied Commander Europe until 2003 and General Klaus Naumann, Germany's former chief of defence and head of Nato's military committee argue in a 97-page study (*European Defence Integration: Bridging the Gap*

between Strategy and Capabilities) that European leaders have "lacked the political will" to improve military capacities and plead for a pooling of defence resources. "Failure to meaningfully improve Europe's collective defence capabilities in the coming years," they write, "would have profoundly negative impacts on the ability of European countries to protect their interests, the viability of Nato as an alliance and the ability of European countries to partner in any meaningful way with the US to meet shared security challenges." The report calls on European powers to re-allocate defence spending so that 25 per cent of the budgets are spent on research and acquiring new weapons, while no more than 40 per cent is spent on personnel. For smaller armies it calls for increased specialisation. *Financial Times 12.10.05 (Peter Spiegel); Defense News 14.10.05 (Brooks Tigner)*

■ **UK/Israel: Hurndall's family express "disappointment" at verdict.** In June 2005, Wahid Taysir became the first Israeli solider to be convicted of manslaughter whilst on duty in a active combat zone when he was found guilty of killing the British peace activist Tom Hurndall, in Gaza in April 2003. The court rejected defence claims that the malpractice of British doctors was responsible for his death and in August 2005 he was sentenced to eight years in prison. Hurndall's family welcomed the outcome but also expressed disappointment at both the leniency of the sentence and that the sniper had been "laid at the sacrificial alter of Israeli policy". Taysir has always argued that he has been used as a scapegoat because he is a Bedouin Arab. Speaking in June Hurndall's father said, "We don't feel that the underlying policy has been addressed" which consists of "indiscriminate shooting and very little accountability" (see *Statewatch* Vol. 15 no 2). In September 2005 the documentary being filmed by James Miller at the time of his death (he was shot and killed in Gaza in May 2003) won three Emmy awards. A soldier was cleared of his death in April 2005, now his family are taking civil action against the Israeli government. *Times 12.8.05, 13.9.05; Independent 28.6.05, 12.8.05*

■ **EU: Monitoring Mission in Aceh**: The EU, together with five contributing countries from ASEAN (Brunei, Malaysia, Philippines, Singapore and Thailand), Norway and Switzerland is deploying a monitoring mission in Aceh (Indonesia) to oversee the peace agreement between the Indonesian government and the Free Aceh Movement (GAM). The mission, called AMM became operational on 15 September 2005 and was established according to the EU Rapid Reaction Mechanism. Some of the objectives are to support the demobilisation of GAM and assist with the decommissioning and destruction of its weapons, ammunition and explosives, to monitor the re-location of non-organic (Indonesian) military forces and police troops, and to monitor the human rights situation. According to EU estimates the GAM has around 800 major weapons or weapon systems to turn in. The mission will consist of 130 unarmed personnel from the EU states, Norway and Switzerland and 96 from the ASEAN countries. The headquarters will be in Banda Aceh. Head of the mission is a Dutch diplomat, Pieter Feith, who is a high official from the EU Council secretariat with Balkan experience. The operation will cost EUR 9 million from the EU budget and EUR 6 million from the participating countries. For the time being it will last six months. It is the first EU military mission in Asia and will "test the unions ability to oversee a security oriented mission in a distant and hostile corner of the world with long supply lines to Europe." *EU Council Secretariat Factsheet ACH/02 15.9.05; Defense News 3.10.05 (Brooks Tigner)*

Military - new material

The Emerging EU Military-Industrial Complex: arms lobbying in Brussels, Frank Slijper. Transnational Institute & Dutch Campaign Against the Arms Trade *TNI Briefing* no. 1, 2005, pp. 36. This TNI Briefing "highlights the influential but little-exposed role that the arms industry and its lobby play in Brussels today." It shows how this "lobbying power threatens the 1998 EU Code of Conduct on arms exports that should forbid arms sales to human rights abusers or conflict zones" and calls for a "much more transparent European decision-making process - especially on military matters - including civil society, instead of the current situation of overwhelming corporate power."

Revealed BAE's secret £1m to Pinochet, David Leigh & Rob Evans. *Guardian* 15.9.05. This article discloses US banking records which reveal that the UK's biggest arms firm, BAE Systems, secretly paid "more than £1m to General Augusto Pinochet, the former Chilean dictator." The most recent of these payments was made in 2004. Questioned about the payments to a war criminal, BAE issued a statement saying: "We at BAE Systems have clear and rigorous policies which govern the conduct of our relationships with third parties. We require all our employees to adhere to these policies and comply with the law." The Chilean courts are currently pursuing Pinochet regarding allegations of tax evasion.

Leadership Failure: Firsthand accounts of torture of Iraqi detainees by the US Army's 82nd Airborne Division. *Human Rights Watch* Vol. 17 no. 3 (September) 2005, pp28. This report recounts eye-witness reports of torture and other mistreatment used by soldiers of the US 82nd Airborne Division in Iraq "as a means of intelligence gathering and for stress relief." The report says: "According to their accounts the torture and other mistreatment of Iraqis in detention was systematic and was known at varying levels of command. Military intelligence personnel, they said, directed and encouraged army personnel to subject prisoners to forced, repetitive exercise, sometimes to the point of unconsciousness, sleep deprivation for days on end, and exposure to extremes of heat and cold as part of the interrogation process. At least one interrogator beat detainees in front of other soldiers. Soldiers also incorporated daily beatings of detainees in preparation for interrogations. Civilians, believed to be from the Central Intelligence Agency conducted interrogations out of sight, but not earshot, of soldiers, who heard what they believed were abusive interrogations."

European Commission Press Release MEMO/05/368 Linking the internal and external aspect of the EU security. *European Commission*, Brussels, 12 October 2005.

Towards a European Defence Equipment Market. Burkard Schmitt, *Eurofuture*. ISS Analysis, Summer 2005

EU-US burdensharing: who does what? Gustav Lindstrom. *ISS Chaillot Paper* no 82, September 2005.

POLICING

ITALY

Worrying trends detailed in interior ministry report on security

On 18 August 2005, the Italian interior ministry published its annual report on security for 2005, which seeks to evaluate developments since 2001, when the current government came into power. This was shortly before the G8 summit in Genoa in July of that year which was marked by heavy-handed policing, casting a shadow over the police and *carabinieri* (Italy's paramilitary police) forces. The first part of the report looks at different forms of criminal activity: "widespread criminal activity" (thefts, robberies and fraud); violent crime involving murders; organised crime and related criminal activity by Italian (the Mafia in Sicily, 'Ndrangheta in Calabria, Camorra in Campania, and the Sacra Corona Unita in Apulia) and foreign criminal organisations (in fields such as drug trafficking/dealing,

extorsion and profiteering, and criminal activity in the economic, environmental, IT and artistic heritage); illegal immigration; criminal activity by minors; and a final chapter entitled "terrorism and so-called widespread political illegality" (divided into "internal terrorism" of a Marxist-Leninist or anarchist nature, "international terrorism" of an Islamist nature, and "widespread political illegality" encompassing both left-wing movements and the far right).

The second part of the report looks at crime prevention and security initiatives that have been adopted: a) proximity policing, neighbourhood police officers, control of the territory and technological innovation; b) public order, particularly during demonstrations and sports events; c) the protection of people who are "at risk" and of "sensitive" targets; d) a programme aimed at southern regions to promote security and development; and e) international police cooperation within Europol and cooperation of an operative nature, involving the deployment of liaison officers and joint operations against criminal activity.

In the midst of figures showing a general improvement in security over the four-year period, a number of worrying trends are illustrated:

- in the first semester of 2005, ***29,228 websites were under surveillance****;*

- from 2002 to 2005, ***over 11,000 "illegal" migrants were expelled in charter flights****;*

- building work has started on the ***first of three*** *planned Italian-funded* ***holding centres for migrants*** *in* ***Lybia (Garyan)***

- large-scale ***raids and identification*** *targeting foreigners and the* ***expulsion of "radicals****";*

- a ***shift*** *in the emphasis of* ***police activity****, targeting* ***migrants*** *and* ***low-level street crime***

- the interior ministry's insistence ***in linking terrorism and anti-globalisation or left-wing*** *political activity;*

Concern over "perceived security": targeting low-level crime

Introducing the report, the Interior Minister, Giuseppe Pisanu, highlighted the decrease in the number of thefts and murders in Italy, adding that the most significant development was the increase in crimes committed by "illegal" immigrants, who represented over 28% of the 611,000 people who were arrested or reported to judicial authorities in 2004. He did not relate these figures to an increase in police activity targeting migrants. Pisanu stressed that official crime statistics must be considered alongside concerns such as "real crime, perceived crime and uncivilised [or anti-social] behaviour", which affect citizens' sense of "subjective security". The argument about "subjective" or "perceived" security is further developed in the section concerning crimes that, while not deemed particularly serious, "have a strong effect on citizens' sensitivity and on their perception of security". This concern has led to "high impact operations" which are part of a new model of territorial control introduced in August 2002 to "combat forms of delinquency that have the greatest impact on citizens' sense of security", namely low-level crime, listed as prostitution, illegal immigration, drug dealing, illegal street vending and crimes against property.

The focus on low-level street crime and its emphasis on "illegal immigration" and activities such as street vending in which foreigners and the poorer elements of the population are over-represented has opened the way for an increase in police presence and operations on the streets, predominantly aimed at these groups. Statistics provided in relation to the ongoing Vie Libere (Free Streets) Operation, conducted periodically all over Italy, support this view. It resulted in 18,386 arrests (almost 11,000 of whom were third-country nationals), 21,935 people being charged with offences, 24,374 expulsions involving accompaniment to the border, and the use of 54 charter flights to carry out repatriations.

Organised crime

Murders reportedly decreased to 2,740 in the period from July 2001 to June 2005, in 23.6% of cases related to organised criminal activity, almost half of which have to do with the Camorra. In relation to murders related to ordinary criminal activity, the report distinguishes between "Italian ordinary crime" and "foreign ordinary crime", noting a decrease in murders related to the first (Italian) category, from 2,378 to 1,739, and a substantial increase in the second (foreign) one, from 41 to 353, compared with the period running from July 1997 to June 2001.

