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A new player in Security Research: the European Network of Law Enforcement Technology Services (ENLETS)

by Eric Töpfer

Europe's police forces want to increase their influence on European security research policy, but it is doubtful that this will constrain the spread of military technology into civil arenas.

A major source for fattening Europe's emerging security-industrial complex is the EU security research programme (ESRP), which the European Commission will fund with €1.4bn until 2013. The early preparations for this programme were heavily influenced by a few European arms and high-tech industry giants such as BAE Systems, EADS, Thales and Finmeccanica, which were co-opted by a small community of policy makers interested in both Europe's industrial competitiveness and arming European security and defence policy. However, public-private dialogues on the future direction of EU security research have opened the arena to agenda-setters with other backgrounds [1]: academics and research institutions; companies maintaining major infrastructures; national interior ministries and key agencies for civil protection and policing. Police forces felt that they were under-represented in these fora and were worried that their voice would not be heard among a cacophony of interests.

In February 2008, less than one year after the ESRP was officially launched as part of the 7th Framework Programme for Research and Technical Development (FP7) in Berlin, the French Police Cooperation Working Party delegation of the EU Council of Ministers proposed "set[ting] up an informal network of heads of departments responsible for implementing new technologies in police departments." EU member states were invited to submit contacts and join the first networking event on 1 October 2008 in conjunction with the third Security Research Conference (SRC) organised by the French EU presidency in Paris. Twenty-two delegates from 18 nations responded to this invitation to discuss the potential and mission of a "European Network of Law Enforcement Technology Services" (ENLETS). Supported by politicians, national homeland security officials, the European Commission and industry representatives gathering at SRC '08, the delegates welcomed the French initiative for ENLETS as a promising framework to exchange experiences. [2]

However, it took two years and another four meetings until the network developed a work programme. While it was clear from the beginning that ENLETS should facilitate the exchange of information on experiences with new technologies, ongoing R&D projects and "blank spaces", the methods it would use to do this were contested, as was the role of the network in the pre-existing institutional landscape of European security research. In its early formative phase, it was noted that ENLETS should not enter into competition with the European Security Research & Innovation Forum (ESRIF) but instead identify the needs – and potential solutions – of national police forces or groups of states. [3] Discussions focussed on the details of setting up an "electronic bulletin board" for the "systematic pooling of knowledge" [4] and on funding opportunities offered by the European Commission to maintain such permanent infrastructures and pay for travel costs.

Dr Strangelove in Blue?

The tone has changed since ESRIF submitted its final report in December 2009. In the first semester of 2010, the Spanish Presidency proposed to increase the involvement of the European Commission in ENLETS' activities because of its responsibility for defining work programmes for the FP7. The Spanish delegation also lobbied for ENLETS to function as a platform to improve dialogue with suppliers from the "academic world" and industry. These ambitions were endorsed when ENLETS met for the fourth time at the Security Research Conference at Oostende in September 2010. Delegates from 15 countries plus representatives from the Commission, Europol and the EU Border Agency Frontex agreed that ENLETS should not limit its activities to the sharing of experiences and analyses of demands. Rather the network's main objective should be "to find new synergies with the European agencies to avoid overlaps and to point out common goals." Ideas for new projects should be developed and "taken into consideration" by the Commission when drafting FP7 calls for 2011. [5]

One month later ENLETS met again, in Brussels, to hammer out a mission statement:

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Viewpoint: 10 years after the G8 Summit in Genoa see page 17

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

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

The opportunities offered by the new technologies outdate the old investigation methods and often challenge the legal framework in which law enforcement and justice have to operate. Law enforcement agencies therefore have to analyse the impact of technological change in these areas.

Due to the limited size and fragmentation of the market for law enforcement technology, the document also states, "new technology developments are often dictated by suppliers rather than end-users." Therefore, ENLETS should "identify operational security needs" and "participate in security-related research and help as (an end-user) to develop innovative processes and products." As a "proactive group" the network should:

- *raise police awareness in the use of new technologies,*
- *act as an effective platform for exchange of information,*
- *contribute to standardisation,*
- *encourage interoperability,*
- *become a sounding board for the Commission and the law enforcement supply base "by verifying, when asked, whether their work programmes and priorities meet end-users' needs,*
- *become a force for proposals based on expressed end-users' needs, and*
- *help to bridge the gap between the needs of law enforcement agencies and industrial and academic providers of technology.*

