Time to rethink terrorist blacklisting
by Ben Hayes

The terrorist proscription regimes enacted by the United Nations (UN) and the European Union (EU) after the attacks of 9/11 have been seriously undermined by growing doubts about their legality, effectiveness and disproportionate impact on the rights of affected parties.

Introduction

At face value, terrorist blacklisting (the act of designating a group or individual as 'terrorist', as an associate of known terrorists, or as a financial supporter of terrorism) seems like a reasonable response to the crimes of 9/11 and subsequent terrorist attacks. Ostensibly, these 'smart sanctions' (which target groups and individuals rather than whole populations) are designed to disrupt the activities of terrorist groups by criminalising their members, cutting off their access to funds and undermining their support. In practice, however, far too many people have been included in national and international terrorism lists. At the same time, they have been systematically denied the possibility of mounting a meaningful defence to the allegations against them. Moreover, many listings are clearly politically or ideologically motivated, undermining genuine counter-terrorism efforts and paralysing conflict resolution efforts.

The UN blacklisting regime stems from UN Security Council Resolution 1267, which created the first list of alleged terrorists "associated with Osama bin Laden, the Taliban and Al-Qaeda". Those included in the list (which currently stands at 397 individuals and 92 organisations) are subject to asset-freezing, travel bans, an arms embargo and other sanctions. UN Security Council Resolution 1373, adopted in the immediate aftermath of 11 September 2001, encouraged states to create their own blacklists to prevent "the financing of terrorist acts" and enact other counter-terrorism provisions criminalising support for terrorism and breaches of the UN sanctions. The EU's terrorist lists stem from the measures it took to transpose Resolution 1373 into EU law and currently stands at 57 individuals and 47 organisations. In addition to the UN and EU lists, many states have adopted domestic blacklists, massively expanding the net of criminalisation.

Whereas the EU has adopted a (particularly broad) definition of 'terrorism', the UN has failed to reach such an understanding, despite decades of deliberation. UN Security Council Resolution 1373 thus effectively outsources the definition of terrorism to nation states, encouraging the criminalisation of groups on the basis of geopolitical, foreign policy or diplomatic interests. The criminalisation of self-determination movements that has resulted has transformed the migrant and Diaspora communities that support them into 'suspect communities' and obstructed peace processes aimed at resolving such conflicts.

An abject lack of due process

There is now an irrefutable body of expert legal opinion that views international proscription regimes as incompatible with the most basic standards of due process. The adverse and unacceptable impact of the sanctions on fundamental human rights is also abundantly clear and systemic violations have been recognised repeatedly in judicial proceedings, particularly within Europe. Listing decisions are usually based on secret intelligence material that neither blacklisted individuals nor the Courts responsible for reviewing the implementation of the lists will ever see. Needless to say, affected parties cannot contest the allegations against them (and exercise their right to judicial review) if they are prevented from knowing what the allegations actually are.

Like control orders and administrative detention without charge, blacklisting has been seen as a key component of the pre-emptive security agenda pursued by states in the years since 9/11. Whilst it is widely accepted that the lists have been largely ineffective in blocking terrorist financing, states have nonetheless prioritised blacklisting as a means of facilitating prolonged interference with the lives of terrorist suspects on the basis of intelligence material incapable of withstanding judicial scrutiny. Indeed, should the legislation on control orders be repealed by the coalition government in the UK (a prospect that now seems increasingly unlikely despite manifesto commitments and post-election pledges) those subject to the measures will likely be placed on a UK terrorist blacklist instead in order to maintain state control over their lives.

Challenging terrorist blacklisting

There have now been scores of legal challenges to the national and international terrorist blacklists in domestic and regional courts. Many successful challenges have resulted in 'pyrrhic victories' for listed groups and individuals as the executive bodies of the UN and EU have simply ignored the growing judicial dissent and substance of the judgments while maintaining the successful litigants on the blacklists.

One of the most important legal challenges brought to date has been the case of Yassin Abdullah Kadi, a Saudi businessman. Mr Kadi successfully challenged the European implementation of his UN listing in the EU Courts. Significantly, in 2008 the European Court of Justice (ECJ) ruled that despite the supremacy of the United Nations in the hierarchy of international law, the principle of due process enshrined in the European Convention on Human Rights had to take priority. In response, the UN and EU introduced several due process reforms – culminating in the 2009 appointment of an Ombudsperson (OP) to facilitate de-listing requests. Yet they maintained the sanctions against Mr Kadi. In 2010 the ECJ ruled against the European implementation of the UN list for a second time, noting that the creation of the OP fell far short of the standard necessary to ensure compliance with European human rights law. Mr. Kadi may ultimately be removed from the list to prevent further successful litigation. But it will not be long before the fundamental problems created by the UN and EU proscription regimes return to the EU Courts.

Another important case recently heard by the UK Supreme Court involved five blacklisted men (known as A, K, M, Q and G) who successfully challenged the implementation of the relevant UN Security Council Resolutions by the British government. The Court held that the UK implementing regulations were *ultra vires* the United Nations Act because of their devastating impact on fundamental rights (a similar judgment is now expected from the Canadian Courts in the case of Abousfian Abdelrazik, see below). In a scathing judgment, the Supreme Court found that the UK/UN regime "strike[s] at the heart of the individual's basic right to live his own life as he chooses" and effectively renders "designated persons... prisoners of the state". The Court ruled that such a draconian regime could only be justified by an Act of Parliament, which would have surely introduced an appeals procedure. This decision led to the UK's implementing measures being struck down by the Court. However, instead of referring the UN terrorism list to parliament, the UK government has simply chosen to directly apply the EU Regulations that transpose the UN terrorism list into EU law. Put more simply: people in the UK who have been blacklisted by the UN will remain "prisoners of the state" because of EU governments' unflinching reluctance to demand meaningful reform at the UN.

In Switzerland, which is home to the assets of numerous blacklisted individuals, legislative reforms have been introduced that empower the Swiss Federal Council to refrain from implementing the UN 1267 blacklist in certain circumstances – including, *inter alia*, where blacklisted individuals and groups have not been afforded access to an independent mechanism of review and/or where they have been listed for more than three years without being brought before the Court. Upon approval of the proposal in March 2010, the Swiss Parliament stated that the government "should make clear that it is not possible for a democratic country based on the rule of law that sanctions imposed by the Sanctions Committee, without any due process guarantee, result in the suspension, for years and without any democratic legitimacy, of the most basic human rights that are proclaimed and propagated by the United Nations".

In Canada, a challenge to the UN list is pending at the Federal Court in the case of Abousfian Abdelrazik. Mr Abdelrazik was jailed in Sudan in 1989 after the successful military coup of Omar Al-Bashir. He managed to flee to Canada in 1990, where he was granted refugee status and, subsequently, Canadian citizenship. In March 2003, after some of his acquaintances had been charged or convicted for participating in terrorist attacks, Mr Abdelrazik returned to Sudan in order to visit his mother and escape harassment by the Canadian Security Intelligence Service (CSIS). Upon arrival, however, he was promptly arrested and detained for two periods of eleven and nine months without charge, during which time he was questioned by CSIS and tortured by Sudanese authorities. In July 2006 Mr Abdelrazik was placed on the UN 1267 terrorist list at the request of the US government, which alleged that he was a senior Al-Qaida official with personal connections to Osama Bin Laden, had trained in a terrorist camp in Afghanistan and fought with Islamic militants in Chechnya.

In late 2007, Abdelrazik was released from Sudanese imprisonment and cleared of all charges by both Sudanese authorities and Canadian police and intelligence agencies. But when he attempted to fly home to Canada he was prevented from leaving; airlines refused to carry him because of his inclusion on a 'no-fly' list and the Canadian authorities refused to issue him with the emergency travel documents necessary to leave Sudan on the basis of his 1267 blacklisting. After repeated visits from Canadian officials failed to facilitate his repatriation, Mr Abdelrazik was granted temporary refuge at the Canadian embassy in Khartoum where he spent the next 14 months, initially sleeping on a mattress in the lobby. Finally, following a legal challenge and public campaign in Canada which saw his airline ticket paid for by supporters in direct breach of Canada's 'material support' provisions, Mr Abdelrazik was allowed to return home in June 2009. In the Court judgment that paved the way for his return, Justice Zinn of the Canadian Federal Court noted that the UN's delisting process requires the petitioner to prove a negative (that s/he is not associated with Al-Qaida), something akin to trying to prove that "fairies and goblins do not exist". The situation for a blacklisted individual, he added, is "not unlike that of Josef K. in Kafka's *The Trial*, who awakens one morning and, for reasons never revealed to him or the reader, is arrested and prosecuted for an unspecified crime". Despite this judgment, Mr Abdelrazik remains on the UN blacklist, with Canada's implementation of the UN regime the subject of further proceedings at the Federal Court (these mirror the Supreme Court challenge brought by A, K, M, Q and G in the UK, above).

The broader implications of the list

Despite numerous Court rulings and widespread proclamations of this nature, there has been very little public debate about the role and function of terrorist blacklisting. The discussion that has taken place within institutional and academic circles has tended to follow the increasingly complex legal architecture arising from litigation and piecemeal reform. It is crucial therefore that the wider political significance of the blacklisting regimes is not overlooked because their impact extends far beyond individual human rights to fundamental matters of social justice, self-determination, peace-building and conflict resolution. These matters call into question the very role and function of the "international community".

Blacklisting has had a tremendously negative impact on attempts to resolve long-standing conflicts and complex struggles for self-determination, often undermining the right to self-determination itself. International development organisations have had to adjust to a new regime of due diligence obligations at home while simultaneously finding their work in conflict zones and fragile states paralysed by the blacklisting of groups and individuals in the communities in which they operate. In Europe and North America, migrant and Diaspora communities have come under particular scrutiny because of their association with terrorist organisations. Kurds, Palestinians,

Tamils, Kashmiris, Baluchis and other minority communities have all felt the effect of suspicion and stigmatisation. The practice has had a disproportionate and gendered impact on the lives of women and other family members of those who are designated. It has also facilitated the creation of new forms of unaccountable and supranational authority at the UN level to directly target and interfere with the rights of individuals. The adoption of terrorist lists by the UN and EU also sets a dangerous precedent that legitimises the principle of blacklisting and encourages its use in other security frameworks, with worrying long-term implications for civil liberties.

Overdue process

There is an emerging consensus that something urgently needs to be done about terrorist blacklisting that goes beyond mere procedural tinkering. However, there are only actually two options available to the United Nations that could satisfy constitutional due process safeguards and international human rights law. These are: either (a) introduce an independent judicial review mechanism at the UN Level, or (b) allow judicial review of UN blacklisting decisions in national courts. In reality, the permanent members of the Security Council will sanction neither development. In the face of such intransigence, the time has therefore come to radically rethink the issue and for the international legal framework underpinning the blacklisting regimes to be abolished. As Martin Scheinin, UN Special

Rapporteur on the promotion and protection of human rights while countering terrorism, has observed:

Whatever justification there was in 1999 for targeted sanctions against Taliban leaders as the de facto regime in Afghanistan, the maintenance of a permanent global terrorist list now goes beyond the powers of the Security Council. While international terrorism remains an atrocious crime ... it does not justify the exercise by the Security Council of supranational sanctioning powers over individuals and entities.

Although the EU's legal system provides a relatively higher standard of 'due process' than the UN, its blacklisting regime falls far short of any reasoned interpretation of the substantive obligations on the Union to introduce a much fairer system – one that respects both fundamental rights and the principles of proportionality and democratic control. If the fundamental flaws of the blacklisting regimes are to have any chance of being properly addressed, then both wholesale reform and a broader public debate about how terrorism ought best be dealt with is required.

"Blacklisted: Targeted sanctions, preemptive security and fundamental rights", by Gavin Sullivan and Ben Hayes with a foreword by Martin Scheinin (UN Special Rapporteur on human rights and countering terrorism), was published by the European Center for Constitutional and Human Rights in December 2010. The report is available to download at: http://www.statewatch.org/news/2010/dec/eu-ecchr-blacklisted-report.pdf

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EU: Deepening the democratic deficit: the failure to "enshrine" the public's right of access to EU documents
Tony Bunyan

In April 2008 the Commission opened up the process to amend the 2001 Regulation on access to EU documents but all that has been agreed is a new set of "comitology" rules that will restrict access

The struggle for openness – access to documents – in the EU has been a long and protracted one that has yet to be resolved. When Maastricht Treaty came into force the Council of the European Union (the EU governments) and the European Commission adopted the "Code on access to EU documents" in December 1993. The Amsterdam Treaty, adopted in 1997, came into force in 1999 and Article 255 promised to "enshrine" the right of access to EU documents.

During 1999 and 2000 the Council and the European Parliament engaged in lengthy "trilogues" which resulted in the current Regulation on access to EU documents (1049/2001). See: Statewatch's Observatory [1].

In April 2008, the Commission finally put forward proposals to amend the Regulation. This was highly contentious as the Commission sought to change the definition of a "document" which would exclude most documents thus removing the requirement to list them in its register of documents and the public right of access to them.

Nor did the Commission's proposals address any of the long-standing criticisms from civil society:

- the power of the Council and the Commission to deny access to documents under discussion – they can refuse access, as they consistently have, to documents on deciding legislation until a measure is adopted (and even then they can be refused);

- the power of EU member states (governments) to deny access to documents they has submitted as part of the legislative and administrative processes to the Council. People have a right to know what is being done in their name.

- the failure to accept that the public interest in disclosure was greater than the institution's need for secrecy

- the right of "third states" (like the USA) to veto access to EU documents

- the failure to amend Article 6 of the Regulation to also allow for freedom of information requests (FOI) - whereby the applicant can make a general request without having to ask for specific documents.

- the failure of the Commission to provide a complete register of all documents produced and received[2]

At the time *Statewatch* commented on the Commission's failure to address the concerns of civil society and those of the the European Parliament:

Most crucial is the public's right to know what is being discussed in the Council before it is adopted in Brussels - a practice that would never be tolerated at national level.

The Amsterdam Treaty was agreed in 1997 and was meant to herald a new era of openness and transparency – we got half the loaf and are still waiting for the other half."

Now, nearly three years later, there is an institutional "impasse" as the Council refuses to recognise the right of the parliament to make additional substantial amendments to those put forward by the Commission, and the Commission refuses to consider any amendments to its proposals until the parliament adopts its 1st reading position.[3] The Council, for its part, shows no enthusiasm to change the *status quo*.

The Lisbon Treaty

While this process of inactivity continued the Lisbon Treaty (comprised of the Treaty on the Functioning of the EU, TFEU and the Treaty on the EU, TEU) came into effect in December 2009 and should have given a fresh impetus for meaningful change.

Article 1 of the TEU states:

This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.

Article 15 of the TFEU, replaces Article 255 of the Amsterdam Treaty, and spells out in more detail the issue of openness. Article 15.1 says:

In order to promote good governance and ensure the participation of civil society, the institutions, bodies, offices and agencies of the Union shall conduct their work as openly as possible.

And Article 15.2 says, within agreed limits, that:

Any citizen of the Union, and any natural person or legal person residing or having its registered office in a Member State, shall have the right of access to documents of the Union institutions, bodies, offices and agencies, whatever their medium…"

These statements are unequivocal and spell out that these principles also extend to EU bodies, office and agencies for the first time.

New comitology "deal" denies citizens access

On 16 December the Commission announced that a new Regulation had been agreed with the European Parliament on comitology. "Comitology" refers to the procedure under which Member States and the Commission reach agreement on the implementation of legislation (hundreds of implementing measures are adopted each year).[4]. In fact agreement on this Regulation was reached as a result of yet another 1st reading secret "deal" between the Council and the European Parliament.[5]

The Commission declared in a press release that the new powers will be "simpler, more efficient, more transparent and in full compliance with the Treaty"[6]. The Legal Affairs Committee rapporteur in the parliament also declared "transparency and parliamentary control will be much better after this regulation is adopted" and the parliament enthusiastically adopted the measures by 567 votes to 4. The MEPs were convinced that "parliamentary control" would be "better" but this will only happen if MEPs have the time and resources to carry out their role, which is a big "if". But "transparent" the process is not. The MEPs were primarily concerned with their own powers and failed utterly to protect the right of citizens to get access to the documents being discussed.

The previous rules on comitology were set out in the Council Decision of June 1999. Article 7 says that "the principles and conditions on public access to documents applicable to the

Commission shall apply to the committees". Under the 1999 Decision the European Parliament received copies of the agenda, a summary record of meetings together with the voting list and those attending. "References" to these documents (under Art 7.5) were to be listed in "a register" to be set up by the Commission in 2001. The public register set up by the Commission rarely contains these references and the separate "Comitology register" is patchy with summary records (often a few very general paragraphs and certainly not Minutes) listed in some cases and not in others.

Since 2001 the Commission rules on public access to documents came under the Regulation on access to documents (not the old Code of Access agreed in 1993) and following the further commitments to openness and transparency in the Lisbon Treaty it might have been expected that the new Regulation on comitology would reflect these principles – and that the European Parliament would stand up for the right of citizens to get access to these documents subject to the exceptions in Article 4.1 of the Regulation. But no.

In the new Regulation Article 7.2 repeats 1999 Decision's commitment that the rules on public access to documents shall be those applicable to the Commission – which are those set out in Regulation 1049/2001. But then totally undermines this commitment in Article 8.

Here Article 8 (paras: a-g) says that a "register of committee proceedings" shall be set up which contains: the agendas, summary records, draft measures, the voting results, the final draft measure, information on the final adoption by the Commission and statistical data on the workings of the committees.

The Council (the EU governments) will get access to the **content** (called euphemistically "information") of all of these documents. But the public will only get access to the **"references"** of these documents, not the content, on the "register of committee proceedings" (the "Comitology register"). The only document that will be made public is the statistical data on the work of the committees.

When the new Regulation comes into force in April 2011 the Commission will be obliged to provide even less public information than it does at present.