Information concerning operations to combat IT-related organised crime states, alarmingly, that in the first semester of this year, **29,228 websites were under surveillance**, and that in the last four years, 17,936 persons were reported to judicial authorities and 770 were arrested. Details of one operation against drug dealing conducted by the postal police raise concern over the nature of some of these activities:

> *a constant Web-based research of sites dealing with subjects that could be useful for the repression of this phenomenon [drug dealing]… the careful observation of a forum, in the website www.mariuana.it has allowed the discovery of a vast organisation devoted to the growing, at home, of cannabis, and to the reporting of 53 persons, belonging to this same organised crime syndicate, to the judicial authorities.*

The fact that the people concerned were sharing information about growing marihuana on a Web-based forum suggests that it is more likely that they were amateur marihuana home-growers rather than an "organised crime syndicate" (or extremely careless, which would raise issues over how "organised" they were).

Illegal immigration: 11,000 expelled in charter flights and camps in Libya

The section on illegal immigration notes that a majority of the 104,608 "illegal" migrants identified by the authorities in Italy in 2004 were overstayers who had entered the country legally (67%), while 29% had illegally crossed the border and 4% had arrived after a sea crossing (this figure rose to 12% for the first semester of 2005). Figures are provided regarding **charter flights** organised to repatriate foreigners: 26 flights were used to repatriate 2,297 foreigners in 2002; there were 33 flights carrying 2,334 persons in 2003; 72 flights were used to remove 4,900 persons in 2004; and, in the first semester of 2005, 43 flight had been used to deport 2,940 migrants. Overall, **more than 11,000 "illegal" migrants have been expelled from Italy using charter flights**, and joint charter flights have been organised to carry 54 people to Nigeria (with the UK), 10 people to Romania (with France, Spain and Belgium) and 30 people to Ecuador (with Spain). The **start of building work to establish the first of three planned holding centres in Lybia (Garyan)** funded by Italy for would-be illegal migrants to be returned to their countries of origin is also mentioned, as is a wide array of measures adopted at a national level and in the framework of international cooperation in this field.

Terrorism and "widespread political illegality"

The title of the "terrorism and so-called 'widespread political illegality'" section of the report confirms the approach adopted by Pisanu in a speech in the Italian Senate in January 2003, when he linked terrorism and activists' "widespread political illegality" (see: http://www.statewatch.org/news/2003/feb/02italy.htm). It deals with trends, investigations and judicial proceedings into terrorism of a Marxist-Leninist, anarchist and international kind, as well as mapping the activity of left-wing activists and the far right. The report notes that in relation to Marxist-Leninist

terrorism by different groups, the number of arrests over the last for years has increased to 94, up from 35 in the previous four years, with BR-PCC members receiving life sentences for the killings of a *carabiniere* and two government advisors, and highlights that a collaborator from the group was sentenced to a shorter prison term after cooperating with investigators. In relation to anarchist terrorism, it highlights the emergence of the *Federazione Anarchica Informale* (Informal Anarchist Federation), involving a loose network of individual federated cells conducting low-scale actions using letter-bombs and explosives against carabinieri, prison police, temporary recruitment agencies, companies working with CPTs (immigrant detention centres) and other commercial interests (Esso, Benetton) and institutional figures (Romano Prodi).

The ministry unquestioningly uses the acronym FAI (as EU Terrorism Situation and Trend (TESAT) reports also do), in spite of the fact that this acronym has been used by the *Federazione Anarchica Italiana* (Italian Anarchist Federation) for several decades. Details of 21 recent arrests in Viterbo, Lecce, Cagliari and Rome are provided, and there is mention of the trilateral working group on anarchist terrorism (with Spain and Greece) that was established in December 2004. It is worth noting that a large number of the reported arrests and subsequent charges have not been upheld by judges. In the second section of the report, the anarchist collective is tentatively divided into two camps: one is "violent" and campaigns on issues such as prisons and repression, whereas the other is "moderate" with "traditionalist" goals of an environmental animal rights and social kind.

Large-scale raids and the expulsion of "radicals"

As for international terrorism, the report refers to the recent legislation that was passed (see Statewatch analysis in this issue) before the summer break, and to a series of large–scale raids which have resulted in nationwide searches and the identification of thousands of individuals and hundreds of houses and establishments, leading to arrests, expulsions and sanctions, that largely concern immigration offences such as the possession of false documents and drug offences. It refers to raids on 2 April 2004 involving the identification of 161 foreigners, leading to 12 expulsions; searches of 241 persons on 13 July 2005, in an ongoing operation that led to 201 searches being conducted in over 50 provinces, the identification of 423 foreigners of whom 6 were arrested for not complying with their expulsion orders, 1 person being arrested for possession of gunpowder for fireworks and 35 people being expelled. Italy issued expulsion orders to people for "belonging to a radical Islamic scene" and is increasingly monitoring establishments used by such people – call centres/Internet points or businesses related to this scene, with 396 such places checked in July in nine provinces, leading to the identification of 1,593 people, 11 arrests for contravening the immigration law, 71 people undergoing expulsion procedures, 12 reported for "different crimes" and 32 managers of businesses sanctioned for administrative irregularities. Over a four-year period, there have been 203 arrests for "international terrorism", an offence that was introduced in the Italian legal system following the 11-September airborne attacks on the United States.

"Widespread political illegality"

The report's analysis looks at development on the left-wing "antagonist" scene, stressing the growing influence of initiatives against repression and fascism. Episodes of different degrees of seriousness have seen the targeting of members of far-right and governing coalition parties, with the former (*Alternativa Sociale, Forza Nuova*) suffering attempts to obstruct their initiatives in public spaces. It lists a range of anti-repressive activities as "political illegality", including campaigns against anti-terrorist legislation, against detention centres for migrants, against exploitation and instability in employment, against the war in Iraq. As for the right wing, the report maps some political developments within different far-right factions and parties, most notably the political alliance that is developing around Alessandra Mussolini's *Alternativa Sociale*, and that members of the *Fronte Veneto Skinheads* skinhead group have taken up posts in the *Movimento Sociale – Fiamma Tricolore* party. Violent attacks against migrants and left-wing persons and centres that are increasingly being reported (especially in Lombardy) are dismissed as "isolated" incidents, and violence against left-wing groups is described as a reaction to anti-fascist activities. Arrests relating to "widespread political illegality" as a whole (involving both the right and left) amount to 427 over the four-year period in question (up from 284).

**An account of the police operation by one of the people against whom it was carried out, and of charges brought for "encouraging the use of drugs" after the small quantities of 4g of hashish and 4g of magic mushrooms were found in a police search of his house, as well as details of the media hype stirred up by the case, is available at:*

http://www.mariuana.it/modules.php?name=News&file=article&sid=297

The report "Lo Stato della Sicurezza in Italia 2005" is available (full-text, in Italian) at: http://www.interno.it/assets/files/8/20058141464.pdf

UK

New generation of shock weapons

Taser International, the Arizona-based company which manufactures the 50,000 volt stun gun that is used by the UK's police forces, has been forced to correct claims about the weapon's safety following an investigation by US officials. There has been intense concern over the stun gun's safety and stability, and while it was eagerly adopted by police forces in the UK, it is banned from export because of its use as a weapon of torture in countries such as Greece, Spain and Austria. General safety concerns arose because of the lack of tests on the "less-lethal" weapon and the rapidly escalating death rate associated with it - Amnesty International has information on more than 70 deaths since 2001 that are attributed to the use of police tasers in the USA and Canada. Taser International has now voluntarily amended its claims regarding safety and limited the use of the words "non-lethal" in an effort to deflect criticism from the Arizona attorney general.

In the UK, the response to the criticisms by the last Metropolitan police commissioner, Sir John Stevens, was to call for the use of the Taser to be extended. In the USA the Homeland Security Advanced Research Project Agency (HSARPA) has announced an extension to its programme, with "weapons designed to fire 'electric bullets' into crowds [that] are being developed for police and border protection agencies."

Where the existing Tasers fire a pair of darts trailing current-carrying wires to shock the victim the new programmes aim to "develop wireless weapons that can be used over greater distances". This new projectile is being developed by Lynntech in Texas and can be fired from a shotgun or grenade launcher. The *New Scientist* magazine describes the effect of the weapon as follows:

> *On impact the device sticks to the target and delivers an 80,000-volt shock for seven seconds, using a pulsed delivery similar to that used by Tasers. Further shocks can be triggered via remote control.*

Another project being pursued by the "less-lethal" weapons industry is the "Piezer". Mide Technology Corporation describe this as containing "piezoelectric crystals, which produce a voltage when they are compressed. The Piezer would be fired

from a 12-gauge shotgun, stunning the target with an electric shock on impact."

A third project involves the Inertial Capacitive Incapacitator, which is being developed by the Physical Optics Corporation, and uses a "thin-film charge storage device that is charged during manufacture and only discharges when it strikes the target. It can be incorporated into a ring-shaped aerofoil that can be fired from a standard grenade launcher at low velocity, while still maintaining a flat trajectory for maximum accuracy."

The first prototypes are expected to be delivered to HSARPA by the end of 2005.

Amnesty International "USA: Excessive and lethal force? Amnesty Internatiuonal's concerns about deaths and ill-treatment involving police use of Tasers" 31.11.04; New Scientist 13.8.05; Standard 29.9.05.

AUSTRIA

Hearing into the death of Seibane Wague

On 15 July 2003, 33-year-old Mauritanian Seibane Wague died when police officers were called to a dispute at his workplace (*Statewatch* Vol. 13 nos 3 & 4). The incident was caught on camera and showed the police sitting on Mr Wague whilst he was handcuffed and lying on the ground, as well as paramedics standing on the victim and failing to give first-aid as he lay motionless. Wague died of positional asphyxiation. According to eye witness reports, police beat the victim and threw him to the ground. The incident, which was filmed by a passer-by, was later screened on national television. The footage also raised serious questions about the conduct of the paramedics, who were seen standing on Mr Wague and "looking on" whilst Mr. Wague's condition deteriorated.