Despite these ambitious goals, those meeting in Brussels were well aware that representatives from 12 EU member states were missing. To involve them was seen to be extremely important – not least because the long-term vision is seen as a "formally structured collaboration." Meanwhile, key instruments to organise ENLETS' work are said to be, first, a database with information on needs, relevant projects and their progress reports, a "technology watch" with an events calendar and notices about relevant evaluations and publications, and relevant contacts and documentation on ENLETS itself; second, biannual meetings prepared and chaired by a trio of past, present and incoming EU presidencies. [6]

In January and February 2011, the mission statement and work programme were reported to the EU Council's Law Enforcement Working Party and the Customs Cooperation Party, and all member states were provided with a questionnaire to identify needs and to update or name their contact points for ENLETS. [7] However, the process has not been as dynamic as expected when the optimistic vision for ENLETS' future was drafted by the team in Brussels. In early April, the Hungarian Presidency informed the Law Enforcement Working Party that the deadline for replies to the questionnaire had been extended and that it was considering postponing the next ENLETS meeting because of limited feedback. [8]

Which member states caused these obstacles is unknown. All EU nations, except Romania, Norway, Iceland and Switzerland had appointed "national contact points" by the second ENLETS meeting in Prague in 2009, but delegates from major EU nations such as the UK, Spain and Italy were absent from this meeting (see table). Meanwhile Europol, Frontex and the EU's Joint Research Centre (JRC) have become involved and are expected to contribute to the information exchange. [9]

The reasons for some nations' lack of response remains unclear. Perhaps the initiative is lacking substantial support from national police services, or possibly it is because English is the only working language at ENLETS meetings and no translation is provided. [11] The issue of the Commission's funding of travel costs has not been resolved which might also be decisive in an era of austerity.

Thus, it remains to be seen if ENLETS will evolve into a comprehensive European network with the authority to influence the agenda of European security research policy. Whatever the future of ENLETS is, the launch of the network has enrolled new players in EU security research. Other police factions less obsessed with counter-terrorism and border security but interested in countering crime and public order policing might now raise their voices. [12] However, it is doubtful that this will "civilise" security research. The decision to host ENLETS meetings in conjunction with annual Security Research Conferences and its "partnering events" has contributed to the co-option of ENLETS members by the emerging European security-industrial complex. In ESRP projects such as IMSK, launched in 2009 to develop a mobile surveillance and detection system to protect major events, ENLETS members such as the French Technologies Service for Internal Security (STSI) and the Swedish National Police Board, were developing applications with "internationally recognised defence companies" such as Selex, Diehl and Thales. [13] Thus, it is likely that technologies with military origins such as drones, the plethora of high-tech sensor systems or new generations of command-and-control-centres, will diffuse further into areas of policing.

Endnotes

1. These public-private dialogues were the Group of Personalities (GoP, 2003/2004), the European Security Research Advisory Board (ESRAB, 2005/2006)) and the European Security Research and Innovation Forum (ESRIF, 2007-2009)). See B. Hayes (2009) NeoConopticon. The EU Security-Industrial Complex. Amsterdam: TNI/Statewatch, pp. 9-27

2. Council of the European Union (2008): Doc. 14669/08, 23 October 2008

3, EU Council doc. 6211/09, 9 February 2009

4. After early ideas to utilise CEPOL or EUROPOL platforms for the electronic bulletin board the third ENLETS meeting chaired by the Swedish Presidency in October 2009 in Stockholm opted for services of the Commission's Communication and Information Resource CIRCABC. EU Council doc. 14415/09, 13 October 2009

5. EU Council doc. 16250/10, 15 November 2010

6. Annex to EU Council doc. 16250/10, 15 November 2010

7. EU Council docs. 5760/11, 27 January 2011 and 7181/11, 3 March 2011

8. EU Council doc. 8982/11, 13 April 2011

9. Annex to EU Council doc. 16250/10, 15 November 2010

10. Annex to EU Council doc. 10573/09, 4 June 2009

11. Annex to EU Council doc. 16250/10, 15 November 2010

12. In the ESRAB and ESRIF dialogues police forces from many EU member states had no voice; national interests were represented by industrialists and military officials or others with a similar background. Police forces of member states such as Germany, for instance, were represented by agencies leading in counter-terrorism. In contrast, ENLETS members seem to

ENLETS Members in April 2009 [10]

(* those who took part at Prague meeting on 29-30 April)