Footnotes

1. http://www.statewatch.org/secret/observatory.htm

2. http://www.statewatch.org/analyses/no-82-eu-commission-register.pdf

3. http://www.statewatch.org/foi/observatory-access-reg-2008-2009.htm

4. See: EU doc no: 15942/10 and Statewatch Guide to decision-making after the Lisbon Treaty: http://www.statewatch.org/analyses/no-115-lisbon-treaty-decision-making.pdf

5. http://www.statewatch.org/analyses/no-84-ep-first-reading-deals.pdf

6. European Commion press release, 16.12.10.

The growing use of "preventative arrest"

by Kees Hudig

Examines police tactics to counter and thwart protests using mass and preventative arrests, new laws and "kettling" to deny the right to demonstrate

The Brussels noborder camp [1], held in the last week of September 2010, drew headlines but not for reasons the organisers' had hoped. The Brussels police, backed by the mayor and local authorities, decided that it would not tolerate any protests from the camp and its estimated 500 participants. Almost all of the ensuing arrests were so-called 'preventative' [pre-emptive] arrests.

Mass arrests in Brussels

Police operations on Wednesday 29 September were heavily criticised after an estimated 300 people were arrested to prevent them from joining a demonstration by European trade unions. Several people resisting arrest were injured. Preventative arrests are not unusual in Belgium, which has the controversial legal

concept of *bestuurlijke ophouding* or administrative detention, giving a police officer the right to make an arrest in order to protect public order in an "absolute emergency". Because of the concept's broad definition, the detainee has to be released within 12 hours and the arrest must be ratified by a trial judge (*procureur des konings* or *onderzoeksrechter*). In practice judges nearly always sanction arrests. The law also has additional criteria that make it possible to approve preventative arrests; one of these is if a person is unable or unwilling to identify themselves.

The large-scale arrest of protestors has created difficulties for the authorities because the right to demonstrate is a fundamental premise of a democratic system. On 29 September, protesters were on their way to a legal demonstration having agreed their participation with trade union officials. Some arrests were made at the demonstration, but most trade unionists did not react at the time or later. Only the FGTB-Wallone issued a statement protesting at the arrests [2]. Some left-wing organisations spoke out and the Human Rights League also denounced the police operation. A week later a demonstration - attended by 500 people – was held to protest at the arrests.

There was also a parliamentary debate after MPs Zoé Genot and Eva Brems, (Ecolo, *Écologistes Confédérés pour l'organisation de luttes originales*, Confederation of ecologists for the organisation of original struggles), demanded an explanation from Interior minister, Annemie Turtelboom [3]. She backed the police chief explaining that he had received information that "a few hundred anarchists" were planning to gather at the no border camp with plans to "commit violent actions". After the arrests a Brussels police spokesperson stated that they had made "preventative arrests of 148 demonstrators because they were carrying weapons...Also, 96 anarchists were arrested because they were trying to join the demonstration" [4]

Preventative arrests

The rounding-up of large groups of demonstrators who have not committed a crime has become an alarmingly familiar phenomenon at protests across the world. In *Statewatch* Volume 20 No. 2, I wrote about the policing of the G8 and G20 summits in Toronto, Canada, where more than 1,000 people were detained. Only 304 of them appeared in court, the remainder were released without charge. Many of the 304 agreed to pay fines of between $50 and $100, entering guilty pleas to avoid a court case even though it might have cleared them. Sociologist Christian Scholl, in his dissertation *Two Sides of a Barricade; (Dis)order and summit protests in Europe* [5], points to the fact that almost every summit protest reveals similar figures - a massive number of arrests with few convictions:

But it is difficult to get hold of reliable statistics. Police forces are reluctant to give the total figures of those arrested if it is high and demonstrators' legal teams are often too busy for good 'bookkeeping'. Also, the legal procedures can drag on for years. But in general you can state that many of the summit protests were 'dealt with' by resorting to the large-scale rounding-up of people without any prospect of serious charges being laid against them.

Scholl adds:

and if they need to find legal backing, the European definition of 'terrorism' is so vague and broad that even summit protesters fit it.

Special rules

In many European countries the law snuffs out potential political confrontation through preventative arrest, even when the protest is small. In the Netherlands for instance, mayors have the right to declare a "local state of emergency" through the General Local

Regulation (APV, *Algemene Plaatselijke Verordening*) in the case of a threat of a disturbance to the public order. This is often used when far-right organisations plan a demonstration in a town and anti-fascists move to counter it. All demonstrations are then banned in a part of the town and activists discover that their civic and political rights have been cancelled for that day. Those who walk with a banner or refuse to show identification details can end up in jail.

A typical example of this was a demonstration by the fascist NVU (*Nederlandse Volks Unie*, Dutch Peoples Union) in Venlo on 12 June 2010. Initially, local Mayor Bruls tried to ban the demonstration, but the NVU appealed and a judge ruled the banning order illegal. The mayor then issued a *noodverordening* (Emergency Decree) [6], with so many restrictions that almost anybody could be arrested. This happened to at least 59 people, among them a group of clowns (because the emergency decree stated that it was forbidden to "cover your face" or even to carry material that can be used to cover your face, including face paint). Others were arrested two hours before the demonstration was due to start for having a banner with them (the poles could be considered a weapon) or a scarf (which might be used to conceal your face).

Many of those arrested were released after the fascist demonstration ended, with a *transactievoorstel* ('a proposal for a deal') to pay a fine of 300 euros. Rejecting the proposal meant that the case automatically went before a judge. On 28 October, five demonstrators who rejected the proposal saw their fine reduced to 100 euros and one individual who refused to show identification saw their case dropped.

Plea bargaining

The *Transactievoorstel*, or 'plea bargain', is quite common in many countries. The victims of a mass arrest are often released once they have been detained for the maximum length of time permissible - and sometimes longer - with a piece of paper informing them that they can avoid further prosecution by paying a fine. This proposal is tempting, particularly for those who have travelled from abroad, because returning to defend oneself in court is expensive. Travel costs can be much higher than the proposed fine. However, paying the fine also means accepting the verdict.

"Kettling"

Another preventative policing method is "kettling". This occurs when large numbers of police officers encircle a group of people - sometimes an entire demonstration – and detain them. The method is common in Germany, but has spread to other countries. In the UK it was used to curb protests against the G20-summit in April 2009. The first German "kettle" happened in June 1986 in Hamburg, where a group of 800 people was held for 13 hours. Ironically, the demonstration was organised to protest against the fact that the previous day demonstrators were impeded from reaching a demonstration to protest against the Brokdorf nuclear plant. The "Hamburger Kessel" was later judged to be illegal and those caught up in it were paid 200 Deutsche Mark compensation. The method itself was not deemed illegal, only the manner in which it was used in Hamburg. Since this judgement the tactic has been used repeatedly in Germany, albeit people have seldom been held for such a long period of time. The Hamburger Kessel did have one positive effect: the creation of a group of critical police officers, now known as *Bundesarbeitsgemeinschaft kritischer Polizistinnen und Polizisten*, and initially called the "Hamburger Signal". [7] These officers refuse to be deployed on some operations that are opposed by demonstrators, and they urge their colleagues to do the same.

Group guilt

Finally, although officially not fitting the category of a preventative arrest, there is the legal instrument of collective or group "guilt". In the Netherlands for instance, article 140 of the penal code criminalises "participation in a group that has the intent to cause a crime". This definition is so vague that almost anybody can be made to fit it, and it has been used to suppress protests and make arrests. A notorious case was the eviction of a large squat (Wolters Noordhof) in the city of Groningen. The squatters tried to defend their building and police rounded-up anyone present at, or around, the squatted building. The 139 people arrested were detained for over a month.

According to the prosecution anybody who participated in defending the squat, whether they made coffee or threw stones at the police, was equally guilty. A judge rejected this, stating that the law demands criteria to establish that they belong to the same criminal group, such as "prolonged participation in the...group". The prosecution was unable to prove this. [8] In other cases, where the prosecution was able to establish that they had targeted certain people for specific reasons, the case went to court. Although judges regularly dismiss the use of this article to indiscriminately round up people, the authorities in the Netherlands continue to use these containment tactics against demonstrators and football fans.

Footnotes

1) http://www.noborderbxl.eu.org/

2) Statewatch issued an immediate report about those arrests http://www.statewatch.org/news/2010/oct/01brussels-noborder.htm

3) http://www.fgtb-wallonne.be/sites/default/files/fichiers/lettre_bourgmestre_de_bruxelles.pdf

4) http://www.zoegenot.be/En-marge-de-l-Euro-manif-et-du-No.html

5) De Standaard 30.9.10.

6) 3. University of Amsterdam 2010: http://dare.uva.nl/record/342633

7) http://www.venlo.nl/actueel/berichten/Documents/NOODVERORDENING%20NVU%202010.pdf

8): http://www.kritische-polizisten.de/

9) http://www.burojansen.nl/artikelen/tips6.htm

Statewatch News Online

http://www.statewatch.org/news

Civil liberties in the UK: Future of data retention and counter-terrorism powers uncertain as splits within the coalition become apparent

by Max Rowlands

In May 2010, *Statewatch* published an analysis of the coalition government's commitment to civil liberties. Six months on, this article analyses what progress has been made in the fields of surveillance, data retention and counter-terrorism powers.[1]

Within weeks of its formation in May 2010, the Conservative-Liberal Democrat coalition government announced with much fanfare their intention "to restore the rights of individuals in the face of encroaching state power." An easy victory over Labour's contentious National Identity Scheme followed, but since then the government's approach has been characterised by caution and pragmatism rather than an unerring commitment to liberty.

This is largely because there are splits within government on many of the key civil liberties issues that fundamentally define the relationship between citizen and state: how long and under what conditions can the government detain us, to what extent should the state surveil us, and what data on us should it hold? These internal divisions have been compounded by significant pressure from the civil service and security agencies to retain Labour policies that served to empower them.

It is likely that the coalition government will not scrap control orders, will revive Labour's Interception Modernisation Programme in some form, and will not repeal or amend the Digital Economy Act: all things that the Liberal Democrats pledged to do in opposition. Should these defining characteristics of the Labour regime remain in place the Liberal Democrats' reputation could be irreparably damaged. Certainly the lustre of the Freedom Bill, due to be published in 2011, is increasingly being tarnished.

Counter-Terrorism legislation

On 24 June 2010, Home Secretary Theresa May announced that the government would support a six month renewal of the 28 day pre-charge detention limit for terrorism related offences pending an examination of the UK's anti-terrorism laws. On 13 July, a "rapid review" into six areas of "key counter-terrorism and security powers" was announced:

- the use of control orders

- stop and search powers in section 44 of the Terrorism Act 2000 and the use of terrorism legislation in relation to photography

- the detention of terrorist suspects before charge

- extending the use of deportations with assurances to remove foreign nationals from the UK who pose a threat to national security

- measures to deal with organisations that promote hatred or violence

- the use of the Regulation of Investigatory Powers Act 2000 (RIPA) by local authorities, and access to communications data more generally.[2]

May called for the introduction of a "counter-terrorism regime that is proportionate, focused and transparent. We must ensure that in protecting public safety, the powers which we need to deal with terrorism are in keeping with Britain's traditions of freedom and fairness." The appointment of a long-standing critic of Labour counter-terrorism legislation, the Liberal Democrat peer Lord Ken Macdonald QC, to provide independent oversight of the review served to engender optimism among the scheme's detractors.

However, it has become increasingly clear how divisive this issue is within the coalition government. Writing in *The Observer* on 31 October, Andrew Rawnsley said that although the review's conclusions were due in September, they have been delayed twice because "an intense internal battle...is dividing the intelligence services, splitting the cabinet and has left David

Cameron and Nick Clegg in a state of alarmed semi-paralysis."

Ms May went to Number 10 a fortnight ago for a difficult meeting with David Cameron and Nick Clegg. When she revealed that they had hit this impasse, both men were horrified. David Cameron told the meeting: "We are heading for a fucking car crash." [3]

According to Rawnsley, heavy pressure to keep control orders is coming from Jonathan Evans, the head of MI5. He has reportedly taken the unusual step of writing to the Prime Minister directly to warn that public safety cannot be guaranteed without their continued use. By contrast, Lord Macdonald informed Theresa May that he would condemn a decision to retain control orders in any form. This led the Home Secretary to publically rebuke him on 31 October. On the same day, in a clear illustration of the lack of cohesion within the coalition, Chris Huhne, the Secretary of State for Energy, told the BBC:

We voted against control orders repeatedly, and I think that all of us in government frankly want to preserve the rule of law...I want to see people who are suspected of terrorism brought to justice properly, through the courts, in the same way we have traditionally done in this country for any other offence.[4]

The review of terrorism powers is being conducted by the Office for Security and Counter-Terrorism, a unit based in the Home Office and staffed by active and former members of UK security services. Its preliminary findings are reported to recommend the continuation of the control order regime. The maximum length of pre-charge detention for terrorism offences is likely to be reduced to 14 days - which would still be the longest anywhere in the western world - but with the option to then place individuals under 14 days of heavily restricted bail, tantamount to a mini control order.

This outcome would be disappointing to say the least. It would severely undermine the coalition's pledge to restore civil liberties and, in particular, would discredit the Liberal Democrats who were unrelentingly critical of Labour's counter-terrorism regime whilst in opposition. The need for repeal of control orders is greater now than ever. During the last six months their use has been significantly criticised by two high profile legal defeats. In June, the Supreme Court ruled that a control order imposed on a 32 year-old Ethiopian man breached his Article 8 rights to private and family life. The order had stipulated that he move 150 miles away from his family to the Midlands in order to "make it more difficult for him to see his extremist associates."[5] In July, the government lost its appeal against the quashing of two control orders. The Labour government, in an attempt to avoid liability, had responded to the House of Lords' June 2009 ruling that the system breached Article 6 rights to a fair trial by revoking the control orders of two men. The court of appeal upheld the high court's decision that the orders must instead be quashed so as to allow them to claim compensation.[6]

The pressure exerted by civil servants and intelligence agencies on these issues cannot be understated. May has been roundly accused of being easily influenced by "Whitehall securicrats", a suggestion she felt the need to refute in a BBC interview: "I can assure you I am not being overwhelmed by anybody or anything."[7] Such is their influence however, that Henry Porter suggests that:

the more one hears about the row behind the scenes the more one suspects that the fault line exists not just between politicians of different stripe, but between the coalition and an impatient authoritarian rump of civil servants, police and the intelligence officers. An unelected establishment is fighting very hard to retain an arbitrary power that was granted by Labour with its customary lack of care for Britain's traditions of justice and rights.[8]

So deep-rooted are both sides of the argument that the government is left searching for middle ground where none

exists. Any attempt to repackage control orders so as to make their continuation more palatable to liberals is surely doomed to fail. Rawnsley says that "David Cameron, scared of rupturing his coalition, yet fearful of over-ruling the securicrats, is just playing for time."

Other areas of the government's review have also raised concern. In its 137 page response to the review, titled *From 'War' to Law*, Liberty warned that government plans to proscribe non-violent organisations that promote hatred would be a "step too far":

The current power to ban organisations is already far too wide, compounded by the inclusion of 'glorification' as a ground for proscription. Any extension to 'hatred' would capture an innumerable number of organisations, including, potentially, political or religious bodies. It would be a grave step indeed to ban an organisation on the basis that its message was offensive rather than violent.

The potential extension of "the use of deportations with assurances" is also extremely worrying. Under the principle of non-refoulement, the UK is prohibited from deporting anyone to a country where their life or freedom would be threatened. The thoroughly discredited system of "assurances" bypasses this obligation by using an unenforceable "memorandum of understanding" with the country to which the individual is to be returned promising that their human rights will not be violated. A 2008 Human Rights Watch report criticised the UK for contributing to the "erosion of the global ban on torture" by seeking "assurances over the years from a veritable A-list of abusive regimes: Algeria, Egypt, Jordan, Libya, and Russia, to name a few."[9] More recently, in June 2010, Amnesty UK condemned the UK's deal with Libya insisting that: "Libya's international partners cannot ignore Libya's dire human rights record at the expense of their national interests."[10] Amnesty International has called on the UK to scrap the system entirely.[11]

In another alarming development, it emerged in June that members of Islamist groups jailed for terrorism offences are having unprecedentedly severe parole conditions imposed upon their release. Harry Fletcher, assistant general secretary of Napo, the union for probation staff, told *The Guardian*:

The conditions amount to control orders by the back door and are applied regardless of the seriousness of the original offence and any genuine attempt at rehabilitation or reform...The individual offenders are being set up to fail in order to maximise the chance of recall.[12]

Section 44 powers

On 8 July 2010, the Home Secretary, Theresa May, announced that police will no longer be able to use section 44 of the Terrorism Act 2000 to stop and search members of the public, only vehicles. On 30 June 2010, the European Court of Human Rights had ruled that their January 2010 judgment in the case of Gillan and Quinton V the United Kingdom was final. The January judgement had found that the police's decision to stop and search Gillan and Quinton in the Docklands in 2003 "amounted to a clear interference with the right to respect for private life."

On 4 July 2010, a Human Rights Watch report revealed that none of the approximately 450,000 people subjected to section 44 stop and searches between April 2007 and April 2009 had been successfully prosecuted for a terrorism related offence.[13] Similarly, in October 2010, Home Office statistics revealed that none of the 101,248 people police had used section 44 powers against in 2009 were arrested for a terrorism offence.[14]

May announced the introduction of "interim measures [that] will bring section 44 stop and search powers fully into line with

the European Court's judgment."[15] Police will now have to rely on section 43 of the Act which, unlike section 44, requires them to demonstrate reasonable suspicion that a person is involved in terrorist activity before stopping and searching them. Whereas section 44 can only be used in prescribed "authorisation zones", section 43 can be invoked anywhere in the country. Previously, police had been able to use section 44 in place of section 43, and in so doing bypass the need for reasonable suspicion, by creating "authorisation zones" that covered vast geographical areas.

The demise of section 44 is to be welcomed, but the government will likely face a stern challenge to ensure that section 43 powers do not come to be routinely misused in much the same way. While section 44 has been used on a grander scale and thus attracted more negative publicity, there is also evidence that section 43 has been dubiously employed. For example, on 6 June 2010, police determined that a photographer taking pictures of cadets near Buckingham Palace should be detained under section 43.[16] If incidents such as this become entrenched as part of common police practice the damage can be long-lasting. Over the last few years government bodies have displayed a frequent inability to rectify the police's misuse of section 44 powers despite regularly publishing guidance on the legislation.