On 28 October this year, a second round of hearings started in the trial of six police officers, three paramedics and a doctor in Vienna's regional court, who are charged with death through negligence. In their defence, the police officers claimed that it was a lack of training on restraint techniques, rather than their beating-up of the victim, that led to his death. However, after the death of the deportee Marcus Omofuma (see *Statewatch* Vol. 10 no 6, Vol. 12 no 2), an Interior Ministry decree explicitly prohibited forcibly holding arrestees to the ground with their face to the floor. The police officers are claiming that the law enforcement agencies had not been properly informed about this decree.

Africans living in Austria have been subjected to racist stereotyping through "Operation Spring" that declared them potential drug dealers. This led to years of stop and search, deportations and racist media reporting. Police officers accused of brutality resulting in death have defended their conduct by claiming ignorance of the dangers involved in using violence to make arrests. Marcus Omofuma's death occurred in a very similar fashion and at the trial of the three police officers charged, Marcus was declared to have "joint guilt" in his own death. The officers received a suspended sentence. African commentator Chibo Onyeji identified this defence strategy, and the ideology underlying it, as the "Rodney King syndrome": "The defence argued that the policemen who battered Rodney King were endangered by him and that Rodney King's conquered body, which was shown by the video as it was 'being brutally beaten, repeatedly, and without visible resistance' was, in fact, the source of this endangerment" (*Statewatch*, Vol. 12 no 2).

Gertrud Lamptey, spokeswoman from the Platform for Justice for Seibane Wague commented:

The police officers in question are a danger to the general public and the only logical conclusion is to suspend them from their duties. The judgment should, according to an individual assessment of the officers' responsibilities, reflect a just sentence and in the case of a death during the course of duty, it should not follow the logic of the Vienna police which says that "we did not receive adequate training, therefore we are not guilty"."

A series of talks and events are accompanying the trial and activists are observing and transcribing the hearings, published on http://no-racism.net. A verdict is expected shortly; http://no-racism.net/article/1398. Statement from the Platform for Justice for Seibane Wague: http://no-racism.net/article/1416

Policing - in brief

■ **UK: No red card for anti-social ASBO "expert".** Louise Casey, the Prime Minister's chief adviser on anti-social behaviour, was forced to apologise in July 2005 after delivering an expletive-laden after-dinner speech mocking ministers and government policy. The senior civil servant, who in September 2005 was made head of the Respect taskforce charged with cracking down on binge drinking and maintaining "good manners", said: "I suppose you can't binge drink any more because lots of people have said you can't do it. I don't know who bloody made that up, it's nonsense...doing things sober is no way to get things done." She added ministers might perform better if they "turn up in the morning pissed" and that when meeting them "the most powerful person in that room is Betsy who brings the tea round". Casey also criticised the formative process of government policy: "If No 10 says bloody "evidence-based policy" to me one more time I'll deck them." *Independent 7.7.05, 3.9.05*

■ **UK: ASBO use soars**: The number of Anti Social Behaviour Orders (ASBOs) reported to the Home Office by the end of March 2005 totals 5,557. An ASBO is a civil order that prevents an individual from carrying out a specific act, but if breached a criminal offence has been committed punishable by a £5,000 fine or up to five years in prison for adults. The new figures illustrate a rise of 85% over the first three months of 2005 over those of 2004. At a regional level, Manchester council continues to be the ASBO's most fervent advocate issuing 816 of all orders. In contrast, Liverpool has issued just 156. Announcing the new statistics, Home Office minister Hazel Blears said "This shows that there are still many people suffering at the hands of irresponsible and threatening individuals...ASBOs are an effective way of stopping the actions that make people's lives a misery when other attempts to stop the problems have failed." But 42% of orders are breached, and with half being issued to children this has led to around 50 juveniles being admitted to custody every month. *For more information on ASBOs see Statewatch's ASBOwatch website: http://www.statewatch.org/asbo/ASBOwatch.html; Guardian 4.11.05; Independent 4.11.05*

Policing - new material

Police station law and practice update, Ed Cape. *Legal Action* October 2005, pp.10-14. In this piece Cape considers the Serious Organised Crime and Police Act (SOCPA) 2005, Legal Aid and legal advice. The author expresses "most concern" over Section 3 of SOCPA and the "radical changes to police powers of arrest, abolishing the concepts of arrestable and serious arrestable offence, and giving the police power to arrest for any offence providing arrest is "necessary"". These provisions come into force on 1 January 2006.

Got your number, Frank Whiteley. *Police Review*, 8.4.05, pp.24-25. This article envisages "am imaginary basic command unit in 2008 where Automatic Number Plate Recognition technology is being used to its full potential to catch criminals."

Police the police, Helen Shaw. *Labour Left Briefing*, September 2005,

p. 6. Shaw, the co-director of INQUEST, considers the shoot-to-kill policy that dictated the "execution" of Jean Charles de Menezes, the Brazilian electrician who died after seven bullets were pumped into his head by police officers from point blank range as he made his way to work following the 21 July bomb attacks on London. The questions raised by a policy that was never openly debated have only been compounded by the misleading information placed - and allowed to remain - in the public domain by Metropolitan police commissioner, Sir Ian Blair, leading to calls for his resignation. *www.inquest.org.uk*

Police Misconduct and the Law, Stephen Cragg, Tony Murphy & Heather Williams. *Legal Action* October 2005, pp. 26-30. Among the wrongful acts considered here is the detention of protesters in central London on May Day 2001 and the shooting of James Ashley by Sussex police in January 1988.

Shooting to kill, Daniel Machover. *Red Pepper* Issue 133 (September) 2005, pp. 17. Article on the comments and reactions by police officers following the killing of Jean Charles de Menezes in July. Machover observes "a stark change in police policy, with shots fired at the suspect's head on purpose, rather than to the biggest body mass. It places an almost certain death sentence on anyone who in the perception of armed officers poses an immanent threat of exploding a device as a suicide bomber." The police also want to change the law to make them immune from possible legal action.

Inspector Gadget, Chris Herbert. *Police Review* 30.9.05, pp18-19. This article discusses Merseyside's planned "futuristic" police car technology which, when installed, will give police drivers access to the national criminal database, fingerprinting technology, facial recognition software or wireless briefings "at the touch of a button." Described as "a mobile laptop in a car", Merseyside's Inspector Holland foresees a situation where police officers: "While they are sitting in the car, the car's ANPR [Automated Number Plate Recognition] cameras are automatically reading passing vehicles' numberplates and pinging the information back to the Police National Computer. The machine will then speak to the driver: "The driver of the old blue Audi to your right is believed to be disqualified" for instance."

PRISONS

UK

Controlling prison numbers?

With the prison population hovering around the 77,000 mark, and more than 7,000 prisoners currently held two to a single cell, the Prison Service decided to re-roll HMP Buckley Hall as a mens' prison and thereby create 350 places for adult men. Home Secretary Charles Clarke told a September conference organised by the Prison Reform Trust that he intended to abandon plans to peg the prison population at 80,000. Clarke's speech was, for the most part simply re-stating the status quo, with references to "individualized support packages" for prisoners and "a contract between the criminal and the state where each individual in prison, on remand, or on probation is required to commit to a non-criminal future" and in return the state and its agencies should commit to providing whatever support it can to stopping their re-offending.

The 1999 Prison Rules already state that the purpose of the training and treatment of convicted prisoners should be to encourage and assist them to lead a good and useful life, and the Woolf Report proposed that all prisoners serving over 12 months should have a sentence plan, so Clarke's comments should be seen as an admission of failure to deliver on Woolf's agenda.

Given that Clarke explicitly linked prison schemes to reduce offending with access to work and a home, talked of extending work-related support packages to remand prisoners, and abandoned all talk of pegging prison numbers, the proposals amount to a package of prison expansion with training for low-paid, casual work at the heart of any sentence plan.

Prison Reform Trust

UK

A duty of care

Few shed any tears when the serial killer Harold Shipman hanged himself at HMP Wakefield on 13 January 2004, but it would be reasonable to expect those who owed a duty of care to Shipman to be concerned for his welfare.

The recent investigation into Shipman's suicide by the Prison Ombudsman (and former Prison Reform Trust director) Stephen Shaw, has, unsurprisingly concluded that the death by hanging could neither have been prevented or predicted. This conclusion was reached despite the fact that Shipman was known to be distressed that he could not afford to telephone his wife, having lost privileges for refusing to undertake offending behaviour courses, and that he was a life sentence prisoner in the first year of his sentence - a known risk indicator for suicidality. Staff at Wakefield failed to call paramedics or contact a doctor for two hours after Shipman was found. His wife Primrose heard about his death from another relative, who had heard the news on the radio, Wakefield having incorrect details of Shipman's next of kin. Prisoners gave evidence to the Ombudsman that Shipman was routinely taunted and bullied by staff but this was discounted by the Ombudsman.

Sixty-one prisoners have taken their own lives thus far this year. In 2004, ninety-five prisoners took their own lives, but no call was raised for the resignation of any minister or prison service director.

Prisons Ombudsman, INQUEST.

UK

Inquest into the prison death of Arif Hussain

Arif Hussain died from a drug overdose at Full Sutton on 11 March 2003. At the June 2005 inquest into his death, the jury held that his death was an accident-due to his ingestion of heroin on a prison visit seven days prior to his death, but that defects in the prison system materially contributed to his death-in particular the lack of an appropriate drug ingestion protocol. Evidence from prisoners in the segregation unit where Arif was held suggests he was not merely neglected, but abused. Arif was treated by a consultant psychiatrist while at Full Sutton, who deemed that he was a polysubstance user and a depressive. He was held in a strip cell, clearly distressed and possibly hallucinating, but described by staff in the segregation log as a "total pain in the arse."

One prisoner, Murat Mavric, gave evidence that Arif was periodically denied food and water by segregation unit staff and was often verbally abused as "a fat Paki." Another prisoner, Craig Smith, recalls that on the night of his death, Arif cried out "I need a doctor." A forensic toxicologist told the inquest that if Arif had been transferred to hospital up to six hours before his death he would "more likely than not" have survived.

Fight Racism! Fight Imperialism!; Miscarriages of Justice UK.

Prisons - in brief

■ **Spain: Rising number of deaths in prisons**. Figures concerning deaths in Spanish prisons are experiencing a steady rise, with 180 people dying in 2004, 20 more than in 2003. The

number of suicides is also climbing, with 22 in 2002, 28 in 2003, 40 in 2004 (over half of whom were serving prison terms for theft) and 30 in the first six months of 2005. The prison population also increased to 51,272 at the end of 2004, up from 48,645 in 2003 and 44,924 in 2002. The General Director of Penitentiary Institutions, Mercedes Gallizo stresses that "we have 10,000 more prisoners than we should have, we are 30% above our capacity". The two latest deaths were suicides in Soria prison, where an ETA suspect and a 71-year-old prisoner were found hanged on 30 October. *El País, 23.10.05, 1.11.05.*

■ **UK: Haslar "needs major investment".** A recent report of an announced inspection by HM Chief Inspector of Prisons, of Haslar Immigration Removal Centre, a facility run by the Prison Service, found that staff routinely carried (and in a recent case had drawn) wooden staves, a practice unknown in C and D category prisons, and in private sector removal facilities. The inspectors found that "the poor fabric of this ageing facility meant that without major investment it will never offer the standard of accommodation that is appropriate to house immigration detainees." Inspectors noted that anti-bullying arrangements were hampered by the inadequate and hard to supervise accommodation; that privacy and sleep were inhibited by three-quarters height partition walls and lack of doors; that family ties were disrupted by the lack of evening visits and that escort vehicles used to transport detainees were not suitable for their purpose, in that they had clear windows which allowed onlookers to see in, resulting in recorded incidents of abuse from passers-by. *Bail for Immigration Detainees; HM Chief Inspectorate of Prisons.*

■ **UK: HMP Durham Womens' Unit should be closed**. In October 2004 HM Inspectorate of Prisons held that the womens' unit at Durham was an unsuitable place to hold women and recommended its closure. By the time of the unannounced follow-up visit, the majority of women had been transferred elsewhere, leaving six women- five of whom were "restricted status". These had been transferred to what was previously the mens' Close Supervision Centre - a jail-within-a-jail - already condemned as unsuitable for its previous purpose. The inspectors found that on all tests for a healthy prison - safety, respect, purposeful activity, resettlement - conditions for those women remaining at Durham were poor. No senior manager at Durham had clear and specific responsibility for the women prisoners and staff, and although the women were awaiting security upgrading at Low Newton, no timescale had been set for this and the women had been left in limbo. Four women at Durham were responsible for a third of self-harm incidents in a jail with a population of 700, and there was a real risk of suicide deaths in the unit. *HM Chief Inspectorate of Prisons*

Prisons - new material

Recent developments in prison law - part 2, Hamish Arnott, Simon Creighton & Nancy Collins. *Legal Action* August 2005, pp. 23-25. The Latest update on the law relating to prisoners covers the Prison (Amendment) Rules 2005 and prison conditions.

RACISM & FASCISM

Racism and fascism - in brief

■ **Germany: NPD leader jailed for inciting hatred.** On 25 August the regional court in Stralsund sentenced NPD leader Udo Voigt to a four months suspended sentence with two years probation. The sentence was given in an appeal procedure initiated by the public prosecutor, which had brought a case against Voigt for a speech he gave in August 1998. The case had been rejected in first instance by the administrative court in Greifswald for lack of evidence. In an election campaign speech in Greifswald to 50 youths, Voigt declared that he would have taken up arms during the Cold War if Germany had been under threat and told the audience that "we would expect that from you, too". The enemy, he said, was the thinking of established politicians. Film material gathered from a television crew at the public broadcasting channel ZDF started the proceedings, which, according to judge Frank Bechlin, showed that Voigt had "incited hatred against politicians". Voigt was a candidate in the national parliamentary elections this summer. *Süddeutsche Zeitung 26.8.05. See http://lexikon.idgr.de/v/v_o/voigt-udo/voigt-udo.php for an outline of Voigt's history in the far-right movement in Germany.*

Racism & Fascism - new material

Why Muslims reject British values, A. Sivanandan. *Observer* 16.10.05. This article takes as its starting point government ministers' arguments since the 7 July bombings that Muslims have failed to integrate into society - it is an argument that follows the "road to assimilation rather than integration." Exploring the ahistorical "culturalist" explanations of racism proffered under Thatcher, Sivanandan reminds us that: "...the racism that needs to be contested is not personal prejudice, which has no authority behind it, but institutionalised racism, woven over centuries of colonialism and slavery into the structures of society and government." He counters Blair's "segregation theory" explanation for 7 July by pointing out that while racial segregation impacted on the generation of the bombers parents the men themselves were integrated and explicit about the causes for their actions: the illegal invasion and destruction of Iraq. The consequences of Blair's myopia, a blindness that refuses to acknowledge "his complicity in the destruction of Iraq and its part in the terrorist cause", are authoritarian measures, such as the introduction of four sets of anti-terrorist measures in five years. As Sivanandan says: "When our rulers ask us old colonials, new refugees, desperate asylum seekers - the sub homines - to live up to British values, they are not referring to the values that they themselves exhibit, but those of the Enlightenment which they have betrayed. We, the sub-homines, in our struggle for basic, human rights, not only uphold basic human values but challenge Britain to return to them."

Achieving the history of a social movement, Anandi Ramamurthy and **Asian Youth Movement: here to stay, here to fight**, A Sivanandan. *Red Pepper supplement* Issue 121, June 2005.

The Integration debate, Liz Fekete. *European Race Bulletin* no 52 (Summer 2005). The latest edition of the bulletin has features on "'Speech crime' and deportation", "Immigration, integration and the politics of fear" and "Developments within extreme-Right and anti-immigration parties". There is also a Table of Deportation Cases.

Observatory on the surveillance of telecommunications in the EU
www.statewatch.org/eu-data-retention.htm

ASBOwatch
www.statewatch.org/asbo/ASBOwatch.html

"Terrorist" lists: proscription, designation and asset-freezing
http://www.statewatch.org/terrorlists/terrorlists.html

The European Civil Liberties Network (ECLN) was launched at a packed press conference in Brussels on 19 October - which was addressed by Tony Bunyan (Joint Coordinator ECLN), Aidan White, (Secretary-General of the European Federation of Journalists), Brigitte Alfter (Bruxelles correspondent, Danish daily Information), Courtenay Griffith QC (Garden Court Chambers - who funded the preparations and the launch) and Jay Stanley (American Civil Liberties Union).

The ECLN has been set up by Statewatch, *European Race Audit* (part of the Institute of Race Relations), *CILIP* (based at the Free University of Berlin), *Mugak* (the Basque country in Spain), *Komitee gegen Schnueffelstaat* (Bern, Switzerland), *Hellenic League for Human Rights* (Greece), A*ccess to Information Programme* (Sofia, Bulgaria), *VD AMOK* (the Netherlands) and *Komitee für Grundrechte und Demokratie* (Germany) plus sixteen individuals.

The ECLN website carries a "Noticeboard" of meetings, publications, campaigns and conferences which groups and individuals can post items on. There is also a "Newsfeed" and a "Call" for people to sign up.

For the launch sixteen specially written Essays were published. Five of them are reproduced here - all are available on the website (see back page for full list).

The initiative is intended to be a long-term response to the "war on terrorism" and its ongoing threat to civil liberties and democratic standards - it is open to all who agree with the objectives to use and contribute to.

Website:http://www.ecln.org; e-mail: info@ecln.org

Why Terror and Terrorism are the Greatest Test of Modern Journalism

by Aidan White

There is no greater challenge to journalism today than finding words and images that help us to understand the nature of terrorism and religious fanaticism without falling into the trap of negative media coverage of Arab and Muslim communities.

Anti-Arab intolerance is on the rise, as is anti-Muslim sentiment, and Western media stereotypes of the Arab world seem to be greater and more dangerous than they have been for decades. Too often media fail to distinguish between fundamentalism and mainstream Islam and appear to regard engagement with religious communities as forever compromising to progressive values. In the process, there is another story – one of heroism and the struggle for rights – in the Muslim world which is being missed altogether. If ever there was a need for good ,honest reporting and for facts to be placed in the context of social change it is now, but there is little evidence that media are rising to the challenge.

Of course, the emphasis on terrorism and fanaticism in the Arab world has been made worse by the war on terrorism. It is an obsession, fed by sensationalist and superficial reporting of conflict in the Middle East and nurtured by unscrupulous and racist politicians. It contributes to an increasingly fearful climate within previously stable metropolitan communities in Europe and the United States.

Today in countries with a history of tolerance like Norway, Denmark, Belgium, Austria and the Netherlands, a toxic cocktail of prejudice and ignorance about Arab culture is leading toa resurgence of extremist politics not seen for50 years.

Europeans are waking up to a difficult reality– that immigrants who began coming to Europe in the 1950s when governments and businesses encouraged mass migration, are profoundly alienated from European society and remain unreconciled to their situation in Europe. Some have turned to the most grotesque interpretation of the Islamic faith to give their lives meaning and there is a growing attachment to violence on the fringes of the diaspora.

The multicultural dream of Europe is being eclipsed everywhere. But no-one, apart from the die-hard racists, are able to describe what will replace it. The danger is that the anti-Muslim discourse of Jean-Marie Le Pen's National Front in France or the Vlaams Belang Party in Belgium or the British National Party may become part of the political mainstream.

The decline of investigative and thoughtful journalism is partly to blame. Even worse, some media have turned their backs on European models of balance and impartiality which are essential to the quality of this debate and complex discussion.