Interception Modernisation Programme (IMP)

Buried in the 'Terrorism' subsection of the government's October 2010 Strategic Defence and Security Review, is a commitment to:

*Introduce a programme to preserve the ability of the security, intelligence and law enforcement agencies to **obtain** communication data and to **intercept** communications within the appropriate legal framework. This programme is required to keep up with changing technology and to maintain capabilities that are vital to the work these agencies do to protect the public...We will legislate to put in place the necessary regulations and safeguards to ensure that our response to this technology challenge is compatible with the Government's approach to information storage and civil liberties.[17] (emphasis added)*

The government has been criticised for backtracking on its promise to "end the storage of internet and email records without good reason" - though this vague wording had left them with ample room for manoeuvre. In reality it was clear six months ago that the UK's legal obligation to implement the EU Data Retention Directive would greatly restrict the new government's capacity to abandon Labour's data retention regime. That said, it is very disappointing that instead of moving the practice in line with the minimum standards required by the Directive (for example by reducing the length of time data is held to six months), the government appears to be heading in the opposite direction.

It is worth emphasising that the ability to "obtain" communication data is entirely distinct from the ability to "intercept" the contents of communications. Communication data consists of times, dates, email addresses, phone numbers and web-pages gathered from phone-calls, e-mails, mobile phone calls (including location), faxes and internet usage (the latter reveals the content), but not the content of what was said or written. CSPs automatically retain this data for their own purposes and then allow public authorities to access it through RIPA (see below). However, in recent years there has been a rapid growth in the British public's use of third-party internet services, such as Gmail, Skype, Facebook and Twitter – what the Strategic Defence and Security Review refers to as "changing technology". Data from these websites and computer software is not retained by Communications Service Providers (CSPs). The Government Communications Headquarters (GCHQ)

spearheaded the £2 billion IMP under the Labour government in order to furnish the UK intelligence services with communications data from these new sources and it now appears that the coalition government has bowed to pressure and revived a scheme that both parties criticised in opposition.

Were it to be introduced, the IMP would instantly blur the boundaries between access to communication data and access to the content of communications. This is because the only way that data from third-party services can be collected is by intercepting the content of the communication using deep packet inspection technology. The desired communication data would then have to be extracted before it could be logged in a database, and the content ignored. Access to content requires a warrant from the Home Secretary would be conducted by CSPs on a routine basis. A London School of Economics briefing on the IMP questions whether this form of "blanket warranting" would comply with UK and EU law. It would also cause a sea change in the role of CSPs. Currently their contribution to intercepting communications is "passive" insofar as they do "nothing until a warrant is received." Under the IMP they would be obliged to adopt a pre-emptive role by "actively looking at the content." As the LSE briefing stresses, what is being considered is very much a "new form of data collection" and the wisdom of placing responsibility for its operation in the hands of private companies is highly questionable.[18] ISPs have been shown to have trawled through their subscribers' web browsing history in order to subject them to targeted advertising (see below). How would the government be able to reliably ensure that every CSP would comply with the Data Protection Act and handle responsibly the mountain of data they would be charged with intercepting?

During Prime Minister's Question Time, on 27 October, David Cameron was asked to "reassure the House that the Government have no plans to revive Labour's intercept modernisation programme, whether in name or in function." His response was evasive:

I would argue that we have made good progress on rolling back state intrusion in terms of getting rid of ID cards and in terms of the right to enter a person's home. We are not considering a central Government database to store all communications information, and we shall be working with the Information Commissioner's Office on anything we do in that area.[19]

That vast quantities of communications data should not be stored in a single, massive database is a conclusion the IMP's architects had reached 18 months ago. The government's message is confused. In November 2010, the Home Office Business Plan 2011-2015 stated that it would "develop and publish proposals for the storage and acquisition of internet and e-mail records" as a means to "end the storage of internet and email records without good reason."

If one were needed, a reminder of just how easily data stored under the IMP would be accessed came in July 2010 when the Interception of Communications Commissioner, Sir Paul Kennedy, published his annual report. It found that in 2009 public authorities (predominantly automated access by law enforcement agencies) used powers afforded to them by RIPA to make 525,130 requests to CSPs to access retained communications data.[20]

Worryingly, in September 2010, the European Commission referred the UK to the European Court of Justice for its improper implementation of the EU Data Protection Directive. This followed an investigation into complaints made by members of the British public over BT's secret trialling of internet advertising software, made by the US company Phorm, without its subscribers' permission in 2006 and 2007.[21] In November, the government responded by launching a consultation into the way lawful interceptions are made under RIPA. Intercepting communications under RIPA requires a warrant from the

Secretary of State unless both the sender and intended recipient have consented to the interception or "the person carrying out the interception 'has reasonable grounds for believing' that consent has been given."[22] This margin for interpretation has been abused by ISPs to infer "complied consent" where none exists.

The Digital Economy Act (DEA)
The DEA was passed in April 2010 having been debated by just 20 MPs in the House of Commons. It contains copyright provisions that have yet to come into full force but could eventually compel internet service providers to temporarily suspend the internet connection of individuals suspected of having illegally downloaded copyrighted material and block access to websites believed to be illegally hosting copyrighted content. These provisions were scheduled to come into effect in January 2011, but their introduction has been delayed by the high court's decision, on 10 November, to grant a judicial review of the Act's provisions.

The case was brought, in July, by BT and TalkTalk, two of the UK's largest ISPs. They argue that the Act will infringe internet users' "basic rights and freedoms" and that it was subjected to "insufficient scrutiny" by parliament. Their motives are also financial. Ofcom's draft code of practice for the Act, published in May, only applies to ISPs with over 400,000 subscribers. BT and TalkTalk argue that this will put them at an unfair business disadvantage because some of their customers will be feel the need to join smaller ISPs in order to avoid being monitored. They are also fearful of "investing tens of millions of pounds in new systems and processes only to find later that the Act is unenforceable."[23]

The High Court granted a judicial review on all four of the contested legal points, namely: that the European Commission was not given enough time to scrutinise the Act; that the Act does not comply with EU privacy laws; that the Act does not comply with EU e-commerce laws; and that the Act's provisions are "disproportionate" because they infringe, among other things, rights to privacy and freedom of expression afforded by the UK Human Rights Act and the free movement of services provided for by the Treaty of the Functioning of the European Union.[24] TalkTalk's executive director of strategy and regulation, Andrew Heaney, said:

The provisions to try to reduce illegal file-sharing are unfair, won't work and will potentially result in millions of innocent customers who have broken no law suffering and having their privacy invaded...We look forward to the hearing to properly assess whether the Act is legal and justifiable and so ensure that all parties have certainty on the law before proceeding.[25]

The hearing of the review is expected to take place in February. If the High Court rules in favour of BT and TalkTalk, the copyright provisions contained in sections 3 to 18 of the Act could be quashed.

The regulation of CCTV
The Home Office's July 2010 Draft Structural Reform Plan says that the Freedom Bill will "further regulate CCTV, including Automatic Number Plate Recognition (ANPR), to ensure that its use is proportionate and retains public confidence." In the same month the Home Office confirmed that the UK's ANPR camera system will be placed under statutory regulation. Home Office minister, James Brokenshire, said "Both CCTV and ANPR can be essential tools in combating crime, but the growth in their use has been outside of a suitable governance regime." *The Guardian* said that:

The options being looked at by the Home Office for regulating the system...include establishing a lawful right for the police to collect and retain such details as well as defining who can gain access to the database and placing a legal limit on the period information can be stored for.

Regulation could not come too soon. Responding to a freedom of information request in June 2010, the National Policing Improvement Agency revealed that the National ANPR Data Centre now holds over 7.6 billion records in its database. As Big Brother Watch points out, this equates to around 200 surveilled journeys for every motorist in the UK.[26] Use of the technology continues to grow. In July, the Police Service of Northern Ireland was given £13 million to spend on an ANPR system.[27] The decision to introduce regulation comes largely in response to the public outcry surrounding the introduction of ANPR cameras in a predominantly Muslim area of Birmingham as part of "Project Champion". On 30 September 2010, a review of the scheme, conducted by Thames Valley Police, found there to be "little evidence of thought being given to compliance with the legal or regulatory framework." Further:

The consultation phase was too little too late, and the lack of transparency about the purpose of the project has resulted in significant community anger and loss of trust. As one community leader stated to the Review Team, "this has set relations [with the police] back a decade.[28]

On 18 October, Liberty threatened West Midlands Police force with judicial review if a commitment to remove all Project Champion cameras was not given within 14 days. [29] On 2 December, West Midlands Police confirmed that the £3 million scheme would be dismantled at a cost of £630,000.[30]

Unfortunately, such wastefulness of public money is not uncommon. On 30 November, Big Brother Watch published a report revealing that 336 local councils have spent over £314 million on installing and operating CCTV cameras between 2007 and 2010.[31] Accordingly, "the UK spends more per head on CCTV coverage than 38 countries do on defence."

In July 2010, Big Brother Watch also revealed that 54 CCTV smart cars, operating in 31 local councils, caught and fined at least 188,000 motorists between April 2009 and March 2010 generating over £8 million in fines.[32] The cars are equipped with a 12 foot mast with a camera attached and are deployed under the guise of monitoring road safety. Announcing the organisation's findings, the Campaign Director of Big Brother Watch, Dylan Sharp, said:

The CCTV Smart car represents a very dangerous escalation in Britain's surveillance society. The vehicles are sent out to catch people and make money, with road safety only an afterthought. £8 million is an eye-watering amount to take in fines in just 25 councils. It is surely only a matter of time before more councils start using these cars. The Coalition Government must act now and prevent that from happening.

Another revenue stream may soon come in the form of average speed cameras which are currently being trialled by Transport for London in four London boroughs to enforce 20mph zones. They work by recording a vehicle between two fixed points on a road and estimating the average speed at which it is travelling and are considered to be more reliable than traditional speed cameras. All recorded data would be sent to the National ANPR Data Centre.[33]

There have been several other alarming developments in the last six months that clearly illustrate the need for greater regulation of CCTV. For example, the introduction of a scheme called Sigard in Coventry city centre. This intrusive system works by attaching powerful microphones to CCTV cameras in order to monitor private conversations. It is accurate up to 100 yards and attempts to detect "suspect sounds, including trigger words spoken at normal volumes as well as angry or panicked exchanges before they become violent."[34] Police are then called to the scene by the system's operators.

On 4 October, the website "Internet Eyes" began streaming live CCTV feeds from businesses and shop owners to its subscribers over the internet. For an annual membership fee of £12.99 users can view up to four streams at any time and click an alert button if they see "suspicious activity." Alerts cause an SMS message to be sent automatically to the owner of the CCTV camera (the website's customer) along with a screenshot of the video feed. Users are awarded points on the basis of how helpful their alert was that can then be put towards cash prizes.

In July 2010, investigations into the January 2009 Gaza protests in London uncovered alarming evidence of police manipulation of CCTV footage. Two charges of violent conduct against demonstrator Jake Smith were dropped after it was revealed that footage of him attending the demonstration had been edited to suggest that another man throwing a stick at police was him. Events were shown out of sequence and images of him being assaulted by a police officer and left lying on the floor were cut entirely. His solicitor, Matt Foot, warned "We should be both curious and suspicious about how the police use CCTV footage in these cases."[35]

And in July 2010, a study by the University of Hull warned of the damaging effect of surveillance in schools. "The children we have talked to in this paper are treated as suspects on a regular basis and we have to ask what effect that is going to have on children's relationships with adults."[36] In September 2010, it was revealed that half of York's secondary schools have been filming pupils on CCTV without notifying parents.[37]

In his November 2010 report to parliament on the state of surveillance, the Information Commissioner, Christopher Graham, warned of increasingly intrusive surveillance. This included the use of unmanned drones, workplace monitoring of employees by GPS and the analysing of data from social networking sites. He said that since 2006 "visual, covert, database and other forms of surveillance have proceeded apace and that it has been a challenge for regulators who often have limited powers at their disposal, to keep up." The report calls for legal reform:

> Surveillance cannot be effectively constrained without a more rigorous regime of law, supervision and enforcement. The enactment of positive legislation to create or to reform the regulation of surveillance activities where it is absent or deficient must play an important part in the near future.[38]

It is to be hoped that whatever regulation the coalition government plans to introduce is up to the task.

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EU: "The law will bring peace" - a view on the European Gendarmerie Force (EGF)

by Tim Schumacher [1]

The emergence of para-military police units for use abroad (and potentially at home) is exemplified by the EGF which is being organised by six EU member states outside of the Justice and Home Affairs structures

The increasing deployment of para-military gendarmerie forces abroad is due to a changing threat analysis resulting in new requirements for operational forces. The control of the population through permanent gendarmerie deployment is a central component of this threat analysis, leading to a para-militarisation of forces, as is illustrated by the multi-national European Gendarmerie Force (EGF / EUROGENDFOR). Due to this unit's dual nature (the EGF can operate under military as well as civil command, inland as well as abroad) and through common training, the paramilitarisation of police forces in Germany, the EU and worldwide is inevitable. The logo of the EGF is LEX PACIFERAT ("The law will bring peace") – it is a law enforced to ensures uninterrupted economic activity.

Population control

What is deemed to be a threat depends on which group is able to enforce its views; the group which possesses a discursive hegemony. Since the 1990s, hegemonic threat analysis and its resulting security strategies have undergone fundamental changes. With the disappearance of the clear frontlines drawn up during the Cold War, there is no definitive enemy such as the Soviet Union. According to the German government's coalition agreement, the new global threats are "international terrorism, organised crime and piracy, climate change, (lack of) food and resource security as well as epidemics and diseases": diffuse, ambiguous and asymmetrical threats.[2] These new enemies seemingly can attack everywhere and at any time; they are also difficult to differentiate from the civil population or are in fact identical to it. The population therefore poses a continuous threat and its "political and social control" has become central to the planning of military and police operations.[3]

A study conducted by the German government's advisory institute, *Stiftung Wissenschaft und Politik* (Science and Politics Foundation), found that:

post-conflict societies are violence-prone and militarised. This is why early civil reconstruction and reform measures are often overshadowed by looting, revenge killings or civil unrest within a population. The emerging network of organised crime and its nexus to politically motivated violence often overburden civil police forces.[4]

This newly defined enemy necessitates new requirements for operational forces. As the control of the population during and after a military intervention has to be guaranteed, a hybrid police and military, so-called gendarmerie forces, gain increasing importance.

In the report *Shoulder to Shoulder*, written by eight important US and EU thinktanks, the use of gendarmerie forces plays a central role. Due to concerns that Western domination might be contested in the near future, the report urges close cooperation between the USA, the EU and NATO:

With the Cold War over and new powers rising, some say the transatlantic partnership has had its day. We disagree...The world that created the transatlantic partnership is fading fast. The United States and Europe must urgently reposition and recast their relationship as a more effective and strategic partnership. It is a moment of opportunity - to use or to lose. [5]

The luxury of internal squabbles, the report argues, can no longer be afforded. In order to maintain Western domination, the USA, EU and NATO should work together very closely and cooperation should be extended and intensified. NATO, being a military partnership, has no "civil" crisis management tools at its disposal. The authors suggest that the EU supply the latter, thereby bringing cooperation to a higher and more institutionalised level. The EGF appears to be a convenient link as it is equipped for multinational operations and can fill the gap between purely military operations and population control remits, applying non-lethal methods. Because neither the USA nor NATO have forces similar to the EGF at their disposal, strengthening the gendarmerie can allow Europe to gain significant influence within NATO through intensified cooperation. The *Shoulder to Shoulder* report suggests integrating the EGF into the USA's and NATO's military planning.

Hybrid units

Gendarmerie units usually have the same status as police forces, but they can also be deployed abroad for police missions. They are organised in military units, have the same arsenal as light infantry soldiers and can be placed under military command. Gendarmerie forces are therefore a para-military hybrid form [6] between the police and the military. They answer to the Ministry of Defence and/or the Interior Ministry. The advantage of using gendarmerie forces is that in the early phase of a military intervention they can be deployed alongside regular soldiers under military command. They can almost immediately begin to create a new police force, combatting resistance by controlling the population and eliminating threats.

Most gendarmerie forces are modelled on the French Gendarmerie National, which emerged during the French revolution and mainly consisted of military personnel. Its main function was to maintain "law and order" inland, especially in remote areas where state control was largely absent. Gendarmerie forces were particularly useful for containing

unrest in former colonies and maintaining the control of the central state.

The increasing interest in the creation of hybrid units became apparent during the military intervention in Bosnia Herzegovina. In 1998, a unit was set up under the framework of the NATO-led Stabilisation Force (SFOR) to fill the gap between military and police capabilities. These "multinational specialised units" (MSUs) were police forces with military status, organised in relatively small, flexible units. MSUs could carry out executive functions such as active intervention in conflicts because they had powers to arrest and use firearms, usually given only to local police forces. Their function was to support military units as well as local police forces, specifically in the management and control of civil unrest.[7] An MSU led by the Italian Carabinieri began operating in mid-1998 with 600 gendarmerie officers. The focus of the operation was to "control angry civilians" and prevent protests.[8]

The deployment of the MSU in Bosnia was evaluated a success, and a similar unit was sent under KFOR commando to Kosovo in August 1999. To enable the unit to control the population, as had happened in Bosnia, the Kosovo MSU was also given "preventative and repressive resources" for the suppression of unrest.[9] The Italian Carabinieri took a lead role, this time supported by the French Gendarmerie Nationale.

The creation of hybrid units was an important theme at the European Council meeting at Santa Maria da Feira, Portugal, in 2000. EU Member States extended their "non-military crisis management" to include up to 5,800 officers in a Police Rapid Reaction Force consisting of police and gendarmerie units. This force, modelled on the MSU, was set up in 2004 by 27 EU States. However, deficits in operational planning and timing, together with a lukewarm response by some states such as Germany, where national constitutional issues created barriers to taking part in cross-border operations, [10] meant that further action was needed.

Paramilitary "European Gendarmerie Force"

The creation of a trans-national police unit, the so-called "European Gendarmerie Force", was first suggested by the French defence minister, Michelle Alliot-Marie, in September 2003. This led to the creation of a headquarters with 30 personnel in the Chinotto Carabinieri barracks in Vicenza, northern Italy. The EGF was thereby equipped with a permanent base which would significantly increase the effectiveness of its planning and dispatching of forces when compared to the earlier ad hoc missions. The headquarters could plan and lead a mission within 30 days. Initially, the EGF had around 800 officers, but this force could be supplemented to reach 2,300. In mid-2006, the EGF was declared fully operational, although it was not until 18 October 2007 that its powers were regulated in a Treaty signed by the French, Italian, Spanish, Portuguese and Dutch governments. This process is symptomatic of the creation of the European Gendarmerie Force: first it is created and then it is established by law.