The murder of film-maker Theo van Gogh by alone Muslim extremist in Amsterdam, for instance, unleashed a spiral of Islamophobia, in which Dutch media, previously standard bearers for tolerant reporting, did little to dampen the fires. The government considered closing mosques that spread "non-Dutch values." Primary schools for Arab children were fire-bombed. Attacks on Muslim and Arab communities increased. In Britain, the same pattern of racist violence against Muslims followed in the wake of the London bombings of July 2005.

Media responses have often reflected a profound uncertainty, mirroring the political paralysis and drift to extremism that threatens fundamental rights and stability within society. Yet a return to the basic building blocks of good reporting – asking simple questions, putting facts in context and striving for balance in comment – may well provide a solution.

Are Muslims really a threat? In Europe, for instance, the number of people voting for openly xenophobic parties in most countries exceeds the number of Muslims let alone those who inhabit tiny cells of Islamic extremism. In truth, Europe poses a far greater threat to Muslims than Muslims do to Europe, but this reality hardly figures in media coverage.

Who is harassing who? Countries with minority Muslim populations devote increasing police resources and efforts to the monitoring of Arab and Islamic communities. The number of Asian people stopped and searched in the UK, for instance, increased by 285% in 2002/3, fuelling resentment in already alienated communities.

Under the banner of "radicalism and recruitment", Muslim communities' places of education and worship across Europe are being targeted for increased surveillance. Racial profiling, a practice theoretically prohibited by international law, has also made a come back. There have been renewed arguments about wearing "the veil" at school and about use of religious symbols, all of which have added to the tension.

Are Islamic countries fomenting "extremist" societies? A climate of suspicion and press scaremongering, bolstered by some absurd notions of a "clash of civilisations," is contributing

to support and electoral success for anti-immigration and far-right political parties. Yet no one who visits the Middle East can believe that communication is now controlled by governments or that society relies on traditional voices or the Mosque.

Radical changes in every aspect of the forces that shape public opinion, such as the yearning for social justice, free expression and fundamental rights, are an ongoing reality in much of the Middle East and North Africa, despite the presence of outdated laws and, in some quarters, a still unreconstructed and corrupt political class.

In fact, change is in the air and the evidence is to be found in the invigorated newsrooms of Arab media like *Al-Jazeera.*

Arab states are singular and complex. They are vastly different, both in economic and cultural traditions. Many do operate in a political and social climate where secular political options attract a limited following, but the reasons are rarely fully explained.

In the routine stereotype of Western media, Islamic extremists on the margins of society are confused with the whole Arab world; Arabs are typecast as supporters of terrorism and in the background is a growing media fixation on a millennial clash between Islam and Christianity.

But burning resentments in the Arab world, much of them focused for decades on the injustice of the conflict in Palestine, are too complex to be reduced to such simple terms. Even limited research by reporters of political rebellions against Western domination in the region would reveal they have been mainly secular. Arab nationalism, though often associated with Islam, is sometimes at odds with it. Pan-Arabism, some of whose founders were Christians, offered an alternative, more secular, form of cohesion even if it was not necessarily more democratic.

Its failure and Western interventions, often imperialist in nature, leading to the toppling of freely-elected governments and the support of dictators, have not helped the cause of democratic change, but may instead have contributed to a revival of Islamist movements.

Although Western media tend to suppose that the lack of separation between church and state is the basis for Islamist revolutions, they ignore the fact that in the non-Arab Muslim world, in places like Indonesia and Malaysia, religious ideologues have failed to make much headway. Indeed, more pragmatic Muslims in many countries are keen to separate politics from religion. They form a significant body of opinion in the ongoing debate in the Muslim world on Islam and democracy and Islam and modernity. This inner conflict rarely surfaces in Western media coverage.

Despite all of this, the rhetoric now building in both the West and the Arab World is of a final showdown between great religions. Socially democratic governments are moving further to the right, abandoning the ideals of diversity and pluralism.

The time may be right for a new dialogue between western and Arab world media professionals about rights and tolerance in journalism. We may also think it is the right time to revive anti-racist campaigning within journalism to counter xenophobia which was a feature of cross-border co-operation among journalists' unions in Europe during the 1990s.

Journalists and media need to navigate through these treacherous developments with some sense of professionalism. If they do not, then the onward march of intolerance and racism, with its bleak and pitiless inhumanity, can be guaranteed.

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Checking and balancing polity-building in the EU

by Deirdre Curtin

"Is the Council aware of any website maintained by a European public authority which is better designed to frustrate the ability of citizens to access information than that of the Council of Ministers?" [1]

From Market to State?

The days of the European Union being what some termed a "market without a state"[2] or a "stateless market" [3] is long past. Back in the days before the Treaty of Maastricht and the leap to more overtly *political* integration, the European integration process could indeed be conceived as in its core about the construction and consolidation among the constituent Member States of a free market (an "internal market"). It was a fairly win-win scenario with markets being opened up for the benefit of traders and consumers by a combination of judicial activism, legislative harmonization, mutual recognition of (product) standards and technical standardization. There were of course inroads made into national sovereignty and national laws had to be disapplied on occasion but the inroads were in the field of economic law (and later some "flanking" issues such as the environment and consumer protection). Of course all of this could be considered necessary foundations in order to achieve the long term goal of a more political federation. This is certainly what the federalists and neofunctionalists believed, the integration process was moving forward step-by-step towards – some day - a more overtly *political* union. In the meantime what was termed (and largely accepted by the so-called passive consensus that existed among the national political classes) "integration by stealth" could progress, little by little, with the bureaucrats (and at times the judges) firmly in the driving seat.

The Treaty of Maastricht can in many ways be considered the very explicit crossroads, the moment that the EU's politicians signalled both internally and externally that it would henceforth also be integrating areas such as justice and home affairs within the institutional framework originally conceived for purely market integration. Gradually as the decade of the Inter-Govennmental Conference advanced (in the 1990's) changes were made in the legal frameworks and the legal instruments in a manner that consolidated ambitions in this - qualitatively different - area. The scenario shifted at the same time from a relatively optimistic win-win one to a more troubled scenario with very clear winners and *losers*.

The winners in this incremental process have this time not been individual citizens or companies but rather their statal executive counter-parts in the constituent Member States themselves and at times at the central EU level too. Thus we have seen the powers increased and the role strengthened of substate authorities such as the police, customs and enforcement authorities more generally. Moreover we have seen the establishment of more operational executive type bodies at EU level itself (such as Europol and the External Borders Agency) as well as extensive databases being administered by EU institutions (for example in the case of SIS II it is proposed that it will be managed jointly by the Commission and the Council General Secretariat [4], in explicit recognition it seems of the split nature of the EU executive).The losers, sadly, have tended to be the individual citizens and noncitizens who have seen their

rights and interests adversely affected by the changes that have been made and their civil liberties often challenged and eroded.

For more than a decade the European Union has as a matter of empirical and normative fact been more than a market with or without a state. That "more" has ever so incrementally grown to the point that one can in my opinion consider the EU to have inched closer towards what it means to be a "state" in today's world. This is not to say that the EU can be compared in all respects to a state – this is clearly not the case. But what it has done is in the past decade or more is two-fold. On the one hand it has at the centralized EU level acquired certain specific trappings of "states". On the other hand it has taken the logic and the instruments of the internal market and sought to transplant them beyond the market and the world of companies, traders and consumers to the very core of state power, criminal law, the powers of enforcement authorities and intelligence actors etc. In the manner of its so doing the hypothesis might well be that it has shifted the paradigm of the EU: from market to – dare one put it in such politically incorrect terms these days - to (non-) state.

Refining the paradigm: enter transgovernmental networks

At the same time even as a hypothesis this is too strong in terms of the absolute images it sketches. The EU is clearly not on the road to becoming a (federal-type) state as such, at least not in the short or medium term. The Member States have not overtly delegated their powers say in the field of criminal law or of internal security to the EU so that the EU can now assert itself as such in their place in these fields. The EU is as dependent as ever on the judges, the courts, the administrations, the police, the intelligence actors etc of the individual Member States. It has not replaced these as such at the central level.

The point is rather to frame what is happening in terms of the type of polity that is emerging as a matter of empirical and normative practice. The EU is as a matter of legal and institutional practice increasingly empowering (sub-) state actors and national authorities in various fields to integrate their practices. What is happening is however not so easy to see and to evaluate as the process of integration by stealth shifts even further underground as a result of the failure to ratify the Constitutional Treaty. It entails the imposition at the EU level of the institutional parameters and requirements mandating what can be termed advanced "transgovernmentalism" among various core state actors. A good example of this phenomenon is the recent draft Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union (not yet available in PDF file on the Council's Register of its Documents [5]). The basic idea is the free movement of information held in databases that are owned by the competent enforcement authorities or information that is "available" to them (including information available in other State and private databases). The principle of availability requires that authorities in one Member State exchange all information available with other authorities in other Member States in the same way and under the same conditions as they do within their own jurisdiction. The definition of a "competent enforcement authorities" in the current draft is:

> *a national police, customs or other authorities, that is authorized by national law to detect, prevent or investigate offences or criminal activities and to exercise authority and take coercive measures in the context of such activities*

and clearly seems to include within its scope security and intelligence agencies. The Framework Decision does not prohibit use of information supplied in this fashion as evidence in criminal proceedings nor does it restrict it by setting either procedural or substantive conditions. This is a complex subject which clearly raises important issues with implications for civil liberties of affected individuals. Apart from these substantive issues it highlights the problematic manner in which the Council reaches its decisions in such highly sensitive areas: very largely behind closed doors.

Checks and balances?

In the aftermath of the "Non" and the "Nee" and the feelings of consternation that prevail there does seem to be some growing sense that this situation opens a window of opportunity to discuss why the gulf between the continuing processes of "integration by stealth" meets with incomprehension and outright rejection by (many) of the citizens. Moreover, leaving the C-word to one side with all its state-like baggage what can be done to ensure that it is not just business as usual but in the absence of a Constitution? In other words, what can be done now in the absence of any grand project of reform to ensure that nonetheless the integration process that proceeds at the level of "low politics" in Brussels and Member State capitals can operate within a more accountable framework, with some more measures checking and balancing the on-going exercise of power?

In my view a lot more can be achieved on the subject of freedom of information in the EU especially at this critical juncture of a constitutional impasse. There is no reason why the Council cannot, in line with a recent recommendation from the European Ombudsman, decide quite simply itself (and revise in this sense its own internal Rules of Procedure) to henceforth meet *in public* whenever it is acting in its legislative capacity. In the example I gave above of the (draft) Council Framework Decision this is *legislation* which will bring about quite far-reaching substantive harmonisation in the manner in which law enforcement authorities (as broadly defined) in the Member States are obliged to make information available to their transnational counterparts. This seems to be a very basic first step that can be followed by some serious discussion and debate on the scope of the Council's executive (and even) operational tasks and to see to what extent such processes and the underlying information and documents can also be opened up or at the very least be made available publicly.

In the context of the European Union it seems particularly appropriate to focus on the issue of the *public* nature of decision-making given its bad reputation for secretive decision-taking behind closed doors. One aspect deserving to be highlighted is the fact that a very crucial part of the executive and legislative structures in the EU, namely those involving the Council of Ministers and the increasingly important European Council are often set apart from debates on increasing public deliberation in various processes of the EU. In other words not only is the Council not engaging with non-bureaucratic actors in a deliberative fashion prior to decision-taking, there are entire largely non-public conclaves nestling within its institutional structures. This is true not only in relation to the newer policy areas of foreign and security policy and justice and home affairs although these policy areas have certainly helped to bring the problem more to the fore. There is a mis-match between the rhetoric and practice on transparency and public access to its documents and the Council's secretive structures and rule-making processes, especially in the more executive sphere of activity.

At the launch of the ECLN by Statewatch it seems to be very timely to raise as they have done the need – anno 2005 - for an EU Freedom of Information instrument that would impose tailored obligations on both the EU level (all institutions, actors and networks) on the one hand and on the Member State level (all authorities and actors implementing or fulfilling Union obligations). Surely the time has come to re-launch the debate in a holistic fashion by focusing on the various sites within the institutional configuration of the EU where executive tasks are carried out with the ambition of formulating and applying

horizontal principles on publicity, debate and participation?

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Footnotes

1. Parliamentary Question by Chris Davies, MEP to the Council, 14 July 2005. The question is slightly disingenuous given the fact that both the European Parliament itself and the Council have far from perfect web-sites themselves.

2. C.Joerges, The Market Without the State? The "Economic Constitution" of the European Community and the Rebirth of Regulatory Politics", European Integration Online Papers, vol 1, no.19, http://eiop.or.at

3. P.Kapteyn, The Stateless Market. The European dilemma of integration and civilisation. (Routledge, 1996)

4. SIS II: Resource management and increased support to improve national co-ordination, Council Document 12721/05, 5 October 2005.

5 But see, Statewatch, www.statewatch.org

The "War on terror" - Lessons from Northern Ireland

by Paddy Hillyard

Marx made many comments about history. But one particular comment is important when reflecting upon the current war on terror. He pointed out that history repeats itself, first as tragedy and second as farce. This is an apt description for the current racketing-up of the anti-terror legislation by the United Kingdom parliament. It conveniently ignores the 105 odd "Acts of Coercion" in Ireland in the nineteenth century, which did little to quell the dissent and led eventually to the granting of independence. It tragically ignores the Special Powers Act, the Northern Ireland (Emergency Provisions) Acts and the Prevention of Terrorism Acts of the twentieth century. Most of these anti-terrorist measures were counterproductive. Many of the actions taken simply served to increase the levels of violence and alienation and prolonged the conflict before a political settlement rather than a military defeat could be obtained. Now history repeats itself as farce.

The new proposed terror laws will include outlawing 'glorification' of terrorism, an offence of acts preparatory to terrorism, laws against giving or receiving terror training, a law against the indirect incitement of terrorism, laws against bookshops selling extremist material, the reintroduction of internment in the guise of detention with suspects able to be held for up to three months, and the requirement that those applying for British citizenship must be of good character. Many of these proposals have been tried before in some form in Ireland. The aim of this short paper is to comment on some of the more important measures.

Internment

The single most disastrous measure in Northern Ireland was the introduction of internment in 1971.[1] Symbolically, it suggested to the nationalist population that their demands for a more fair and just society in Northern Ireland could no longer be carried forward through dialogue and persuasion. The rule of law had been abandoned. Nearly 2,000 people were interned over the period and less than 150 of them were Protestants. Practically, it led to hundreds of young men in working class nationalist communities joining the IRA and creating one of the most efficient insurgency forces in the world.

Torture

Internment was accompanied by the 'torture' of a selected number of internees. It involved the use of five techniques. Each internee was spread-eagled some distance from a wall and made to place their hands against the wall to hold their weight. A hood was placed over their heads and a high-pitched whine was played. If they fell down they were beaten and placed again in the same position. They were deprived of food and sleep. The Government set up a Committee of Inquiry to investigate the allegations under Sir Edward Compton.[2] He was not asked to comment on the legality of the techniques and make a vacuous distinction between 'brutality' and 'physical ill-treatment', deciding that the techniques fell into the latter rather than the former category. The confirmation that the techniques had been used and the attempt to argue that the practices did not amount to brutality united the Catholic community behind the IRA. In 1975 Amnesty established an independent Commission and reported on a number of further cases into the ill-treatment of prisoners and internees.[3] The revelations further alienated nationalist communities.

When the images began to emerge from Abu Ghraib prison showing prisoners hooded, humiliated and tortured few people in Northern Ireland were surprised and expressed deep cynicism when the authorities claimed that the practices were not systemic but the unauthorised behaviour of a few individuals. The lesson from Northern Ireland is that these barbarian methods of interrogation were common practice within the British army and no doubt within other armies worldwide and approved at the highest level. To compound matters, the government now appears to be prepared to allow evidence obtained through torture in other countries to be admissible in criminal courts in Britain. All of this barbarism is supported by a number of academics justifying torture on the grounds of the greater good.

Shoot-to-kill

The shooting dead in London of Jean Charles de Menezes, the innocent Brazilian going about his daily work, has drawn attention yet again to the use of lethal force by police officers. The contrast in thinking about the issue in Britain and West Belfast was neatly captured by the headlines in two newspapers. *The Sun* carried the headline; 'One down and two to go' while *Daily Ireland* carried the stark headline 'Executed'.

For years there were allegations that there was a 'shoot-to-kill' policy particularly targeted on the IRA and other Republicans. It was always denied. John Stalker (then Assistant Chief Constable of Greater Manchester Police), who investigated the deaths of six young men at the hands of the RUC in the 1980s pointed out in a letter to *The Times*: 'I never did find evidence of a shoot-to-kill policy as such'. However, he then went on to say that 'there was a clear understanding on the part of the men whose job it was to pull the trigger that that was what was expected of them'.[4] In other words, there was a policy but Stalker was not allowed to see the evidence for it.

Moreover, it has long been suspected that the security services colluded with loyalist paramilitaries in the assassination of republicans. The report by Judge Cory into the murder of Pat Finucane provides prima facie evidence that this was indeed the case.[5] It therefore came as no great surprise when it was revealed following the shooting of Menezes that a shoot-to-kill policy for suicide bombers had been introduced and disseminated to all police forces by the Association of Chief Police Officers without informing either parliament or the public.

Stop and Search

Early in the conflict, the powers of stop and search, arrest and detention were extended throughout the United Kingdom. Again there is ample evidence of the counter-productive nature of these developments.[6] Thousands of innocent people experienced humiliating situations on the streets, at ports and airports and in detention facilities. Very few were subsequently charged as a result of the arbitrary use of the powers and those that were charged were not charged with terrorist but with ordinary criminal offences. The powers created 'suspect communities' within Northern Ireland and, more importantly, a 'suspect community' in Britain.[7] Anyone who was Irish, or had a connection with Ireland or had Irish relatives and friends, became a suspect. Sometimes it was simply an accent, looks or passport that gave rise to suspicion in the minds of the public or the police.

The problem with arbitrary and draconian police powers is that they alienate the very communities from which the police require good intelligence. People are not going to report incidents or crucial information to the police when either their last contact has been at best unpleasant and at worst humiliating and abusive or that they have heard how a neighbour or relative has been treated. Good intelligence is essential to prevent acts of terror, yet the authorities still appear to lack an understanding of the crucial role of good police community relations in this endeavour.

Banning freedom of expression

The policies developed to deal with Irish political violence included measures directed at specific organisations. Various organisations were banned and new criminal offences were introduced, such as being a member of a proscribed organisation or collecting money for the organisation. In addition, a broadcasting ban was introduced to prevent members of illegal organisations speaking on radio or TV. These policies did little or nothing to destroy the organisations. On the contrary, they were pushed into greater secrecy and the broadcasting ban prevented open and political discussion of their aims and objectives further retarded a political rather than a military solution to the problem.

The arrest and conviction in September of the Syrian born journalist Taysir Alouni in Spain on the grounds of that he had collaborated with members of Al-Quaida has worrying parallels with the attempt in Northern Ireland to prevent the freedom of the press. It will have a very negative impact on reporting worldwide and make it even more difficult for the public to obtain a non-western perspective on events in Muslim countries. One of the key pieces of evidence used against Alouni was that he had taken $4,000 to Mohammed Bahaiah, an Al- Quaidi leader. He denied that he knew that Bahaiah was an Al-Quadia leader and he argued that he carried the money as an act of Muslim good manners. As he put it: I took it, and that is not a bad thing…If you refuse you are looked upon badly. What is more, I was interested in these people because of the information that I needed.[8]

The use and possible misreading of cultural expectations to secure convictions also occurred in the notorious Birmingham Six miscarriages of justice case. The six had planned to go the funeral of James McDade, who had blown himself up in a bomb attack. The fact that the six planned to go to his funeral in Belfast was exploited by the prosecution to suggest IRA connections and sympathies rather than a strong Irish cultural practice of respecting the dead even where the person is not particularly well known to the mourners.