From 1 January 2010, Italy held the presidency of the High Level Inter-Ministerial Committee (CIMIN) responsible for the political-military coordination of the EGF. CIMIN consists of representatives from the Member States' foreign and defence ministries and decides on the inclusion of other countries and possible EGF missions. [11] Romania was recently accepted as a full member while Poland and Lithuania became partner countries in 2007 and 2009 respectively. Only EU Member States that have police units that can be placed under military command can become members or partners. This is why Turkey, although it is interested in joining the EGF, only has observer status.

According to Article 5 of the Treaty establishing the EGF, the forces may also be placed "at the disposal of...the United Nations (UN), the Organisation for Security and Co-operation in Europe (OSCE), the North Atlantic Treaty Organisation (NATO) and other international organisations or ad hoc coalitions", either with military forces or as part of a police mission. The European Gendarmeries can fulfil executive functions themselves or train state forces. With the seemingly innocent reference in Article 4 to "public order missions" [12], the EGF's extensive population control capabilities are confirmed. In addition to police and military capabilities, Article 4 also alludes to the EGF's intelligence activities, although the precise meaning of "general intelligence work" is not specified. Furthermore, the EGF was created outside the EU legal framework as a Member States' self-financed initiative. The European Parliament therefore has no authority over the force, and any legal or ethical objections by other Members States are circumvented.

The EGF in action: from the Balkans to Afghanistan and the Caribbean

The first EGF operation took place in Bosnia in November 2007. It was deployed as part of the EU's Operation ALTHEA and took charge of the pre-existing Integrated Police Units (IPUs), the successor to the MSUs operating under SFOR mandate. IPUs are comprised of trained police officers who are deployed to fight any popular dissatisfaction or civil unrest [13] and impose Western-style state and law enforcements organs. On 20 October 2010, the operation was declared completed and the gendarmerie forces received high military honours at a ceremony at which ALTHEA commander Bernhard Bair announced they had helped to bring "peace, stability and security" to Bosnia.[14]

The second EGF task force indicates what future close cooperation between the USA, NATO and the EU might look like. In April 2009, the NATO summit created a "NATO Trainings Mission – Afghanistan" (NTM-A) within the NATO-led ISAG mission. In close, but by no means frictionless, cooperation with the "civil" EU police mission EUPOL, the EDF was entrusted with the creation of the Afghan police apparatus. The chief police advisor in Kabul, Detlef Karioth, envisaged a police force:

that is able to defend itself from armed forces in the country. After all, we don't only train street police here.[15]

It is, therefore, a police force with a paramilitary capacity, and the paramilitary EGF is best prepared to conduct its training. Since 8 December 2009, the EGF has been setting up a large law enforcement body in Afghanistan. Initially, around 62,000 police officers were to be trained but this number has increased to 160,000. The military is also being extended and Afghan forces are expected to support and relieve foreign troops.[16]

The most recent EGF operation was in Haiti. In January 2010, the country suffered one of the most devastating earthquakes in its history. Although 80% of the Haitian population is unemployed and three quarters live on less than 2 US Dollars a day, media reports focused on the issue of security. The EU 'aid package' to Haiti largely consisted of security political measures. Three hundred gendarmes, all part of the EGF, were posted to enforce "peace and order". In addition to 100 million Euros of financial support from the European Commission and individual Member States, another 300 million Euros was promised, although a large part of this money was earmarked for the extension of the Haitian security sector.[17]

In response to questions from the German Left party (Die Linke), the German government said:

The deployment to Haiti of EU Member State police officers, who also take part in the European Gendarmerie Force (EGF) in support of MINUSTAH, is not an EGF operation as such. In its request, the UN had specifically asked for the deployment of gendarmerie forces.[18]

Here another EGF hybrid function is apparent. It can either act as a transnational force or as a force deployed in the name of the European Union. As the government's reply insinuates, the EGF does not operate in Haiti in direct support of the UN. It is part of a European unit, the so-called EUCO Haiti, which was created and supplied with information in large part by the EU's quasi-intelligence service [19], the EU Situation Centre (SITCEN).[20]

This new aspect of European foreign policy, engaging in the targeted deployment of intelligence institutions in crisis management situations to circumvent a parliamentary decision, fits neatly with the concept of the EGF, which operates outside of parliamentary control. It can be expected to determine the nature of future European interventions.

In Haiti, the call for security will first and foremost lead to a further militarisation of society, and possibly even to the reorganisation of the Haitian military that was dissolved in 1994. This will not improve the situation of the country's impoverished population. On the contrary, perfectly legitimate protests in the "poor house of Latin America" will be prevented more efficiently in the future.

Paramilitary forces for all
The EGF is still being set up and is a relatively small force. Under current criteria only Bulgaria has a military unit with the relevant police-military functions. Given further EU accessions, Serbia, Albania, Georgia, Ukraine and Turkey could also be accepted as full members.

A report by the Netherlands Institute of International Relations (Clingendael), co-funded by the Dutch ministry of defence, suggests that it could be beneficial for the force to relax the criteria for the inclusion of other, non-gendarmerie type units.

It would bring more resources for common goals, it would result in more capacities when using this unique organisation, thereby professionalising more gendarmerie forces and policing in Europe, and would further intensify European security integration.[21]

By relaxing the criteria, the EGF could grow and exert more influence on the European security landscape. The force already determines the common training standards of national gendarmerie forces, [22] and by developing multinational training it could contribute to closer EU cooperation in cross-border law enforcement.

The Clingendael report gives another option for the EGF which has frightening potential: the training of gendarmerie or gendarmerie-type forces across the globe.

An enormous pool of over 430,000 relevant paramilitary troops currently operates in EU (neighbour) countries.[23] Worldwide, there are almost 2.5 million personnel in gendarmerie-type forces that could be trained by the EDF (in practice the relevant governments would not have to be accepted as EDF members). Co-operation is not planned with all countries. Some conflicts are so deep-seated or interest in cooperation so low, that their police-soldiers will not benefit from EGF training in the near future. However, through the training of, and cooperation with, gendarmerie-type Special Forces around the globe, the influence of the EGF will increase, securing the interests of participating states - be it with regard to open market opportunities or access to natural resources without trade barriers.

A multi-purpose weapon
Theoretically, EGF operations are not restricted by European borders. Until 1 December 2009, military operations on EU territory were forbidden, but when the Lisbon Treaty came into force it contained a "Solidarity Clause" (Article 222) that introduced substantial changes. The Treaty states that:

"The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to...assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster." [24]

It will be possible, even if only in the distant future, to deploy units such as the EGF within the EU - for example, to support an unstable state shaken by popular protest and civil unrest.

This makes clear another "dual-use" EGF role. The force will not only be able to control a population as a police, military and intelligence unit, but it will also be able to be deployed within the EU or outside. Its operations will be subject to very little democratic control by parliaments. The EU parliament has no say at all, given that the EGF is not an official EU agency. The influence of national parliaments is annulled by the fact that operations by police units that are part of the EGF do not have to be rubber-stamped by the government.

No end in sight
At a ceremony marking the EGFs training of Afghan special units, the French interior minister, Brice Hortefeux, described their deployment in Afghanistan as follows: "the fight against terrorism is a permanent fight". [25] He said that the training had been very successful and enabled the trainees to take up a leadership role in conflicts. At the heart of the training are the management of a population at risk that need to be controlled, and the capabilities of gendarmerie forces. Hybrid units appear to be an "adequate" answer to the changing security strategy towards crisis management. The threshold for troop deployment, as well as the level of force, [26] is lower, and occurs on a permanent basis. As relatively small and flexible rapid deployment forces, they could significantly influence war scenarios in the future. As the urban theorist, Mike Davis, has predicted, such scenarios could increasingly take place in the impoverished regions of the world, which are steadily increasing under capitalism. [27]

The most recent EU strategy paper, *Freedom, Security and Privacy - the area of European Home Affairs* suggests transforming the EGF into an official EU institution. [28] According to the report it is possible that the EGF could be incorporated into the EU's Common Security and Defence Policy (CSDP) as an Integrated Police Unit (IPU). This would probably result in greater financial resources being given to the EGF. Countries such as Germany could welcome this initiative because it would likely increase their influence on the force. From the viewpoint of the founding countries, the disadvantages, namely the formalisation and minimal influence of the European Parliament, would probably suffice for them not to devolve power and to retain command over the EGF.

The next step for EUROGENDFOR will be its transformation into a barracked unit. The relevant legislative proposal already exists and its implementation awaits only the ratification of the EGF Treaty by France. [29] One thing is certain: if the development of the EGF continues on its current path, Germany will most likely continue its efforts to participate in this prestigious project.

Footnotes

[1] This a shortened version of the article 'Lex paciferat - Das Gesetz wird Frieden bringen. Ein Blick auf die europäischen Gendarmeriekräfte', first published in German by the Informationsstelle Militarisierung (IMI) e.V. (IMI Study 2010/012 - August 2010). This is a Statewatch translation with the permission of the author and IMI. The extended version contains a chronology of gendarmerie operations ('Crowd and Riot Control') in Kosovo in 2009 and 2010 repressing popular protests against, amongst others, social cuts in the health sector. The original text also includes graphics on the structure and geographical spread of the EGF. The online

version is published at www.imi-online.de/2002.php?id=2161.

[2] Coalition agreement between CDU, CSU and FDP, 26.10.09, lines 5250-5252.

[3] Zelik, Raul: Aufstandsbekämpfung und Besatzungskrieg [Riot control and wars of occupation], in: Peripherie, No. 116/2009, pp. 425-447, p. 428.

[4] ibid.

[5] Hamilton, Daniel; Burwell, S.; Frances, G. (lead authors): Shoulder to Shoulder: Forging a Strategic U.S.-EU Partnership (Atlantic Council of the United States/ Center for European Policy Studies/ Center for Strategic and International Studies/ Center for Transatlantic Relations/ Fundacion Alternativas/ Prague Security Studies Institute/Real Instituto Elcano/ Swedish Institute of International Affairs), December 2009.

[6] The term paramilitary (Greek [para] "beside" and Latin "fighter" or "soldier')...serves to define different types of groups or units that are usually not part of the regular military apparatus. Examples are quasi-military associations that exist in many countries and usually operate under the remit of the interior ministry, and which exist parallel to the classic military and are usually deployed within the country. Furthermore, the term is used to describe groups that posses military force that are part of a criminal of mafia-like organisation, of a self-protection organisation or party or that stand under their command. Often, such paramilitary groups operate in grey areas or outside of the law, whilst in practice often contracted by or acting in the interests of an official institution or the government..." (Wikipedia Germany, http://de.wikipedia.org/wiki/Paramilit%C3%A4r). Here, the term is used according to the first meaning in the above definition.

[7] Factsheet: Multinational Specialized Unit, www.nato.int/sfor, August 2004.

[8] Kempin, Ronja; Kreuder-Sonnen, Christian, March 2010, Gendarmerieeinheiten in internationalen Stabilisierungsmissionen. Eine Option für Deutschland? [Gendarmerie Forces in international stabilisation missions. An option for Germany?] www.swp-berlin.org/common/get_document.php?asset_id=6882, p 13.

[9] Multinational Specialized Unit, www.nato.int/kfor

[10] Hazda, Peter: Die Europäischen Gendarmerie Force, in: Europäische Sicherheit 07/2008.

[11] TREATY Between the Kingdom of Spain, the French Republic, the Italian Republic, the Kingdom of The Netherlands and the Portuguese Republic, establishing the European Gendarmerie Force, www.eurogendfor.eu

[12] ibid.

[13] Integrated Police Unit, www.euforbih.org

[14] Mullins, Andy: End of European Gendarmerie Force Mission in BiH, www.euforbih.org, 20.10.10

[15] Bickel, Markus: Wir bilden aus fürs Überleben [We train for survival], Frankfurter Allgemeine Zeitung (FAZ), 13.03.09.

[16] It remains entirely unclear where the money for the extended police and military apparatus is supposed to come from. According to Rory Steward, director of the Carr Center on Human Right Policy, the costs amount to between two and three million US Dollars annually and therefore to a multiple of the total revenue of the Afghan state. Steward further notes: "We criticise developing countries for spending 30 per cent of their budget on defence; we are encouraging Afghanistan to spend 500 per cent of its budget...We should not encourage the creation of an authoritarian military state. The security that resulted might suit our short-term security interests, but it will not serve the longer interests of Afghans." Steward, Rory: The Irresistible Illusion, London Review of Books, 07.07.09

[17] Dagdelen, Sevim: Europas "Schutztruppe"[Europe's "Protection Force"], Junge Welt, 06.02.10.

[18] Bundestagsdrucksache No. 17/746, 17.02.10.

[19] EU Common Security and Defense Policy Newsletter, www.consilium.europa.eu/csdp

[20] SitCen - EU Situation Centre, frontex.antira.info/glossar

[21] De Weger, Michiel: The Potential of the European Gendarmerie Force, Netherlands Institute of International Relations Clingendael, March 2009, pp 46f

[22] Kempin, Ronja et al., ibid.

[23] De Weger, Michiel, ibid., Annex C.

[24] Solidarity Clause, Lisbon Treaty, europa.eu/lisbon_treaty/

[25] H.E. Brice Hortefeux, French Minister of Interior, Congratulates Afghan Elite police officers, www.ntm-a.com, 06.05.10.

[26] See Schürkes, Jonna; Marischka, Christoph: Weniger tödliche Soldaten? [Less deadly soldiers?] Ausgabe W&F Dossier 62, 04.2009

[27] Davis, Mike (2007): Planet der Slums [Planet of slums]. Assoziation A.

[28] See Bunyan, Tony: The shape of things to come, www.statewatch.org

[29] Projet de Loi N° 2278, www.assemblee-nationale.fr/13/projets/pl2278.asp; see de St. Leu, J.; Monroy, Matthias: Europäische Gendarmerietruppe wird zur kasernierten Einheit [European Gendarmerie Force becomes barracked unit], www.heise.de/, 12.03.10.

The German Security Research Programme: transferring military technology - securitising civil research
by Eric Töpfer

The German government is spending more than 123 million euros on security research, probably the largest national initiative complementing the European Commission's European Security Research Programme.

On 4 July 2006 Annette Schavan, the conservative German Minister of Education and Research, launched a national programme on "research for civil security" worth more than 100 million euros. Her justification for the initiative was twofold. Firstly, she invoked "new threats", warning of the vulnerability of "society's central nervous system" and explained her understanding of security: "We have to search for innovative solutions to meet the new challenges... because security is dependant on the advantages achieved through research and science and on its implementation through organisation and technology." Secondly, she complained about the "fragmented research landscape", the lack of a "strategy focussing on opportunities for marketing and export" and the inadequate "involvement of end-users in a joint innovation process". The security research programme, Schavan said, is a "platform" for close cooperation between the state and business. Private corporations, in particular those operating the privatised utilities,

are described by the Minister both as end-users of security technologies for whom "cost-efficient solutions" need to be developed and as suppliers whose "competitiveness" needs to be improved to avoid them missing out on "great opportunities in future markets".[1]

South German networks and high-tech strategists
Although Schavan's initiative fits neatly with visions of a "new security architecture" and neo-liberal economic policies it is more than the simple and self-evident execution of *Zeitgeist*. It was driven by an influential network of homeland security officials, military research institutions and the arms industry that were able to exploit national innovation policy and funding.

Edelgard Bulmahn, Schavan's Social Democratic predecessor, had rejected the targeted funding of security research and, informed by participatory dialogue for a future research policy, addressed only issues of IT security and

biometric identification.[2] This situation abruptly changed when Angela Merkel became Chancellor after national elections in September 2005. The coalition agreement between the Conservatives and the Social Democrats only vaguely stated under the chapter heading "research funding for sustainability" that the new government will fund "technology for environmental protection, remote sensing and renewable energy technologies as well as research in security and fusion technology".[3] Decisive steps were rapidly taken after Schavan took up her chair at the Federal Ministry of Education and Research (*Bundesministerium für Bildung und Forschung* – BMBF). In December 2005 Schavan informed parliament that security research would become a priority during her term in office. Between April and June 2006 three workshops were organised to set the agenda for a national security research strategy, involving, as the BMBF reports, around 250 "experts from all relevant areas of security research".[4] Thus, the ministry "created a nationwide research programme in record time," as BMBF State Secretary Thomas Rachel noted.[5]

The criteria which guided the selection of the agenda-setters are unknown, but Rachel reported that the BMBF was advised by the Ministries of Interior and Defence. Most of the workshop participants were from the federal and *Länder* ministries, in particular those from the BMBF, the Federal Ministry of Interior and the Ministry of Defence. There were also representatives from the police forces and disaster control agencies; the arms and IT industry such as EADS, Diehl, Siemens or T-Systems; the large utility network operators such as Deutsche Bahn or Vodafone and of major applied research and engineering bodies such as the Fraunhofer Society for the Promotion of Applied Research, the German Aerospace Centre (DLR) and the Association of German Engineers (VDI).[6]

It is significant that influential interests involved in the security research agenda-setting processes, both at the national and the European levels, are located in the southern German *Land* Baden-Württemberg, which is Schavan's political homeland. The Diehl Corporation, which has a major branch producing arms in Überlingen at Lake Constance, was previously represented in the "Group of Personalities" (GoP) who prepared the European Security Research Programme in 2003/2004 in Brussels.[7] Another GoP member was Karl von Wogau, a Christian Democrat from South Baden and ex-MEP, who was chairman of the European Parliament's Subcommittee for Security and Defence until 2009. As secretary general of the European Security Foundation and the informal Kangaroo Group von Wogau remains an important link between the political arena and the arms industry. Finally, four out of five military research institutes which founded the Fraunhofer Society's Network for Defence and Security Research (*Fraunhofer Verbund Verteidigungs- und Sicherheitsforschung*, VVS) "to strengthen the position of military research" are located in Baden-Württemberg.

The five VVS institutes, which employ a staff of around 1,150 people and were funded with more than 130 million euros by the Federal Ministry of Defence between 2000 and 2007,[8] play a key role for German security research which can be traced back to 2002-2003. In 2003 the Ministry of Defence contracted a VVS member, the Institute for Technological Trend Analysis (INT), to draft a study, *Technological Aspects of Asymmetric Threats*, which was published on 25 January 2005. One day later the report was discussed at a joint consultation between Ministry of Defence agencies mainly engaged in ABC [atomic, biological, or chemical] warfare on one side and Ministry of Interior agencies in charge of civil protection issues on the other. It was agreed to continue the information exchange and use the results of the INT study for the post-9/11 revision of the *Report on Threats* drafted by the Protection Commission, a Federal Ministry of Interior advisory body on issues of civil protection and related research since Cold War times.[9]

The same year, the INT began to organise a series of workshops, *New Technologies – Perspectives on the Future of Military Research*, on behalf of the Ministry of Defence aiming "to bring together research institutions, universities, companies and the armed forces and the arms industry" to discuss unmanned aerial vehicles, autonomous sensor-networks, robotics etc.[10] These workshops bolstered the struggle against shrinking military research budgets and were the backdrop to the formation of the Fraunhofer VVS network, established in November 2002. Military research, once the backbone of the Fraunhofer Society,[11] became a problem for the scientists at the Society's headquarters in Munich as federal money spent on this area of research and development decreased from 1.6 billion euro to 984 million euro between 1991 and 2005.[12]

The VVS institutes were led in their efforts to generate research funding by Klaus Thoma, director of the Ernst-Mach-Institute for High Speed Dynamics in Freiburg, who is said to be the "architect" of the German security research programme.[13] Thoma, who was director of a department for research and development at Messerschmitt-Bölkow-Blohm (today EADS) in the 1980s and a professor at the University of the German Armed Forces in Munich from 1994 until 1996, seems to be a top research manager. "Where no networks exist, he is initiating them," said Baden-Württemberg's Minister of Economics when Thoma received the Federal Cross of Merit for his role in "technology transfer" and security research in 2007.[14] With his contacts in regional politics, the Ministry of Defence and the industry Thoma became – besides being a representative of EADS, Diehl, Siemens and the Vice Director of the Federal Criminal Police Office (BKA) – the fifth German member of the European Security Research Advisory Board (ESRAB) in July 2005. ESRAB was responsible for the preparation of the security research programme within the EU's 7th Framework Programme but also recommended the initiation of complementary national programmes.

When Research Minister Schavan announced her plans for the security research programme in 2006, her forum was the "Future Security" conference held in Karlsruhe. This "first security research conference" was organised by the VVS network and was intended to be a "communication platform for all stakeholders, executive agencies, corporations and developers" for "mapping the position of the key players in Germany".[15] Nonetheless, Schavan stressed that the new programme was "only dedicated to civil areas of application". However, she admitted that security research was indeed benefiting from military research, a statement which was underlined by the constitution of the conference programme board. Among its 30 members were all of the directors of the five VVS-Institutes as well the director of the Institute for Communication, Information Processing and Ergonomy of the Research Society for Applied Science (FGAN) ("50 years of research for defence and security"),[16] two officers from the Federal Ministry of Defence and representatives of the arms companies EADS, Diehl, Rheinmetall W & M as well as the European Defence Agency.

Parallel to this initiative, VVS-president Thoma was supported by the President of the Fraunhofer Society, Hans-Jörg Bullinger. As chairman of the "Research Union Economy-Research", (which advises the Federal Government on the development of the so-called "High-tech Strategy", a six billion euro investment programme by the Merkel government to increase competitiveness of German industries), since June 2006, Bullinger set security research on the agenda of this body from the very beginning.[17]

Mobilisation of research

The security research programme was officially decided by the German government on 24 January 2007, and was budgeted with

123 million euros for the period until 2010. "We mobilise research for the protection of citizens," claimed Minister Schavan. The research programme is an integral part of the High-tech Strategy for economic innovation which was decided only a few months before. The stated objective of the programme is to fund "research projects for the development of security technology". To this aim the "strengths of engineers and science and the potential of humanities and social research" will be combined and "end-users of new security solutions" will be involved in the development process from the very beginning in order to anticipate "innovation barriers which could occur later in the context of data protection, costs or practical implementation".[18]

Funding is organised along two programme lines. Firstly, "scenario-based security research" aims to develop "system solutions" for the security and control of major events, transport systems, other utilities and supply chains. This programme line's priority is not "the individual technological result but the formation of a community of actors" because the "improvement of cooperation between public authorities and operators of privatised security-relevant utilities" is seen as important. Secondly, "technology networks" will develop "cross-scenario technologies", such as, for example, detection systems and technologies for pattern recognition or person identification. In sum, the BMBF expects "innovative solutions for improving the security of citizens without compromising their freedom".[19]

To supervise if and how these expectations are met is outsourced to others. Although in summer 2007 the BMBF established a security research unit within its "Key Technologies - Research for Innovation" branch, the day-to-day administration of the research programme has been contracted to the VDI Technology Centre (VDITZ), an Association of German Engineers (VDI) enterprise, which had already organised the agenda-setting workshops for security research on behalf of the BMBF. The VDITZ remit encompasses "the professional and conceptual formation of research funding as well as evaluation, assistance and management of research projects".[20] In addition, the VDITZ was assigned by the BMBF as a "National Contact Point" for the European Security Research Programme, and is supporting and advising German research institutions and companies which consider EU applications.

Apart from the VDITZ, German security research is "assisted and steered" by a Scientific Programme Board.[21] Chair of the 18-member group is Klaus Thoma, speaker of the Fraunhofer VVS institutes. The other executives are four representatives from the Federal Agencies (*inter alia* officers from the Federal Criminal Police Office (BKA) and the Federal Office for Information Security (BSI)), one criminologist from Freiburg, a theologian from Tübingen, an expert on biological security, an expert on technical standardisation and nine private sector representatives (from Diehl BGT Defence, Siemens Building Technologies, Bosch Security Systems, the Frankfurt airport corporation Fraport AG and the German postal service Deutsche Post, among others).[22] As members of the European Security Research and Innovation Forum (ESRIF), which continued the work of ESRAB until 2009, the representatives of the Federal Criminal Police Office and Deutsche Post also acted as personal interfaces on the Programme Board at the European level.

In March 2007 Research Minister Schavan presented her programme at the "European Conference for Security Research" in Berlin on the occasion of the German EU Presidency. The event, organised in collaboration with EU Commissioner Günter Verheugen and his Directorate General for Enterprise and Industry, not only kicked-off the European Security Research Programme but also was also used to publish the first calls for national programme proposals. [23] The first German security research project started three months later, in June.

Projects for "swarm vigilance" and integrated information platforms

Up to October 2010 the BMBF granted 91 research projects (the latest to be completed in summer 2013) with an overall budget of 209 million euros. [24] 183 million euros of the total was contributed by the BMBF itself, [25] while additional money came from private sector contractors and federal ministries to fund the involvement of agencies and research institutions, such as the Federal Criminal Police Office (BKA), the Federal Police, the Federal Office of Civil Protection and Disaster Assistance (BBK), and the Armed Forces' Institute for Microbiology.

The most important programme area so far is the research and development of technologies for the "detection of hazardous substances". Nineteen projects with an overall budget of 43.6 million euros were funded. One focus is the development of Terahertz [electromagnetic radiation] technology that is used, for instance, in "body scanners". Five Terahertz projects are funded with around 11 million euro, plus an ethical evaluation of the technology worth 300,000 euro. Other foci are the development of biochips to detect various biohazards and mass spectrometry sensors that can "smell" chemicals.[26]

Fifteen projects worth 37.6 million euros are funded under the category of the "rescue and protection of people". Most projects in this area address the high-tech management of major events and mass casualties. They envisage camera-supported automated assessment of crowds and computer simulations of their evacuation, RFID-tagged disaster victims, vitality-sensor-networks and swarms of unmanned aerial vehicles integrated into overarching information architectures and decision support systems, interoperable communication platforms networking rescue personnel etc.[27]

Eleven projects address "the protection of transport infrastructure" at a cost of 37.5 million euros, and six projects are funded within the "security and emergency services protection systems" programme with 21 million euro. These two programme areas include the two largest German security research projects, each with more than 8 million euros: The I-LOV project aims to develop an "intelligent safeguarding localisation system for rescuing people trapped or buried under rubble" combining semi-autonomous snake-like search robots, precision tracking of mobile phones and radar technology. Although addressing issues of disaster assistance, a project partner is the Federal Criminal Police Office, precisely its KI 24 unit, which is in charge of technologies for operation and protection, obviously sharing the interest in sophisticated tools for the location of persons.[28]

The other project is SinoVE for "security on open transport systems and railway management". Its description vaguely states:

The aim of the project is to actively support the various security forces by means of an intelligent security management system which takes various sources of data such as video recordings into account and simulates the scenarios recorded to produce an incident-based control system using system references. Data protection regulations will also be checked parallel to these studies.[29]

In plain English, the project will develop a sophisticated video surveillance system, including technologies for person tracking and object recognition, integrated into a decision support system tailored to the needs of the German railway corporation Deutsche Bahn and the Federal Police, as reported by the Interior Ministry's liaison officer at Deutsche Bahn duriong a seminar organised by the Institute for Police Technology in 2008.[30] The project involves key suppliers of German CCTV technology such as Siemens, the Bosch subsidiary VCS Video Communication Systems and Funkwerk plettac electronics. The crucial assessment of public acceptance and data protection

issues are left to the end-user Deutsche Bahn.

Police forces are involved directly or as associated partners in at least ten German security research projects. The Federal Armed Forces are participating in three more projects worth 3.2 million euros. Two study the detection of biological and hazardous chemical substances, the other focuses on "enhanced-performance, permeable protective clothing using new absorbents and vital sign sensors". Here the "dual use" character of some of the projects becomes obvious when technologies for ABC warfare and for the infantrymen of the 21st century are developed under the label of "civil security". The relation with the military and arms industry is less obvious in other projects. The 3 million euro AirShield project, for instance, aims to research and develop drone swarm applications for "airborne remote sensing for hazard inspection". Project partner, Microdrones, has been developing so-called Quadrocopter drones in collaboration with Diehl BGT Defence since 2004; they are now used by German police forces in the Saxonia and Lower Saxony regions and were recently deployed against an anti-nuclear protest. Moreover, a researcher in charge of studying the social aspects and public acceptance of drones is a member of the German Atlantic Society, a network of officials from the Ministry of Defence, security policy people and high ranking German soldiers such as ex-NATO general Klaus Naumann.[31] Hailing drones as "rescuers from the sky", his study predictably concludes that 95 per cent of citizens interviewed welcomed the AirShield system.[32] In this case it is clear that "civil protection" is used as a vehicle to open civil markets and the public mind for technologies with military origins, while implicitly enhancing their capabilities for warfare operation.

A series of six projects funded with 9.4 million euro is dedicated to protection against the failure of critical infrastructure – mainly focussing on the security of energy supplies and drinking water by improving inter-organisational risk management and crisis communication. In 2010 several projects aiming to develop pattern recognition technologies were started, among others for automated and predictive video-tracking of persons in large-scale camera networks, for the automation of fingerprint detection at crime scenes, or for computerised image analysis to detect victims, offenders and scenes of child pornography when mining large amounts of online data and confiscated hard drives. As in the field of Terahertz technology this research is also consulted by a project on the ethical and social dimensions of pattern recognition.

Recently, seven projects were granted in the area "protection of supply chains". In addition, the assessment and selection of proposals submitted to a call on biometrics is expected in winter 2010. International cooperation is also encouraged and calls for collaboration with Israeli and French partners were published. Seven projects were selected for funding, such as the RETISS project that aims to develop sensor-network-based "real-time security management" on Germany's and Israel's roads. A future call for cooperation with partners in the USA is in preparation.[33]

To underline the declared commitment of the research programme to frame security not only as a technical problem but also to understand its social aspects, additional projects are funded in the "societal dimensions of security research" programme area which makes up 6 per cent of the total security research budget. While some of these projects address very practical issues such as information exchange to prevent school shootings or drug control in "failed states", others have a more theoretical focus and aim to understand policy-making in the field of internal security, urban experiences of (in)security or the interplay between processes of "radicalisation" and external policy. However, all eventually aim to devise "solutions" and policy recommendations.

Apart from this dedicated area for social research, scholars with backgrounds in law, social research or the humanities were involved in around 35 of the technology-oriented projects.[34] However, most of them were concerned with understanding and improving human-machine interaction and inter-organisational communication or with standardisation issues. Only around a dozen of the techno-system-projects encompass some kind of technology assessment. To expect all of them to meet professional standards is doubtful, given the above mentioned example of the AirShield project.[35]

To summarise, funded is large-scale and automated surveillance through networks of cameras and other sensors, biometric access control systems, the operation of robots and drones, bomb-resistant buildings, sophisticated command-and-control centres, networked operations and computerised crowd management but also research in public relations and inter-organisation communication during emergency situations and in the responsibilities of citizens to be prepared for future crises. Independent assessment of the broader ethical, societal and political implications of these projects for "swarm vigilance"[36] only takes place at the margins of the programme. Where an assessment of the massive threats to civil liberties posed by large-scale and ever intrusive surveillance or platforms for seamless information flows and data sharing is seriously incorporated into technology development it seems that the proposed remedies are limited to so-called privacy-enhancing technologies, for instance, the pixellation of faces caught on camera or the computerised modification of body shapes displayed by Terahertz scanners. That such techno-solutions to privacy problems add an additional layer to the systems' complexity and might obscure their actual function even more, while social control over anonymised masses it tightened in the name of security, seem to be issues immune against critical discussion. Defending the Western life-style from any form of disruption is the overall rationale. Questioning the socio-economic and political roots of insecurities is far beyond the imagination of the security research programme.

And the winners are......

Two hundred and seventy-six research institutions, companies, public bodies and non-profit organisations have benefited from the German security research programme so far. Thirty of these bodies have accumulated more than 50 per cent of BMBF's funding.

The main beneficiary is the Fraunhofer Society which is the most successful of the German security research applicants. Eighteen of its 60 research institutes participate in 22 projects, getting more than 18 million euro. Almost 50 per cent of this money flows to the institutes of the Fraunhofer Network for Defence and Security Research (VVS). Thus, a key player in setting up and steering the programme also became its top grantee. In addition, the Fraunhofer Society is also among the major contractors of the European Security Research Programme in which it participates in 18 out of 90 funded projects.[37]

Technical universities are also among the programme's winners: first the Albert-Ludwigs-University, Freiburg, and particularly its Institute for Microsystem Technology (IMTEK), which is the core of a regional cluster of autonomous micro-systems that also involve Fraunhofer VVS institutes and several other spin-offs. [38]

For the private sector it is difficult to get the complete picture as it is hardly possible to disentangle relations between subsidiaries and their umbrella corporations. However, it seems that Siemens is the top contractor among private corporations, getting 5.1 million euro shared among at least three individual Siemens companies. Other major winners are SAP, a German enterprise software house, Smith Heimann, known for its airport scanners, and the Bosch Group's security system unit. Well-known military contractors such as the arms and aerospace giant

EADS, Rohde & Schwarz, a company developing and marketing electronics for military signal intelligence and the biometrics corporation L-1 Identity Solutions, recently sold to the Safran Group and BAE Systems, are among the top 40 of German security research.

In terms of geographical distribution most security research money is spent in Germany's largest *Land*, North Rhine Westphalia, closely followed by Baden Württemberg, Research Minister Schavan's political homeland. Contractors in both *Länder* won more than 38 million euro funding. The other major winners are Bavaria and Berlin, each with around 25 million euro. Next are Lower Saxony and Hesse, which receive 10 million euro each, and, surprisingly, the East German *Land* Thuringia receiving 8 million Euro. The geographical picture clearly shows the overwhelming dominance of regional security research clusters in the German capital Berlin, around the cities of Freiburg and Karlsruhe in Baden-Württemberg, around the Bavarian capital of Munich and in the Thuringian city of Jena. With the exception of Berlin where most security research money flows to the University Hospital Charité and the Technical University, these cluster are centred around old-established entities of military research and development, i.e. the Fraunhofer VVS institutes in Freiburg and Karlsruhe, EADS, the German Aerospace Centre DLR and Rohde & Schwarz in Munich and its suburb Ottobrunn, and the Jenoptik AG in Jena, generating around 30 per cent of its annual turnover by contracts of the Ministry of Defence.

Militarised techno-structures for "networked security"

German security research originates in the emerging civil-military cooperation that has been blurring the line between the armed forces, the police and disaster control agencies for the last decade. The transformation of the Armed Forces launched in 1999 not only aims to optimise global military power projection but also to expand the mission at home. The Defence Policy Guidelines 2003 call for an increasing cooperation between the military and homeland security officials justified by the "protection of the population and vital infrastructure against terrorist and asymmetric threats",[39] and the national security strategy published in 2006 established the new paradigm of "networked security".[40]

The creation of the Armed Forces Base (*Streitkräftebasis*) in 2000 that integrated military command, reconnaissance and intelligence, logistics and training for all three services was guided by visions of network-centric warfare. In addition, it established a "new territorial network" for civil-military cooperation under the Armed Forces Support Command (*Streitkräfteunterstützungskommando*) which meant the territorial reorganisation of regional command structures according to the geographies of civil administration. As an important counterpart for the armed forces within civil-military cooperation evolved the Federal Office for Civil Protection and Disaster Assistance (*Bundesamt für Bevölkerungsschutz und Katastrophenhilfe* – BBK) that was installed by the Federal Ministry of Interior in 2004. The BBK institutionally underpinned the new concept of "population protection" fusing traditional "civil protection" against (Cold War) ABC strikes and "disaster protection" against natural hazards and major man-made accidents.

These interfaces between the military and internal security agencies provided the arena for promoting military-style techno-solutions for "new security". Serving as incubator for the proliferation of "dual use" thinking they facilitated the spill-over of "innovations" developed for network-centric warfare and full-spectrum reconnaissance into areas of civil application. Thus, civil-military cooperation unlocked the window of opportunity which was pushed open by the security research advocacy coalition of homeland security officials, military research

institutions and the high-tech arms industry. Disentangling the dynamics between pulling and pushing technology in this process is impossible. However, it is clear that the tempting promises of savvy engineers in search for new research resources significantly influenced policy concepts for sensor-networked security at all levels of operation. To conclude, in the context of security research the civil realm is not only colonised by military logic but also by a mentality that frames security as technical problem that can be fixed by engineers. The actual marginalisation of serious assessment of the ethical and social implications of these new technologies is unmasking the political assurance for sensitive research as lip service aimed to appease critique.