Transformation of the ordinary criminal justice system

The criminal justice system in Northern Ireland was radically transformed in order, it was argued, to deal more effectively with those suspected of political violence.[9] Juries were abolished and the rules of evidence were substantially changed with limitations on the right to silence and a lowering of the burden of proof. At the same time, a range of different strategies were used in different periods in the conflict to obtain evidence, ranging from the use of brutal interrogation techniques [10] to the widespread use of supergrasses [11] and informers. In effect, there were two criminal justice systems operating in Northern Ireland: one for those suspected of terrorist activities and another for those suspected of "ordinary decent crime"

The development of a separate criminal justice system to deal with political violence has corrupted the ordinary criminal justice process in three significant ways. First, powers and procedures, for example, relating to the length of detention under anti-terrorist legislation were subsequently incorporated into the ordinary criminal law. Secondly, antiterrorism legislation was constantly used to deal with ordinary criminal behaviour. Thirdly, the whole criminal justice system became discredited as the rule of law was replaced by political expediency and the Northern Ireland judiciary did little to uphold the independence of the law.

Accountability

Another major lesson to be learned from the Irish experience is that all organisations involved in dealing with political violence, from the secret services to the units handling public order on the streets, must be independently and democratically accountable. The last thirty years in Northern Ireland is strewn with examples of organisations and agencies acting beyond the law or else mobilising the law for their own political ends.[12] These range from the brutal methods of interrogation, through the 'bloody Sunday' débâcle to the widespread collusion between the security services and paramilitary killers.

Conclusions

The lessons from Ireland are clear. Widespread violation of human rights in the so-called 'war against terrorism' is counterproductive. It erodes democracy by undermining the very principles on which social order is based and alienates the communities from whom the authorities need support in dealing with political violence. Moreover, it is vital that those involved in dealing with political violence must be independently accountable to democratic scrutiny and the rule of law.

The threat from political violence is real as witnessed in Bali, Madrid, Washington, New York, London, Kabul, Basra or Baghdad. But we must avoid at all costs flaming the passions that lead people to become involved in political violence. This makes it even more imperative that those in power do not abandon the rule of law and the prevention of terrorism becomes, as it did in Ireland, the terror of prevention.

Paddy Hillyard is Professor of Sociology at Queen's University Belfast. His book Suspect Community: People's Experience of the Prevention of Terrorism Acts in Britain, Pluto, 1993 is still the only ethnographic study in Britain of the impact of anti-terror legislation on people's lives.

Footnotes

1. See McGuffin, J. (1973) Internment (Tralee, Co Kerry: Anvil Press).

2 Report, C. (1971) Report of the Enquiry into Allegations against the Security Forces of Physical Brutality in Northern Ireland arising out of the Events on 9th August 1971 (London: HMSO).

3 Amnesty International. (1975) Report of an Inquiry into Allegations of Ill-

Treatment in Northern Ireland (London: Amnesty International).

4 The Times, 14 February, 1988

5 See; Cory Collusion Inquiry Report: Pat Finucane, HC. 470, HMSO, 2004. http://www.nio.gov.uk/cory_collusion_inquiry_report_(with_appendices)_pat_finucane.pdf

6 See for example: Boyle, K., Hadden, T. and Hillyard, P. (1975) Law and State: the case of Northern Ireland (London: Martin Robertson) and Hadden, T., Boyle, K. and Hillyard, P. (1990) Ten Years on in Northern Ireland (Cobden Trust: London).

7 Hillyard, P. (1993) Suspect Community: People's Experience of the Prevention of Terrorism Acts in Britain (London: Pluto Press).

8 See 'When a reporter got too close to the story, The Media Guardian, 3 October, 2005.

9 Commission, D. (1972) Report of the Commission to Consider Legal Procedures to Deal with Terrorist Activities in Northern Ireland (London: HMSO).

10 For brutal police methods see: Taylor, P. (1980) Beating the Terrorists? Interrogation in Omagh, Gough and Castlereagh (Harmondsworth: Penguin).

11 Greer, S. (1995) Supergrasses: A Study in Anti-Terrorist Law Enforcement in Northern Ireland (London: Clarendon Press).

12 See for example, Ní Aoláin, F. (2000) The Politics of Force: Conflict Management and State Violence in Northern Ireland (Belfast: Blackstaff Press).

"The rules of the game"?

by A Sivanandan

We live in such a vortex of change that no sooner have we seized the time than it has passed us by. But that is the very reason why we must be more vigilant than ever about constraining power and invigilating the insidious ways of government as it changes "the rules of the game". To do that, however, we need the courage to abandon old ideologies which bear us down, the honesty to turn our faces against intellectual fads and fetishes which turn us away from engagement and the commitment to fight injustice wherever we find it. We need, too, the type of political analysis that Owen and Godwin, Saint-Simon and Fourier, Marx and Engels did for their time in the maelstrom of the industrial revolution - an analysis immanent in which were the strategies that would inform the working-class struggles against capital - and out of that conflict elicit, if not socialism, at least the democratic rights and freedoms that have come down to us.

And it is those rights and freedoms that we are in danger of losing today. The working-class forces that won them for us have been disaggregated and dispersed by the technological revolution - even as that revolution concentrates wealth in the hands of giant corporations and sets them free to roam the world, with the nation-states of the West clearing capital's imperial way by setting up stooge governments for consenting Third World countries, and regime change for those who refuse to play imperial ball. National governments, which under industrial capitalism worked in the interests of their people, under electronic capitalism work in the interests of multinational corporations - and the welfare state cedes to the market state, where those who own the media 'own' the votes that elect the government, where the social fall-out is mediated through welfare sops and controlled through draconian legislation which corrodes the whole fabric of civil society.

Some of these processes were already there in the very nature of globalisation. The fall of Communism hastened them and made them universal. 11 September entrenched them, and the ensuing war on terror added a *military* dimension to the *economic* project, justified through a *politics* of prejudice and fear to create a *culture* of xeno-racism and Islamaphobia: the asylum seeker at the gate and the shadow Muslim within.

It is that symbiosis between racism and imperialism, and imperialism and globalisation that now frames our times. We cannot combat the one without combating the others. Imperialism is the project, globalisation the process, culture the vehicle, and the nationstate the political and military agent. To look at racism as an isolate without considering its relationship to globalisation, and therefore imperialism, is not only to descend into culturalism and ethnicism but to overlook the state racism that embeds institutional racism and gives a fillip to popular racism in the form of laws and edicts that starve and dehumanise asylum seekers whom globalisation has displaced and thrown up on the shores of Europe.

To look at globalisation without relating it to imperialism and therefore racism is not only to regard its penetration into Third World countries as an inevitable extension of trade and not as a precursor to the regime change that follows in its wake, but to overlook the racist discourse that accompanies it and in turn feeds into popular racism.

To look at imperialism without relating it to globalisation and racism is not just to accept the notion that regime change and preemptive strikes have no underlying economic motive but are a defensive strategy against 'the axis of evil' and the terrorists they breed - ('post-modern imperialism', Robert Cooper, one-time adviser to our PM and the EU, calls it). It is also to accept the hoary old myth of the white man's burden of bringing civilisation and enlightenment to the lesser breeds, of freeing them from tyranny, forcing them to be free, bombing them into freedom and democracy. Except that the underlying theme this time is not that of a superior race but of a superior civilisation. Hence the real war, not the phoney war, is not between civilisations, as Huntington would have it, but against the enforced hegemony of western civilisation.

To put it another way - under global capitalism, the relationship between the economic, political, cultural etc., is so organic that we can no longer think of society in terms of superstructure and base, with the economic base determining the political and cultural superstructure. That would have done for industrial capitalism. But electronic capitalism requires us to think in terms of circuits, not hierarchies. And the dynamo that drives those circuits is the free-market system.

The market, in its turn, dismantles the public sector, privatises the infrastructure and determines social need. It violates the earth, contaminates the air and silts up the rivers. It creates a two-thirds, one-third society of the have-everythings and the have-nothings, and keeps poverty from the public gaze. It reduces personal relationships to a cash nexus (conducted in the language of the bazaar) even as it elevates consumerism to the heights of Cartesian philosophy: I consume, therefore I am.

The irony is that when our rulers ask us *subhomines* to live up to their values, it is not the values they exhibit that they refer to, but those of the Enlightenment which they have betrayed. Whereas we, the *sub-homines* that is, in our very struggle for basic human rights not only hold up human values, but challenge Europe to return to them. We are the litmus test of western values. The Enlightenment project is incomplete till its remit of liberty, equality and fraternity is extended to the nonwhite peoples of the world. That is the challenge that our presence in Europe signifies.

Nor is the task of the Reformation over - so long as there is

a connection between Church and State (as in Britain) - which in practice privileges the state religion over all others. That, again, is the challenge that Islam, Hinduism, Sikhism etc present.

On the other hand, states that pretend to secularism, like France, are still to distinguish between rites and rights. The religious symbols that people exhibit (like the cross and the hijab) may in their view be a rite but from the view of the secularist state it is a right. For what, in the final analysis defines a secular state is the paramountcy of individual liberty: my freedom is only limited by yours.

11 September and the war on terror have given the British government the excuse to develop a new virulent strain of anti-Muslim racism to go hand in hand with the punitive laws against asylum seekers - till all of us 'Others' are, at first sight, terrorists or illegals. We wear our passports on our faces or, lacking them, we are faceless.

Since 7 July and the London bombings, however, anyone whose face is not quite the right shade, who does not walk in exactly the right way, who does not wear the right clothes for the season, can be taken as a potential suicide bomber - as law-abiding Brazilian electrician Jean Charles de Menezes learnt to his cost. And, if you're recognisably Muslim (or just believed to be Muslim), you will be subject to official stops and searches by the police and to unofficial racial attacks and harassment in the community.