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EU: Controls, detention and expulsions at Europe's borders

by Yasha Maccanico

In October 2010, Migreurop published its second annual report [1]. It focuses on practices in Europe's border regions, and beyond, that stem from the EU and its member states' migration policies and their "externalisation".

Migreurop's second annual report is based on work carried out through missions and by local organisations and is used to document the situation in Sahel and Saharan countries, which are described as "Europe's new sentries". The report also examines Poland and Romania, countries that are doing their best to prove themselves reliable members of the enlarged EU. It also describes the sea borders where boats from Greece arrive in the Adriatic port cities of Italy where many expulsions are carried out. A glance at what happens to migrants trapped in the Spanish north African enclave of Ceuta is provided, and updates on areas that were examined in the first Migreurop annual report include the Greek-Turkish border and the French operation to dismantle the so-called "jungle" in the Calais region of northern France on 22 September 2009.

Exporting migration policies and human rights violations to north Africa

The report documents the way in which influence is exerted on African nations which leads them to enact policies, both internally and towards neighbouring countries, whose effects run contrary to the EU's claims that they work to advance human rights worldwide. A key pillar of EU migration policy is supposed to be improving conditions in countries of origin in order to reduce the reasons their citizens have to want to emigrate. The report examines the move from initial cooperation in this field between the EU's southern border states (Italy and Spain) with African countries bordering on the Mediterranean (Morocco, Libya, Tunisia and Algeria) to more wide-ranging efforts that appear to have shifted the EU's borders further south. It analyses the situation of countries in the Sahel-Saharan belt, which have become a priority region, by focusing on the Libyan-Nigerien border and Mali's frontiers with Algeria and Mauritania.

In late 2005, a shift in migration routes from the Strait of Gibraltar to the Atlantic Ocean en route to the Canary Islands, saw several thousand people die in shipwrecks. Cooperation between Spain and Mauritania resulted in the number of arrivals in the Spanish archipelago decreasing, but at the cost of thousands of arrests and illegal detentions as well as large-scale collective expulsions. Rather than increasing scrutiny of the root causes of the deaths, the crisis resulted in Spain offering to "help" Mauritania to control its sea borders and repatriate migrants. Returns to Mauritania were based on a 2003 bilateral agreement that contains a readmission clause which includes non-nationals who are "presumed" to have travelled through Mauritania. One of the first operations involved 369 people intercepted by Spanish boat patrols on the *Marine 1* off the Canary Islands in January 2006, who were escorted to the Mauritanian coast. After a 15-day stand-off, they disembarked in Mauritania and were held in a fish warehouse, guarded by the Spanish. Twenty-five of them were transferred to the Canary Islands to have their asylum requests evaluated and, after rejection, they were repatriated to their home countries; others were transferred to Cape Verde and then to Guinea, while others spent several weeks in detention before being returned to their home countries. Twenty-three people spent over three months in detention before they were repatriated and six were taken to Melilla as a result of the effects of detention on their mental health.

As part of this cooperation the Spanish armed forces were deployed to turn a school in Nouadhibou into a detention centre to receive migrants from Spain, before returning them to Senegal or Mali. Frontex deployed rapid intervention boats and joint aerial and sea patrols for border surveillance in successive operations named "Hera". These began in July 2006 and were enacted every year, for varying periods, through 2010. The operations had budgets of millions of euros to finance information, training, detention and repatriation activities, as well as equipment and the use of two boats that Spain gave Mauritania. Migration had not featured in European Development Fund documents concerning Mauritania until 2006, but subsequently it became a key element, with a number of activities in this field included as the purpose of funds allocated to the country (8 million euros between 2008 and

2012).

EU pressure has thus caused considerable change in an under-populated country that has relied on foreign labour since its independence. Mauritania's withdrawal from The Economic Community of West African States (ECOWAS) in 1999 did not alter a situation whereby controls on the entry and residence of foreigners was relaxed and privileged relations with neighbouring countries (such as the 1963 bilateral convention with Mali) encouraged free movement. Malians could enter and travel with a simple identity card, while regulations governing residence were hardly applied, although an immigration law that envisaged punishment of up to six months' imprisonment for illegal entry and residence existed. To satisfy external interests, Mauritania now "arrests, detains and arbitrarily returns people suspected of wanting to emigrate to Europe 'illegally'", the report notes. People who are detained include those sent back from Spain and Morocco, those intercepted at sea and those who are suspected of wishing to leave. It has led to large-scale round-ups which involve the racial profiling of sub-Saharans in areas where they reside and at ports, from where some may seek to leave but many also work. Leaving the country is technically not an offence, as nationals of countries that have bilateral conventions (like Mali or Senegal) are allowed to "freely leave the territory" while others need an "exit stamp" on their passports. Failure to comply with this formality does not entail punishment. When they are detained and questioned to establish their identity, no administrative procedure is enacted and there is no legal assistance or right of appeal. A majority of detained foreigners are now transferred to the Nouadhibou detention centre.

Thus, people's lives may be disrupted suddenly because they are in a city that is deemed to be a gateway for "illegal migration". It is a reputation that derives from arrests that are largely arbitrary, and often target people who are settled and have worked in Mauritania for years and, due to racial profiling, leads to the stigmatisation of black people. In spite of a large decrease in arrivals in Spain (31,678 were detained in the Canary islands in 2006, 9,181 in 2008 and 2,246 in 2009), available data suggests that the number of people detained on the basis of "suspicion" of wanting to reach Spain has remained stable at between 300 and 360 people per month. There is an interest in keeping arrest levels high to prove the worth of EU funding in this field (i.e. the arrests of suspected "migration candidates" show the need for the Nouadhibou detention centre), in a form of repression that is becoming a "market". In turn, the arrests result in human rights violations with testimonies obtained by APDHA/AME/AEC missions [2] that tell of beatings, ill-treatment and problems in such basic needs as being allowed to go to the toilet.

In spite of bilateral agreements allowing free movement and the absence of readmission agreements, Mauritania carries out hundreds of expulsions to Mali and Senegal every year in pitiful conditions, without any formal decisions being issued or the possibility to appeal. These are sometimes the final stage in "serial expulsions", following those from Spain or Morocco, or both. In some cases, migrants expelled from Morocco have been left in the desert near the Mauritanian border, in a region where difficulties are augmented by the presence of landmines from the Western Sahara conflict, and there have been deaths. Many expulsions to Senegal are relatively straightforward, due to the short distance and a relatively good quality road from Nouakchott to Rosso. Others are covert, with foreigners being made to cross a border river in makeshift canoes at night because Senegal does not readmit non-nationals.

Expulsions to Mali are longer and more harrowing. They involve a 1,400 km journey that takes between two and four days in a crowded minibus, without adequate nourishment, before they are handed over to the Malian police in the border village of Gogui. Gogui is one of 16 Spanish-funded border posts created in Malian territory in 2008 "to fight illegal migration, terrorism and organised crime". The French are involved in a training capacity. Here, the migrants are handed over, a discharge form is completed and a woefully inadequate sum of money is provided for travel costs. The border post is isolated, a 65 km walk to Nioro du Sahel. For years, those arriving in Gogui, often in poor physical condition and without access to adequate medical care, have depended on support from drivers and doctors in Nioro's hospital for transport and access to medical care (two refouled people died in July 2009 when they arrived in Nioro from Gogui). Red Crescent medical volunteers are now trying to help people in Gogui, and solidarity in the form of tents set up by Human Help (funded by Cigem, the EU's Migration Information and Management Centre) and transport to the police stations in Nioro or Kayes is being provided. Improvisation has been the norm, with migrants dumped in Gogui and then Nioro with no provisions for accommodation and other needs (the police briefly set up a makeshift reception area in the prefecture offices).

In geopolitical terms, large-scale repatriation harms relations between Mali and Mauritania. Criticism of Mauritania is only voiced by returnees, as Malian authorities do not criticise the treatment meted out to their nationals, aware of the devastating effects that migration policy could have on diplomatic and social relations in the region. It is a delicate balance that the EU does not appear to take into account, blinded by its "war on migration". The Mauritanian population comprises the Moorish and black communities which fought an internal conflict between 1989 and 1991 that resulted in tens of thousands of black Mauritanian nationals being expelled to Senegal. The repatriation of Senegalese nationals could undermine the country's and the region's stability. The agreements and policies that are imposed ignore age-old inter-African human mobility patterns from which all parties benefit (Malians find work and a means to survive; Mauritanians receive a vital labour force). This led a mayor, quoted in the report, to state that "European countries' policies cause a lot of harm to would-be migrants and to our different countries". International organisations working towards free trade and economic and political unity such as ECOWAS and the Community of Sahel-Saharan States (CEN-SAD) envisaged areas of free movement, the first from Niger and Nigeria to the Atlantic coast and the second all the way from Somalia to Morocco and the Atlantic coast (except for Algeria and Ethiopia). Thus, the free movement that is a founding principle of the EU is being attained at the expense of similar projects elsewhere.

Tinzouaten is a town on the Algerian-Malian border where refouled migrants are abandoned in desperate conditions that have led to it being nicknamed the "city of madness" due to its effect on the people who are stuck, often for long periods, in what is described as a "desert no man's land". The city is split between Algerian and Malian sections and, when they are expelled, migrants are left in the former and walk to the, largely abandoned, Malian side in whose buildings migrants have set up ghettoes on the basis of their nationalities (Senegalese, Burkinian, Liberian, Cameroonian). A Touareg rebellion in the region (2008-9) meant that the area was under curfew and no travel into or out of it was allowed for long periods. Since September 2009 the Red Cross has sought to transfer a limited number of people to Gao (Mali) every week. In Gao, NGOs that participate in the Migrants House project are responsible for providing otherwise inexistent reception facilities.

The Libyan case illustrates the bartering process between the EU and its neighbouring states to which border controls are "subcontracted", its human rights implications, and its effects on poor countries, in this case Niger. The equation is simple: substantial financial and material "aid" in exchange for the imprisonment and deportation of migrants, while taking back those who are captured en route or after they enter Italy, or when Italy enacts collective refoulements. Libya is a rich country that

needs foreign labour in several economic sectors and has regularly attracted workers from CEN-SAD countries. It has now taken on the role of guardian of EU borders, enacting restrictive migration policies that contravene its legislation and commitments concerning free movement in the region, in exchange for large amounts of funding, equipment (from both the EU in projects to "aid third states to improve their management of migration flows" and Italy) and a return from its post-Lockerbie diplomatic isolation.

EU projects, which include returns and the setting up of detention centres, always vow to "respect human rights", but there are causes for concern. Sahel country nationals (from Niger, Chad, Mali and Burkina Faso) have migrated to work in Libya for decades, joined in the 1990s by those from west and central Africa, a small part of whom continue their journey towards Europe. The new restrictive measures imposed have resulted in an informal system for taxing migrants while they travel by the police. Migration from Niger to Libya was not illegal due to the free movement principle that applied within CEN-SAD. Now, when a bus crosses a border post, or a military post, or when vehicles are inspected, passengers are required to pay collective sums of money; their documents are sometimes confiscated, only to be returned if further payments are made. If they refuse or are unable to pay, force may be used or they may be lined up for hours in the sun, or in the wind as they are sprayed with cold water, until they collect an amount that is deemed sufficient, even before they have left Niger. Overall, considerable sums are paid by migrants, including CEN-SAD country nationals and sometimes even Nigerians. If they run out of money, their journey stops until they can gather the resources to continue. Crossing the desert is dangerous, and there are accidents, vehicle breakdowns and deaths.

The avowed principle of freedom of movement between Sahel-Saharan countries has been relegated to the level of official discourse, as Libya, Tunisia, Morocco and Algeria have adopted new immigration laws between 2003 and 2008 which introduce heavier punishment for "illegal" migrants, and several countries have signed bilateral readmission agreements. In Libya, this happens in a context in which immigration was encouraged and entry and residence took place with the relative statuses hardly even being ratified officially. Cooperation with the EU has resulted in legislative changes, the setting up of new institutions and the introduction of visa regimes for African and Arab countries (except for Egyptians and Tunisians). Two million euros were allocated by the Aeneas project just to control migration between Niger and Libya, with French officers and IT material sent over to train and equip the border posts in Dirkou and Madama, to ensure the identification of migrants before they enter Libya. The human rights implications of practices that have arisen include violence during arrests and questioning, dreadful conditions in detention centres, including violence and killings in the suppression of revolts. Deportations have led to thousands being abandoned in the desert region at the borders with Niger, Chad, Sudan and Egypt, where many have died following long journeys during which they were crammed in lorries. Repatriations of asylum seekers have also been documented, from a country that has not signed up to the 1951 Geneva Convention, without this stopping Italy from carrying out collective refoulements before their position has been examined. Nigerian officials told the EU Commission's mission that visited Libya in 2004 that they did not see migration as a problem because their nationals generally do not leave to go to the EU as they "stay in Libya to earn some money that they take back home when they return". They said that closing the border would harm the country, but this is not an argument to which EU bodies are very receptive.

Catching migrants in Italian ports and returns to Greece

The situation in Italy's eastern ports on the Adriatic and Ionian coasts is acquiring importance as a point from which to observe migration patterns. This is due to the joint patrols and refoulements to Libya of migrants trying to reach Lampedusa or the Sicilian coast, and Spanish-Moroccan efforts to close down the route through the Strait of Gibraltar. Thus, there has been an increase in attempts to enter the EU from Greece by travelling on ferries that set off from Patras, Igoumenitsa, Corinth and Corfu to the Italian ports of Venice, Ancona, Bari and Brindisi along routes that were primarily used by people from Afghanistan, Iraq and the Indian subcontinent in the past. The journey, during which migrants often hide inside or under trucks, is dangerous, as they risk death by asphyxia, hypothermia or being crushed under a truck's wheels. Survivors are likely to be caught by the border police and returned to Greece as happened to 3,148 people in 2009 and over 5,000 in 2008. Greece is generally a "stepping stone", as conditions for migrants there are poor and the likelihood of an applicant receiving refugee status through its asylum system is remote (under 1%). In April 2008, the UNHCR recommended that EU countries cease to implement the Dublin II Regulation to return asylum seekers to Greece.

Key elements that the report highlights include the militarisation of ports (with a special focus on Venice, Ancona, Igoumenitsa and Patras) which includes high fences, checkpoints, scanners for heavy vehicles and the deployment of a large number of police officers to check vehicles on the ferries when they set off from Greece and upon arrival in Italy. Thus, it is one border within the Schengen area where the relevant Regulation does not apply: "internal borders may be crossed at any point without any checks on people, regardless of their nationality" (art. 20 Regulation 562). Of course, the police have a right to enact controls as part of their competencies, but these "must not be equivalent to border controls", they must result from specific threats or be random checks.

The increased controls have not resulted in fewer departures from Athens. Rather, the means to do so have diversified, fostering the bribing of road haulage carriers, with road trips to European destinations costing up to 3,000 euros, except for those to Italy (also viewed as a transit country). It appears that only the poorest and least well-connected migrants, often minors, continue to leave from Greece hidden beneath or inside lorries that travel on ferries, and they are often discovered and sent back. In Greece, "zero tolerance" towards illegal migration has resulted in ports and meeting places used by migrants becoming militarised to block departures. The Afghans' camp in Patras was destroyed in July 2009. Fences were erected near boarding points in Patras and Igoumenitsa and there are restrictions at certain times of day. Patrols looking for would-be migrants are not only deployed in ports, but also in nearby neighbourhoods and throughout the city "in the bus station, the train station, ticket offices and parking lots for lorries", as well as Athens' main motorway access points. Reception areas for passengers in ports are limited to people whose tickets have been checked, and controls are conducted by the police, lorry drivers, boat captains and private security officers hired by carriers. New screening centres have been envisaged to identify migrants who are living in these cities and dissuade them from staying. The first Frontex regional sea borders centre is set to open for the eastern Mediterranean.

During the sea crossing, people hiding in trucks often climb out to hide between their wheels, at which point they are likely to be caught by security cameras. When caught they can be detained in cells that some ferry companies have on board, before being returned without having disembarked. They are readmitted, but the number of times this happens cannot be estimated as they are not recorded and do not have the opportunity to apply for asylum

if they wish to.

In Italy, arrival areas have been physically separated from the cities and considerable effort has gone into ensuring that it is possible to bypass obligations, due procedure and controls in order to fast-track returns to Greece. Often the migrants who are caught are not even allowed to disembark. In both Venice and Ancona, the separation makes it impossible to have reliable information about the checks that are carried out and the number of people who are intercepted in ports (there is both a tourist and a commercial port in Venice). The body that is entrusted with guaranteeing access to the asylum procedure (*Consiglio Italiano per i Rifugiati*, CIR) is not present in the commercial port. Its opening hours are 9:00 to 13:00 during weekdays and three hours (on request) on Saturdays, thus it cannot intervene every time a boat arrives. Its workers are not allowed on ferries and can only intervene if they are requested to do so by the border police. Some migrants who were interviewed after their refoulement to Greece claimed that once intercepted they are interrogated by the border police, but interviews generally concern lorry drivers' involvement and identifying smugglers, without the migrants being able to file asylum applications. The limited information that is available suggests that 850 people were returned from Venice between January and August 2008 (110 were seen by CIR). The figure is not available for 2009, although 132 people were interviewed by CIR and 3,148 were returned from the Adriatic ports between 22 January 2009 and the end of the year. Those returned claim that controls have spread beyond the disembarking area, with migrants stopped several kilometres away and sent back on the ferries.

Ancona port has been sealed off from the city centre by 3 metre high metal fences, except for two passageways that are under surveillance. A decree on security dated 6 November 2007 envisages that "protected areas" may be isolated. Truck drivers and bar owners complain that citizens are not free to frequent the area and disembarking times have grown longer. There has been a decrease in freight traffic which may be a side-effect of the strict controls that are enacted, leading to changes in the commercial routes that are used. While these measures appear to be a means of preventing the passage of "illegal" migrants, the authors note that the small number of people concerned means that it is just as likely that it is a means of concealing the law enforcement agencies' actions from the population, creating an area in which the management of control operations is arbitrary. Disembarkation and control areas are entirely separate from commercial areas and public access is forbidden. Controls include the occasional use of scanners (Mobix) and a system that identifies people's heartbeat (Avian) which can be used to inspect a vehicle in 15 seconds, although noise pollution in the port area limits its effectiveness. Border police checks and searches take place on a case by case basis in the customs area.