7 July has also signalled a more dangerous tendency on the part of the executive to make incursions into the preserve of the legislature. A case in point is the administrative powers the Home Secretary has arrogated to himself through changes in existing immigration laws to deport anyone suspected of 'unacceptable behaviour', even to countries that accept torture - on the basis of 'memoranda of understanding' that these particular deportees will not be tortured! These are powers that, in effect, complement and reinforce antiterrorist legislation - but by side-lining parliament and public debate. And the more the executive arrogates more and more power to itself (it is after all the Home Secretary and not the courts who decides who will be detained, who will be subject to control orders and who will be returned to face torture) and expects the judiciary merely to rubber-stamp its decisions, the more is the role of the judiciary and the respect in which it is held undermined. Besides, the separation of powers, which silently characterises Britain's unwritten constitution, and is therefore the more to be cherished and safe-guarded, is being systematically undone.

Blair's reasoning behind all this is that 7 July has changed 'the rules of the game'. But the game is democracy and not one part of it can be changed without starting a chain reaction that unravels the whole.

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Lex Vigilatoria - Towards a control system without a state?

by Thomas Mathiesen

In 1997 Gunther Teubner edited *Global Law without a State*.[1] Among the interesting contributions to the volume is Gunther Teubner's own introductory piece "'Global Bukowina': Legal Pluralism in the World Society" (pp. 3-28). Teubner's main concern is the development of *lex mercatoria,* the transnational law of economic transactions, mostly transnational contract law, which he views as "the most successful example of global law without a state" (p. 3). Global law, according to Teubner, has some characteristics which are "significantly different from our experience of the law of the nation-state" (p. 7):

- The boundaries of global law are not formed by maintaining a core territory and possibly expanding from this, but rather by invisible social networks, invisible professional communities, invisible markets which transcend territorial boundaries.

- General legislative bodies are less important – global law is produced in self-organized processes of what Teubner calls "structural coupling" of law with ongoing globalised processes which are very specialised and technical.

- Global law exists in a diffuse but close dependence not on the institutional arrangements of nation-states (such as parliaments), but on their respective specialised social fields - in the case of lex mercatoria, the whole development of the expanding and global economy.

- For nation-building in the past, unity of law was a main political asset. A world wide unity of law would become a threat to legal culture. It would be important to make sure that a sufficient variety of legal sources exists in a globally unified law.

In my own words, ideal-typically about *lex mercatoria:* Transnational economic law is developed not by committees and councils established by ministries in nation-states and subsequently given sanction by parliaments, but through the work of the large and expanding professional lawyers' firms, the jet-set lawyers operating on the transnational level, tying vast capital interests together in complex agreements furthering capital interests. As *lex mercatoria* develops, it is not given subsequent primary sanction by national parliaments but is self-referential and self-validating, finding suitable "landing points" in quasi-legislative institutions (Teubner p. 17) such as international chambers of commerce, international law associations, and all sorts of international business associations. It develops as a system of customary law in a diffuse zone around the valid formal law of nation-states, not inside valid formal law but not too far outside it. Eventually it becomes regarded as (equivalent to) valid formal law or at least valid legal interpretation. It develops continuously, one step building on the other, in the end validating a law or a set of legal interpretations far from the law of the nationstates.

The increasingly independent and self-sufficient development of such a legal arrangement is the crux of the matter. Ideal-typically, global *lex mercatoria* develops of its own accord, based on its own internal sociological logic. There is a great debate going on concerning the independence of global *lex mercatoria* – Teubner calls it a thirty years' war. I will not enter that war here, but simply ask the question: Do we, in recent developments in the late 1900s and the 2000s, see signs of a developing independent global control system, a kind of frightening *lex vigilatoria* of surveillance and subsequent political control? Global control without a state?

The question is complex. There are certainly ties between nation-states in the EU and say Schengen, the SIRENE exchange, Eurodac, communication control through retention and tapping of telecommunications traffic data, the spy system Echelon and so on. For one thing, some of these systems are established on the national level first. The recent British proposal to the EU (in July 2005, after the terrorist onslaught in London 7 July) to make the retention of a wide range of telecommunications traffic data for a year or more mandatory in all member states is an example (though this may be viewed as a strategic way of getting a common system off the ground – note the related proposal from the EU Commission in October 2005).

Secondly, some of the systems are established through various joint national efforts. Some of the joint national efforts are complex (meetings and memos over ten years concerning communications control; the lengthy negotiations over Schengen), some of them are simpler (framework decisions, involving agreements of ministers from the nation-states), some of them are very simple (quick common positions cleared by governments). Thirdly, agreements such as partnerships in Schengen, Europol and Eurodac have to be sanctioned by national parliaments.

But at the same time, there are signs suggesting that systems such as the ones I have mentioned are becoming increasingly untied or "decoupled" (to use Teubner's term) from the nation-states. For one thing, the parliamentary nation-state sanctioning of arrangements such as Schengen, Europol and Eurodac to a considerable extent takes place without in depth debates in public space, and, significantly, without parties and members of parliaments really knowing to any degree of detail the systems they are sanctioning. Parties and members must necessarily trust the work being done by various sub-committees and officials and so on deep inside i.a. the EU structure, over and above agencies of the nation-states. There is neither time nor motive for anything else. An example is the scrutiny of the various *acquis*, enormous heaps of documents drastically reducing transparency for an ordinary parliament member (or even a researcher).

Furthermore, once the various systems are up and going, they interlock through informal agreements and arrangements, rapidly expanding their practices - a kind of customary law, again in the diffuse zone around valid formal law. In other words, the systems are increasingly integrated "*horizontally"*. There are numerous examples of this.[2] There seems to be an important relationship between the "*horizontal"* integration or interlocking aspects of the various systems, and the *"vertical"* weakening of ties or de-coupling aspects to nation-state agencies: The more integrated or interlocked the systems become ("horizontal" integration), the more independent of or de-coupled from national state institutions they will be ("vertical" weakening of ties) when the agendas for future developments and operations are set. Integration, interlocking, links the systems together in functional terms. Given moves are therefore simply regarded as "necessary" or imperative, irrespective of the thinking which might be valid on the nation-state level. Interlocking at the system level also makes particular developments seem imperative from the point of view of the nation-state level. For example, the "package" consisting of the SIS, Europol and Eurodac, in which all three systems are increasingly intertwined in terms cooperation and goals, has made it increasingly "obvious" and "necessary" for Norway to participate in all three of them – if not without debate, at least with a minimum of debate. The question of Norwegian participation in the first of these, the SIS, created some critical debate. Norwegian participation in Europol and Eurodac hardly reached the newspapers or television at all.

The horizontal integration of the systems expands by internal sociological forces, far from the control of nation-state institutions. Eventually, the horizontal interlockings and the vertical de-couplings are taken as *givens*, simply to be reckoned with. System functionaries – and all together there are thousands of them – take pride and find legitimacy in such developments. They become part and parcel of their systems, they find colleagues, and even emotional attachments in their systems, they define their particular system as something they should foster, feeling great satisfaction when they manage to make the system function still better. These are entirely commonplace processes; this is how we all become more or less enveloped by the systems we are working in.[3] A small example: In a discussion with Norwegian Schengen personnel some years ago, I ventured the guess that their doings were not all that rational after all – they probably took great pride and satisfaction in the computerized technical and complex activities they were involved in and were continuously developing. The response was instant – fumbling with papers, some blushing, some openly agreeing.

To be sure, the various horizontally interlocking systems have their national "landing points", but, much like *lex mercatoria,* not through strong vertical ties to responsible and authoritative parliamentary settings, but in quasi-legislative institutions – in this case especially branches of the law enforcement agencies with their strongly vested interests.

Conclusion

A cautious conclusion for the time being: I would say that there is a development towards increasingly *diluted* ties to the institutions of the nation-states. While not global law fully without a state, a dilution of connections with the formal institutions of the nation-state is taking place. Most significantly, the institution of parliamentary sanction has become, at least in many European states, a perfunctory exercise with a silent public as a context.

But perhaps a "state" is re-entering the scene on a different level? At least as far as the European control systems are concerned, the importance of the institutions of the European Union is enhanced as the nation-state institutions fade.[4] Any state, also a European State, requires certain institutions. One of them is policing (but not necessarily of the kind we are witnessing today).

However, the European control systems, though largely emanating from the EU, also have tentacles far beyond the EU, interlocking horizontally with various systems of control in the US and other parts of the Western world. The EU-FBI attempts, pointed out so clearly by Statewatch, to develop transnational communication control over the last ten years is a case in point.

Are we, then, facing once again a developing, unfinished, expanding global control, if not without a state so at least with increasingly diluted ties to state institutions? A *lex vigilatoria*, if not developing entirely of its own accord, at least with strong internal sociological forces leading the development, and control measures increasingly out of state control?

If so, we need to understand these sociological forces better if we are to oppose and contain them. A penetrating and critical research project exactly on this, for example under the auspices of Statewatch, would be in order. Such a project could develop into a counter-force. From a critical point of view, it is vital to stem this tide before it is too late.

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Footnotes

1. Aldershot: Dartmouth Publishing.

2. See my " The Rise of the Surveillant State in Times of Globalization". In Colin Sumner (ed.), The Blackwell Companion to Criminology, Oxford: Blackwell Publishing 2004, pp. 437-451.

3.See my Silently Silenced. Essays on the Creation of Acquiescence in Modern Society. Winchester: Waterside Press 2004.

4. It is possible that the European state may be taking a different form to that at the national level. While it is not evident in the "first pillar" (economic and social affairs) it is arguable that since the Tampere Summit (October 1999) the "third pillar" (policing, immigration, judicial cooperation, internal security) is adopting EUwide "state" functions and roles. The same may be said of the "second pillar" (military and foreign policy) since the Nice Treaty (2000). If this is so then maybe we are seeing the construction of a "coercive" EU state.

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European Civil Liberties Network (ECLN)

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