CIR has been working in the port of Ancona since 2002; it stopped in 2008 before starting up again in 2009, when its staff was no longer allowed to intervene freely (intervention must now be requested by the border police) or to board ferries. CIR data for Ancona in 2009 records 1,107 searches by the border police and 800 interventions by CIR; 79 people were classified as unaccompanied minors (70 of them from Afghanistan), 93 were recorded as others, including minors who have been entrusted to Ancona city council although they had not lodged asylum claims, or people admitted for other reasons, particularly health problems. The border police statistic is higher (1,497), which may mean that some controls take place without CIR being present.

While UNHCR has asked member states to derogate the implementation of the Dublin II convention in cases involving returns to Greece of people who have requested protection, Italy continues to apply the 1999 bilateral convention that enables "readmission without formalities based on the captain's judgement". This leads to provisions in both Italian and EU instruments that impose respect for human rights and access to asylum procedures being contravened, including the non-refoulement principle (1951 Geneva Convention); the individual assessment of the situation of asylum seekers (Dublin II); the prohibition of collective expulsions (ECHR) and Italian legislative decree no. 25/2008 that strips the border police of discretion to decide whether applications are admissible. Migrants are often not allowed to apply for asylum or informed of the possibility of doing so, and they are made to sign a document (not translated and hence often incomprehensible) requesting their readmission. They are also not issued an expulsion or refusal of entry document.

Complaints by organisations about border police conduct in Adriatic ports, where a high proportion of the people arriving come from areas that make them potential asylum seekers (Afghans, Iraqis, Kurds, Somalis, Eritreans, Sudanese), has resulted in less information about refoulements being released. A Venice organisation, *Tuttiidirittiumanipertutti*, filed a case before the European Court for Human Rights in 2008. An interview by an official from Igoumenitsa port authority published by *Melting Pot* which provided details of returns from Venice in March 2010, resulted in CIR issuing a press release. CIR complained that after it was informed that some people had been found, its officer was unable to provide assistance to the migrants, who came from countries that made them potential asylum seekers, most of whom were immediately returned on the same boat in which they had arrived. CIR was told that four asylum claims were filed and two unaccompanied minors were placed under the city council's care. The report draws a distinction between two phases of controls, the first of them "arbitrary" and entailing decisions by the border police as to which claims are admissible, and a second one involving CIR. The basis for claiming this are interviews with people who have been returned to Greece from Ancona, and it appears that this often happens to minors. Even in the second phase, some guarantees are not provided, due to its immediate nature, the availability of translators, the migrants' health conditions, fatigue and the wish to "unmask" so-called bogus asylum seekers. The transcript of an interview with a Palestinian from Gaza is provided, which resulted in an expulsion because he "did not say the magic words", in spite of the well-known situation in his hometown.

There are three kinds of removals from the Adriatic port cities: refoulements from Italy to Greek ports; returns to Greece within the Dublin II framework and transfers from one detention centre to another. Most readmissions take place outside of any legal framework, with people arrested in or around the port area not being allowed to submit asylum claims. The effects of returns and refoulements tend to be identical. The Igoumenitsa police prefect estimated that there are between 10 and 40 readmissions per day from Italy, and the prefect in Patras stated that expulsions have decreased since November 2009. A large number of the people in detention facilities in Igoumenitsa were readmitted from Italy. The same applied to squats and makeshift camps in both Patras and Igoumenitsa with around half of them claiming that they were victims of the Dublin II Regulation. People living rough in the park near Patras port had been expelled from all over Europe, yet they had the pink paper that certifies that they had submitted an asylum claim. They are being made to leave the urban centres of port cities by the police, who attempt to "dissuade and discourage" them. Many end up in a camp in the middle of nowhere near the Albanian border, sometimes taken there by the police. Mass transfers from Patras and Igoumenitsa to Turkey reached their high point in the summer of 2009. They have now been replaced by transfers from one detention centre to another, or by returns within the framework of the Greek-Turkish bilateral readmission agreement that was reactivated in May 2010.

Poland and Romania, trying to be worthy

Poland and Romania are interesting points from which one can observe the effects of EU membership on migration controls in former communist countries. After the end of strict exit bans in 1989, Poland joined the EU in 2004 and the Schengen area in 2007. By contrast, Romania has been a member since 2007 and is set to join the Schengen area in 2011. As routes into the EU and western Europe, the pre-adhesion period resulted in funding under the Phare programme for central and eastern European countries for purposes including the training of officers and the introduction of equipment to improve border controls. Visa requirements have been imposed for nationals of third countries (Belarus, Ukraine, Moldova and Russia) since 2003 and 2007 respectively. Westward migration was rendered more difficult by reinforced border surveillance, Frontex missions, readmission agreements and difficulties in obtaining refugee status, residence permits or regularisation, and the development of the detention system. The damaging effects that this shift has had on key "proximity migrations" resulted in agreements to soften some conditions for entry with neighbouring countries.

Their role as buffer states is demonstrated by efforts in this field. Funding earmarked by the Commission for Poland between 2007 and 2013 to strengthen border controls amounted to 78 million euros to modernise border point infrastructure, consular offices (equipment and biometric data collection) and to set up an IT system to control foreigners' documents. Some 560 million euro in funding was allocated to Romania between 2007 and 2009 for Schengen facilitation. Other Romanian funding included the Phare programme, which has been used to develop border control systems such as Scomar (Integrated Black Sea Surveillance and Observation System) and to implement elements of the Schengen acquis by setting up control mechanisms on its eastern borders, these are subject to EU scrutiny through the Schengen evaluation process. The authorities in charge of border control are the border police and Romanian Immigration Office in Romania and border guards under the control of the interior ministry in Poland.

The region is considered so important in terms of migration management that the headquarters of Frontex is in Warsaw. In fact, according to the Frontex deputy director, Poland was responsible for issuing 27,000 refusals of entry out of a total of 114,000 into EU territory in 2009. In 2008, the agency reported that 3,298 people were stopped for illegally crossing the border into Poland and 756 were caught in Romania, leading the agency to express its satisfaction for the work of the two countries' border control services. Frontex has coordinated a number of operations in Poland with a view to strengthening cooperation with other countries, including Russia. The most important operation, to control entries from the east using false entry documents through the land border or hidden in vehicles, was named "Jupiter", and involved 14 countries including Poland, Romania, Slovakia and Hungary, as well as countries of "origin" or of "transit", such as Ukraine. Earlier, in Romania, the "Euxine 2008" mission sought to improve controls in international ports and involved 12 member states, as well as Moldova and Ukraine. The "Five Borders 2008" mission involving Hungary, Poland, Romania and Slovakia resulted in the stopping of 621 migrants, the discovery of 67 forged documents and 2,378 refusals of entry, and there has been cooperation with Ukrainian border guards to conduct surveillance operations. Frontex is also set to sign an agreement with Belarus.

Poland and Romania are passage points into the EU for nationals of countries like Georgia, Russia or Uzbekistan, Asians and people from the Middle East who travel through Turkey, many of whom may be in need of international protection. Not all head towards Greece and many gather in Moldova, Ukraine and Belarus before attempting the crossing. Thus, Poland and Romania may well turn into countries to which many refugees

are returned in application of the Dublin II Regulation. The most accessible border point between Poland and Belarus is at Brest/Terespol where around 90% of asylum applications are filed.

Developments include a shift in the legal framework for identity controls. Until 2003 a reason was needed for a stop, but subsequently it became possible to stop people to check the lawfulness of their presence in Poland. Migrants claim that controls based on skin colour (or language) have increased. It appears that the Romanian Immigration Office's (RIO) practice of issuing a summons to its headquarters is, in fact, a deception to catch migrants, leading to their detention.

Polish detention centres, four of which were newly built in 2008-2009 with a capacity of 692 places, can hold a total of 980 people. The two Romanian detention centres, in Arad (western border) and Bucharest, can hold up to 180 people. In Poland, there is a division between closed migrant centres and deportation prisons, whose conditions more closely resemble a prison, with one hour per day allowed to go for a walk. The regime is more relaxed in closed centres, within which a degree of movement is allowed. Deportation prisons are meant for people who have shown themselves to be more aggressive or problematic (terms which are also applied to people who have attempted suicide). In Romania, detainees are classified under three groups: "removable", "expellable" and "undesirable". The first no longer have a right to reside in the country and have been issued with a removal order; the second have received an expulsion order from a judge after committing a criminal offence, and the last are people whose activities are liable to endanger national security and public order. Conditions are poor and similar to a prison regime, although they improved after 2006 when a detainee filed a lawsuit before the ECtHR alleging "inhuman and degrading treatment". At Otopeni airport, a transit zone which is supposedly extra-territorial has been set up in which migrants are made to stay while a decision as to whether to admit them is being considered.

The maximum length of detention in Poland is a year, because an initial period of three months may be renewed three times. Asylum seekers can be detained if they must be identified; if they are deemed to "abuse" the asylum procedure; if they are a threat to the security, life and health of others; if they are a threat to public order or if they have crossed the border illegally. These criteria seem to be applied arbitrarily. A judge rules if they are to be detained for between 30 and 60 days. In Romania, the maximum length of detention is six months for "irregular" migrants, two years for people against whom an expulsion order has been issued and, in theory, up to 30 years for "undesirables". Detention for irregular migrants is initially ordered for a month, with five days allowed to file an appeal, and renewals are automatically made for a further five months. These lengths of detention are deemed excessive by the report, because most returns take place within 16 days. The six-month period is considered a way of keeping migrants isolated, as those from Somalia, Iraq or Afghanistan are hardly ever returned, although detention is supposed to only be enforced for the purpose of allowing their deportation. Cases involving people who are detained more than once in the same year or in different countries are mentioned, and some continue their journey because they fear for their security in Poland and Romania. Problems include the detention of vulnerable people such as pregnant women and minors, while access to legal assistance and the provision of information in languages that they understand is not guaranteed.

There are 19 reception centres for asylum seekers in Poland and five in Romania. In Poland they are located on the outskirts of towns to avoid conflict and in poor districts or near the border in Romania. Asylum seekers obtain work permits after a year in Romania and after six months from the start of their procedure in Poland. They can request places in reception centres for asylum seekers, which are open but subject to a curfew, and asylum

seekers lose their place (which is easy to re-obtain if one applies to have it back in Romania) if they are absent on three consecutive nights without prior authorisation. In Poland, after seven days absence, asylum seekers lose their place and their asylum procedure is also curtailed.

Dublin returnees often experience serial returns on the basis of bilateral or EU readmission agreements, particularly in cases involving inadmissible applications. Romania has reached 35 readmission agreements (seven with non-EU countries) and Poland has signed 25 (eight with non-EU countries). They lead to returns to migrants' home countries, countries where they have resided or merely passed through. Returns of third-country nationals to Ukraine are allowed due to the EU-Ukraine readmission agreement, and they may take place in under 48 hours through a fast-track procedure. The report notes that Ukraine is a country to which returns should be forbidden on human rights grounds due to inhuman and degrading detention conditions, readmission agreements with countries of origin or transit, a feeling of vulnerability and insecurity among migrants, racist attacks and refoulements and denial of entry for Russian nationals (including Chechens) although they are not required a visa to enter the country. For 2007, official figures show that 4,470 returns were executed in Romania, as well as a further 431 forced returns (with escorts). In the first half of 2009 the respective figures were 3,111 and 213.

Another problem is that a number of nationalities are almost certain to be denied asylum. Interesting cases that are examined include that of Vietnamese people in Poland, as well as Georgians, Uzbeks and Chechens. The new immigration regimes are causing problems to settled communities such as the 30,000-strong Vietnamese one in Poland. Vietnamese migrants have been in Poland for 15-20 years but have always worked without being officially issued documents. Poland and Vietnam signed a readmission agreement in 2004 in which Vietnamese officials are called upon to help identify migrants. After four visits in 2009, 245 Vietnamese were deported, 57 on the basis of a readmission decision, 183 expelled, three following a Dublin II return and two through different means. There has been criticism of this cooperation because some Vietnamese do not apply for asylum as it may endanger their families at home if they are branded "opponents" of the regime. They are seldom granted asylum.

This is also true for Georgians, Uzbeks and, increasingly, Chechens. Poland is one of the main gateways into Europe for asylum seekers from Russia who travel through Ukraine or Belarus (mainly Chechens). They accounted for over half the asylum applications lodged in 2009 (5,726 out of 10,590). 102 obtained refugee status, while 2,261 were granted subsidiary protection. The number of Georgian asylum seekers has also increased, but their nationality appears to be a reason to deem their applications manifestly unfounded. Chechens also fear for their security in Poland, as there have been cases of kidnappings and shootings carried out by agents of their home country's regime. Moreover, in both countries, intolerance against migrants and asylum seekers is growing, as demonstrated by local protests calling for the closure or moving of detention and reception centres.

Conclusion

The situations that are detailed in this report show how the so-called "integrated migration management" approach that the EU has been promoting within and beyond its borders is leading to widespread human rights violations, growing hardship for migrants in host countries (regardless of whether they are just working or seek to travel to the EU) and a vast expansion in state activity that targets foreigners. In different forms depending on where they take place, the report documents unlawful expulsions, a proliferation of controls and the establishment of detention systems. Even in areas that had longstanding unregulated migration patterns that were beneficial for all parties. They are being curtailed. The trend that is being encouraged is one in which it becomes increasingly difficult to leave one's country. For those that do leave, the authorities are paid to ensure that these peoples' situation is one of permanent instability in which they must fear any interaction with public officials. Areas are being created in which ordinary laws do not apply and in Europe these zones of arbitrary decision-making can be seen in the Adriatic port areas in Italy.

Endnotes

1. *European Borders: Controls, detention and deportations, Migreurop, November 2010,*

http://www.migreurop.org/IMG/pdf/rapport-migreurop-2010-en_-_2-121110.pdf

2. *Asociación Pro Derechos Humanos de Andalucía and Association Malienne des Expulsés. Following a mission to Mali, APDHA and AME jointly published the report "Une autre frontière de non-droit: Mali-Mauritanie", concerning Spain's co-responsibility in serial repatriations from Europe to Africa, April 2009.*

New material - reviews and sources

Civil liberties

Iraq War Logs. *Wikileaks* 22.10.10. *WikiLeaks* has released the largest classified military leak in history, containing 391,832 reports that document the US/UK war and occupation in Iraq as told by soldiers in the US Army. The documents provide a vivid glimpse into the secret history of a war that the US and British governments have sought to cover-up. The reports detail 109,032 deaths in Iraq, comprised of 66,081 'civilians'; 23,984 'enemy' (insurgents); 15,196 'host nation' (Iraqi government forces) and 3,771 'friendly' (coalition forces). Over 60% of the deaths (66,000) are of civilians with 31 civilians dying every day during the six year period. In 2008 a US Army report named *Wikileaks* as an "enemy threatening the security of the United States" forcing editor, Julian Assange, to go on the run. See: Available on the *Wikileaks* website: http://wikileaks.org/

US sorry for using Guatemalans as syphilis guinea pigs, Chris MGreal. *The Guardian* 2.10.10. This article records the apology by US secretary of State, Hilary Clinton, for sexual disease experiments carried out in Guatemala in the 1940s. These "experiments" involved medical researchers seeking out "prostitutes with syphilis to deliberately pass on the sexually transmitted disease to men through intercourse. Other men were injected." This abuse was overseen by the physician, John Cutler, who was later to run another notoriously racist US "experiment", in which hundreds of African-American syphilis sufferers were left untreated in the Tuskegee syphilis study, which took place from the 1930s and continued until the late 1960s.

Right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover. *United Nations General Assembly*, 6 August 2010, A/65/255. On 6 August 2010, Anand Grover, UN special rapporteur on the right of everyone to enjoy the highest standard of physical and mental health, published his report calling for a human rights based approach to drug control. The author states: "The current international system of drug control has focused on creating a drug-free world, almost exclusively through use of law enforcement policies and criminal sanctions. Mounting evidence, however, suggests this approach has failed, because it does not

acknowledge the realities of drug use and dependence. While drugs may have a pernicious effect on individual lives and society, an excessively punitive regime has not achieved its stated public health goals, and has resulted in countless human rights violations.": See: *http://www.idpc.net/sites/default/files/library/Right%20to%20highest% 20standard%20of%20health.pdf*

UK firm denies exporting death row drug, *The Guardian* Owen Boycott 28.10.10. This piece discusses the use of a British manufactured drug used in the execution of a man in Arizona, USA, which has been described by Richard Dieter, of the Death penalty Information Centre, as the outsourcing of the death penalty. Archimedes Pharma UK, which is based in Reading, Berkshire, is the only licensed manufacturer of sodium thiopental in Britain. The company denied it had exported the drug itself and said: "Consistent with applicable regulations, the company does not have information on specific end purchasers or users of its products. The company neither exports the product to the US for any purpose, not is it aware of any exports of the product."

Immigration and asylum

State Sponsored Cruelty' – Children in immigration detention, Jon Burnett, Judith Carter, Jon Evershed, Maya Bell Kohli, Claire Powell, and Gervase de Wilde. *Medical Justice*, 2010, pp. 80. This important report explores the physical and psychological harms caused by the detention of children for immigration purposes in the UK, examining 141 cases between 2004 and April 2010. It sets out key findings in the following areas: the length of time a child is detained; the impact of dawn raids; conditions in detention; violence in detention; psychological and physical harms; the provision of medical care; the failure to immunise children prior to removal; the impact of detention upon parents and the impacts of separating families. These investigations expose "a catalogue of damage that has been both caused and exacerbated by detaining children" and the authors make 11 recommendations to the government, demanding the end of detention for children and families and alternatives to detention that are based on the interests of the child. Its final recommendation is for "a full public inquiry which investigates how UK immigration policy led to the routine detention of children for the purposes of immigration control, and the harm that this policy caused." *Medical Justice* website: http://www.medicaljustice.org.uk/

La ficción de las políticas de control migratorio. Los programas de retorno voluntario, Peio Aierbe. *Mugak*, no. 51, June 2010, pp. 36-37. In its analysis of a EP report on "Programmes for voluntary returns", this article analyses the institutional use of language in this field, highlighting "the huge gulf between the goals that are stated, the contents of migration and control policies, and what they effectively achieve". "Returns of migrants in an irregular situation" (a euphemism to avoid talking of expulsions) are identified as an "economic, social and political priority", without what makes them a "priority" deserving even a passing comment. The fact that forced returns may undermine "a person's dignity" is fleetingly mentioned, but the real concern is that they are "expensive and unpopular". In fact, the difference in the range of costs between "forced" and "voluntary" returns is such, that in the UK, the former cost "between £11,000 and £25,600", whereas the latter cost "between £600 and £5,000", without taking the considerable cost of detention into account. The author goes on to question the meaning given to the figures provided in the report, before looking at the key fallacy: how can a return be termed "voluntary" without considering the view and interests of migrants who have come to Europe moved by powerful reasons that are not remotely balanced by the incentives that these programmes supposedly offer (support for reintegration, development aid, etc.)? The answer: the message is for consumption by the EU's internal public opinion, a mere façade, because migrants who have been declared "undesirable" are well aware of the true nature of these policies.

Two asylum seekers deported to Iraq and 'tortured' were not Iraqis, Owen Boycott. *The Guardian* 11.11.10. This short article describes admissions made by the Foreign office in a letter to the

European Court of Human Rights arguing for a resumption of removals to Iraq. It describes the traumatic experience of two asylum seekers who were deported to Iraq and were tortured before being returned to the UK when they were found not to be Iraqi. The Foreign Office says: "The UKBA is investigating allegations by two individuals, who were removed on [the] charter flight to Baghdad on 6 September, and they were tortured by Iraqi authorities while detained in Baghdad. The two were subsequently returned to the UK on 22 September because they were found by Iraqi authorities not to be Iraqis."

Family Removals: A Thematic Inspection January – April 2010, John Vine. *Independent Chief Inspector of the UK Border Agency (*HO_01690_ICIU) 2010, pp. 34. Vine, the Independent Chief Inspector of the UK Border Agency, writes that he is "concerned" to have found significant weaknesses in current removal procedures: "... specifically no clear individually tailored plans for families throughout their contact with the UK Border Agency, poor compliance in the completion of health and welfare documentation and, should an arrest be necessary, where and when this should be carried out." He "consider[s] that the UK Border Agency could be more effective in ensuring families are encouraged to return voluntarily." It is "unacceptable that the UK Border Agency has no system or process in place to capture and publish with confidence data on families. Given the potential stress experienced by families who are detained, together with the significant cost to the taxpayer both of detention and supporting families in the community, I would expect to see more comprehensive information collected, analysed, produced and published by the UK Border Agency". He says that "clear records need to be maintained in each and every family case and appropriate information on how the UK Border Agency exercises its powers of arrest and detention should be placed routinely in the public domain. Transparency in this area is important – the public should have confidence that the UK Border Agency is meeting its obligation to have regard to the need to safeguard and promote the welfare of children while still being effective in removing families who have no right to remain in the United Kingdom." See: *http://icinspector.independent.gov.uk/wp-content/uploads/2010/07/Family-Removals-A-Thematic-Inspection.pdf*

Women's labour migration in the context of globalisation, Anja K. Franck & Andrea Spehar (WIDE) 2010, pp. 83. This study points out the ambiguity in migration discourse in Europe, "where a combination of economic needs and security interests define fairly restrictive migration policies. While the (temporary), regular movement of highly skilled professionals is encouraged, migrants moving into low-skilled jobs to meet the increasing demand for cheap and flexible migrant labour are facing manifold discrimination. They often find themselves with an unregulated status, where they are systematically denied a basic standard of living and face a de facto violation of their fundamental rights: they lack access to basic services such as health care or education, they are deprived of labour rights and social protection, and in the worst cases their bodily integrity and physical security are threatened." The authors also draw attention to the "inconsistencies and lack of cohesion between international and EU commitments to human, women's and workers' rights, on the one hand, and its migration policy discourse and practice, on the other." See: http://62.149.193.10/wide/download/WIDE%20Migration%20report% 20final.pdf?id=1256

Law

From 'War' to Law: Liberty's response to the coalition government's Review of Counter-terrorism and Security Powers 2010. *Liberty*, August 2010, pp. 138. This is Liberty's response to the coalition government's review of counter-terrorism policy, announced in July 2010. It covers control orders; terrorist asset freezing orders; Section 44 of the Terrorism Act 2000 and photography; the use of RIPA (Regulation of Investigatory Powers Act 2000) by local authorities and powers to access communications data; deportations with "assurances" to torturing countries; measures dealing with organisations that promote hatred or violence and pre-charge detention of terrorist suspects. It expresses concern that the coalition's plans to revise counter-terrorism laws will lead to the banning of a wide range of political and religious

groups. Available as a free download at: *http://www.liberty-human-rights.org.uk/pdfs/policy10/from-war-to-law-final-pdf-with-bookmarks.pdf*

Cuts that do no Justice. *Labour Research* Volume 99 No. 10 (October) 2010, pp. 13-15. Article discusses the Conservative-Lib Dem coalition's plans to close 103 magistrates' courts and 54 county courts across England and Wales that are "underused and inadequate" in order to save £15.3 m a year in running costs and £21.5 in maintenance costs. Trade Unions fear that the cuts will not only lead to the loss of 900 jobs but also "devastate access to local justice." The PCS union has launched a Justice under the Hammer campaign to raise awareness about the impact of these savage cuts Justice under the Hammer website: *http://www.pcs.org.uk/en/ministry_of_justice/justice-under-the-hammer--save-our-courts/*

Five years on: Time to end the control orders regime. *Amnesty International* (EUR 45/012/2010) August 2010, pp. 26. The pamphlet describes the UK's "shadow justice system" of control orders, which affects people accused by the authorities of involvement in terrorist-related activities, but who are unable to be charged with an offence for lack of reliable evidence. In place of the law secret "evidence" is heard in closed hearings. The report describes the distinguishing characteristics of this alternative justice system, which include: "...the wide scope for the state to deploy secret material against individuals which remains undisclosed to them and their lawyers of choice; to exclude those individuals, their lawyers of choice and the public from judicial hearings; and to keep key findings secret from the public." Amnesty argues that this procedure: "...undermines the rule of law as well as the role of the fundamental procedural rights that are included in the ordinary criminal justice system precisely to protect the right to liberty and other human rights**."** Available as a free download at: *http://www.amnesty.org/en/library/asset/EUR45/012/2010/en/bbaadcd1-28fe-491f-9e4a-1550e63fbed9/eur450122010en.pdf*

Military
Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance. *UN Human Rights Council* (A/HRC/15/21) 22.9.10, pp. 56. The fact-finding mission by the Geneva-based Human Rights Council concluded that "a series of violations of international law, including international humanitarian and human rights law, were committed by the Israeli forces during the interception of the flotilla and during the detention of passengers in Israel prior to deportation." Nine people on the humanitarian mission were killed by the IDF on board the Marvi Marmara and the report says that: "The conduct of the Israeli military and other personnel towards the flotilla passengers was not only disproportionate to the occasion but demonstrated levels of totally unnecessary and incredible violence. It betrayed an unacceptable level of brutality. Such conduct cannot be justified or condoned on security or any other grounds. It constituted grave violations of human rights law and international humanitarian law." See: *http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21_en.pdf*

BAE Systems: a blight on universities and education, Abi Haque. *CAAT News* Issue 218 (October-November) 2010, PP. 6. This piece introduces the Ban BAE campaign, directed at "the world's biggest arms producer. It sells its products indiscriminately to countries with poor human rights records such as Saudi Arabia, Israel, Pakistan and Indonesia. It has been accused of bribery and corruption, and in 2010 was fined £30 million in the UK and $400 million in the US following corruption investigations". The article summarises recent university campaigns. For further information email: *universities@caat.org.uk*

Cities Under Siege: The New Urban Militarism, Stephen Graham. *Verso* 2010, pp. 288 (ISBN 1844673154). Stephen Graham provides an examination of how the mindset prevalent in the military and security industries is transforming the way that cities are perceived, built, used, and controlled. Original research backs up an analysis focusing not only

on cities riven by conflict (e.g. Baghdad, Kabul), but also major Western cities. To protect and increase the reach of the global economy, urban spaces are increasingly perceived as being populated by potential 'threats' that need to be assessed and controlled by a bewildering array of high-tech devices and repressive policies. Useful reading for anyone with an interest in war, militarism, border control, security, social control, and policing.

Convenient Killing: armed drones and the 'Playstation' mentality, Chris Cole, Mary Dobbing and Amy Hailwood. T*he Fellowship of Reconciliation*, September 2010, pp. 20. This report charts the increasing use of drones to launch missile and bomb attacks by the US military in Afghanistan (since 2001), Iraq (since 2002) and Yemen (since 2002), by the CIA in Pakistan (since 2004), by the UK military in Afghanistan (since 2007) and by Israel in Gaza (since 2008). The authors' draw attention to the "Playstation mentality" whereby "the geographical and psychological distance between the drone operator and the target lowers the threshold in regard to launching an attack and makes it more likely that weapons will be launched." However there is an absence of reliable figures on fatalities and casualties since none of the countries involved do body counts of their enemies, although Pakistan Body Count estimates that 50 civilians are killed for every militant. The United Nations has challenged the US and the UK to explain the legal basis of using drones in assassinations and this report optimistically calls for the UK to "address the growing 'accountability vacuum' by making information public about the circumstances of armed drone attacks and the number of casualties incurred." Available as a free download at: *http://www.for.org.uk/files/drones-conv-killing.pdf*

Policing
A Vision for the Future, Gary Mason. *Police Product Review* Issue 40 (October / November) 2010, pp. 30-31. This article examines the "need to develop more intelligent surveillance systems that aim to relieve the users from overload and automatically detect and analyse unusual events and alert human observers only when appropriate." Mason looks at a number of research projects to develop such systems including SAMURAI (which is funded by the European Commission with the objective of interfacing with existing CCTV systems employed widely across Europe), "a next generation CCTV system that will be capable of identifying and tracking individuals who act suspiciously in crowded public spaces." Another example, developed by SELEX Systems Integration, is a close-area security system combining CCTV and radar technology, incorporating Friend or Foe (IFF) application "that is able to distinguish between a genuine intruder and either residual guard forces employed on mobile patrols or friendly response forces called in from outside."

Ci fa vergognare, Gianni Barbacetto. *Il Fatto Quotidiano*, 3.11.10, p.4. This article interviews carabinieri who are deployed as escorts complaining that they have become "taxi drivers for [the PM's] parties", leading to them being "ashamed of ourselves" when they go on missions abroad and their counterparts mock them. "We can't stand it any longer. We did not become carabinieri to guard the PM's escorts", the officers are quoted as saying, as they mention "several" parties and the arrival of an astounding amount of women, or accompanying VIPs to various venues where "maybe they use drugs or break the law and laugh at us, saying: we are safe here, we have the carabinieri to protect us".

Prisons
Access to Justice Denied: Young Adults in Prison. *The Howard League for Penal Reform* 2010, pp. 22. (ISBN 978-1905994-24-3). Report finds that young adults in the criminal justice system are being ignored, creating an "abandoned generation" and makes four recommendations: i. ensuring that legal aid remains available to children and young people in custody; ii. ensuring that Legal Service Officers are appointed in all prisons and that they receive thorough training, including in race and equality issues; iii. promoting access to justice for young prisoners through public legal education and iv. that

legal services for young adults must be young-person-centred and services need to be adapted to their needs. Available at: *http://www.howardleague.org/fileadmin/howard_league/user/online_p ublications/Access_to_Justice_Denied.pdf*

Women in prison: a short thematic review. *HM Inspectorate of Prisons,* July 2010, pp. 81, (ISBN: 978-1-84099-311-0). The report says that there are 4,300 women in the 14 women's prisons in England and Wales (more or less the same number as the previous year) of which almost a third arrive with drug problems and a fifth with alcohol problems. It also found that a third of women feel "depressed or suicidal" on arrival. The problem is worse at local prisons and the report expresses "serious concern" at the relatively high use of force used here. It says: "The extent and seriousness of self-harm, particularly in women's local prisons, remains high, sometimes resulting in extreme measures, including the use of force." There are other concerns: "Three women's prisons were not judged to be sufficiently safe: one had noticeably declined when increased numbers led to the use of a large number of detached duty staff, many of them men. Dormitory accommodation in women's prisons remained highly unsatisfactory, on grounds both of safety and respect. Three prisons were also not performing sufficiently well in resettlement, because services were not sufficiently aligned to the specific needs of women, or of the women who were held. Work with foreign nationals was often underdeveloped, a serious failing given the over-representation of this group within the women's prison population. Many of the issues that affect the prison population generally had a particular resonance for women, given their vulnerability and needs: the lack of sufficient primary mental health care, the need for more alcohol services, and the lack of custody planning for short-sentenced and remanded women." Available at: *http://www.justice.gov.uk/inspectorates/hmiprisons/docs/Womens_The matic_2010_rps_.pdf*

Racism and Fascism

Blood on the Carpet, Simon Cressy. *Searchlight* No. 425 (November) 2010, pp. 12-13. Article on a split in the racist English Defence League, which pitches the northern leadership (under John Shaw) against the south in an argument over the misappropriation of funds, a theme only too familiar among far right organisations. According to the article, Shaw has been expelled by the EDL's "leader", Tommy Robinson (aka Stepeh Yaxley Lennon) and Cressy predicts that the "EDL could find itself in open civil war by the start of 2011."

Rom e non-zingari. Vicende storiche e pratiche rieducative sotto il regime fascista, Luca Bravi. *CISU*, 2007, ISBN 978-88-7975-403-3, pp.75. An interesting booklet that examines the rounding up of gypsies, their containment in concentration camps in the 1940s in fascist Italy, using the camp in Agnone (Molise) in which a re-education programme was set up "to open their heart and mind to a healthy Italian education, so that one day...they may no longer follow in their parents' footsteps", as a starting point. Ranging from the slaughter of gypsies (known as Porrajmos) by the Nazis, with an interesting excursion into the different criteria and approaches used to classify and deal with them in different stages leading up to it, Bravi tackles the issue of whether the notion of the gypsies as a race or as criminals was prevalent, noting that there is a continuum in literature that attributed criminality as a genetic trait of this people. Bravi also explores scientific literature from the period that paved the way for the acceptance of racial laws and measures that targeted gypsies under fascism, posing the matter as a "racial" problem that could not be solved through "assimilation", dispelling the notion that these were basically a result of Nazi influence. Variously described as "vagabonds, layabouts,...wanderers and thieves", the author deems them a "resistance people" that did not and does not accept the social contract through which people become "useful citizens for the state", which identifies them as "antisocial" and tries to organise programmes to "re-educate those who resist", a recurring feature of nation-states. The author notes a lack of acknowledgement of the gypsy's ordeal under the Nazis [and fascists] and shortcomings in historical research of this issue in Italy.

Security and Intelligence

30 False Fronts Won Contracts for Blackwater, James Risen and Mark Mazzetti. *New York Times* 3.9.10. This report details how the infamous private security company Blackwater/Xe Services has "created a web of more than 30 shell companies or subsidiaries in part to obtain millions of dollars in American government contracts after the security company came under intense criticism for reckless conduct in Iraq." It also details how this "reckless conduct", exemplified by the Nisour Square massacre, has been rewarded by the CIA: "The CIA's continuing relationship with the company, which was awarded a $100 million dollar contract to provide security at agency bases in Afghanistan, has drawn harsh criticism from some members of Congress, who argue that the company's tarnished record should preclude it from such work."

Blackwater's Black Ops, Jeremy Scahill. *The Nation* 15.9.10. This article discusses the web of companies spawned by the Blackwater private security company, which was founded by, Eric Prince, and is now known as Xe Services, following its involvement in a series of murders and scandals in Iraq. Focussing on two of these proxies, Total Intelligence Solutions and the Terrorism Research centre, *The Nation* sheds light on the sensitive intelligence and security operations the company performs for a range of powerful corporations (Monsanto, Deutsch bank, Barclays bank, to name a few) and government agencies. "The new evidence also sheds light on the key roles of several former top CIA officials who went to work for Blackwater", the outfit's relationship with the US Special Operations Division, located in Chantilly, VA, and the loss of their government issued Secure Telephone Unit. There is also new information on Blackwater's work for the CIA and JSOC in Pakistan. Available at: *http://www.thenation.com*

Information Commissioner's report to Parliament on the state of surveillance, Charles Raab, Kirstie Ball, Steve Graham, David Lyon, David Murakami Wood, Clive Norris. *Surveillance Studies Network*, 2010, pp. 50. This report finds: "Since 2006 there has been welcome strengthening of the data protection regime, a higher and better informed level of debate and scrutiny of surveillance related developments as well as a renewed political commitment to address the unwanted consequences of existing measures that raise concerns about unwarranted surveillance of the citizen." But finds that "further safeguards are still required with further protection" and recommends: a. Increased adoption of a 'privacy by design' approach; b. Robust privacy safeguards as the default setting when new on line services are offered to individuals; c. A requirement for a privacy impact assessment to be presented during the parliamentary process where legislative measures have a particular impact on privacy; d. An opportunity for the Information Commissioner to provide a reasoned opinion to Parliament on measures that engage concerns within his areas of competence; e. Increased post legislative scrutiny of legislation, based on a formal report on the deployment of the legislation in practice, the value of the information collected, the impact on privacy and the continued need for such measures and e. In certain appropriate circumstances inclusion of a sunset clause in legislation that is particularly privacy intrusive.

Bombe a inchiostro, Aldo Giannuli. BUR, 2008, ISBN 978-88-17-02059-6, pp. 525. A fascinating journey into the history of counter-information in Italy from 1968 through the so-called "years of lead". This in-depth research looks at the success of information campaigns "from below" that sought to belie official information from the institutions, starting from the Piazza Fontana bombing for which anarchists were initially wrongly accused, and a number of events during the "years of lead" in which collusion by sectors of the state's apparatus with right-wing terrorists surfaced. It also looks at its downfall, which stemmed from its failure to acknowledge the existence of "red" terrorism until it was too obvious to ignore. Giannuli uses a wide-ranging selection of official documents and those produced by "movement" sources to shed light on a number of key events and on their repercussions. One of the key successes of Italian counter-information was that society stopped accepting official explanations as the undisputable "truth", seeking alternative explanations when they were not convincing.

CONTENTS

Advance Notice
Statewatch: 20th Anniverary Conference
Saturday 25 June 2011
Conway Hall, Red Lion Square, London
See insert to register

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