COUNTRY	INSTITUTIONAL CONTACT POINTS
Austria *	Bundesministerium für Inneres Österreich I/Büro für Sicherheitspolitik
Belgium *	Commissaire de Police Service d'Appui à la Gestion Contact point for national and international new technologies
Bulgaria *	Communication and Information Systems Directorate Ministry of Interior
Cyprus *	Technical and Scientific Support Department (D) Director of Telecommunications Department
Czech Republic	Police Presidium of the Czech Republic
Denmark	Danish National Police National Investigation Department
Estonia *	Head of Administrative Department Ministry of Internal Affairs
European Commission *	EC DG JLS, Unit F1 Counter8Terrorism & Prepardness
Finland *	Police Technical Centre
France *	Service des Technologies de la Sécurité Intérieure (STSI) Direction Générale de la Police Nationale (DGPN)
Germany *	Polizeitechnisches Institut (PTI) Deutsche Hochschule der Polizei (DHPol) + Referat ÖS I 1, Bundesministerium des Innern
Greece	Technology Division of the Hellenic Ministry of Interior Hellenic Police Headquarters
Hungary	No department or unit specified
Iceland	Director of Finance and IT, Icelandic Police
Ireland *	IT Section, Garda HQ
Italy	Directeur Technique Principal de la Police italienne Ministère de l'Intérieur
Latvia *	Head of European Affairs Unit of State Police Ministry of Interior Republic of Latvia
Lithuania	Informatics and Communication Division at the Police Department
Luxemburg *	Premier commissaire divisionnaire, Directeur Organisation et Méthode et Emploi (DOME) Direction Générale de la Police Grand Ducale
Malta	Malta Police Force General Headquarters
Netherlands	Directorate General for Security Ministry of the Interior and Kingdom Relations
Norway	Head of ICT Division The Norwegian Police Computing and Material Service
Poland *	Wydz. Zaawansowanych Technologii Biuro Kryminalne Komendy Głównej Policji
Portugal	Internal Security Systems
Slovakia	Ministry of Interior of the Slovak Republic Scientific and Technical Development Department
Slovenia	Head of Material and Technical Division, Logistic Office
Spain	Subdirección General de Sistemas de Información Comunicaciones para la Seguridad, Ministerio del Interior
Sweden	Swedish National Police Board Department for Police Affairs

Using false documents against "Euro-anarchists": exchange of Anglo-German undercover police highlights controversial police operations

by Matthias Monroy

Examination of several recently exposed cases suggests that the main targets of police public order operations are anti-globalisation networks, the climate change movement and animal rights activists.

The internationalisation of protest has brought with it an increasing number of controversial undercover cross-border police operations. In spite of questions about the legality of the methods used in these operations, the EU is working towards simplifying the cross-border exchange of undercover officers, with the relevant steps initiated under the German EU presidency in 2007.

In October 2010 [1], "Mark Stone," a political activist with far-reaching international contacts, was revealed to be British police officer Mark Kennedy [2] prompting widespread debate on the cross-border exchange of undercover police officers. Activists had noted Kennedy's suspicious behaviour during a court case and then came across his real passport at his home. Since 2003, the 41-year-old had worked for the National Public Order Intelligence Unit (NPOIU) [3], which had been part of the National Extremism Tactical Coordination Unit (NETCU) since 2003. The NPOIU was formed at the end of the 1990s to surveil anarchist and globalisation groups as well as animal rights activists. NPOIU and NETCU report to the Association of Chief Police Officers (ACPO), but recent media coverage [4] has led to the restructuring of undercover police operations in the UK with the Home Secretary withdrawing NPOIU's mandate to lead. This decision follows on from the disclosure that some undercover officers had used sexual relationships in order to gain trust or extract information.

Kennedy later gave interviews [5] to the *Daily Mail* tabloid newspaper in which he recounted his infiltration activities. He said that he had been issued with tagged mobile phones through which his superiors could locate his position at any time. He "reported back daily" and regularly sent text messages to his employers. He also claims to have received – in addition to his regular salary – annual fees of €60,000 to €240,000 for his activities. Kennedy says he met 20 other undercover officers during his operations of whom five are still active.

Police infiltrators from Britain, Germany and Austria

Undercover police officers are increasingly being exposed, partly due to the publication of a handbook in 2009 [6] and guidelines for handling the exposure of infiltrators published on the *Indymedia* website. [7] After pictures of police officer "Lynn Watson" [8] were published, another police officer, "Marco Jacobs" [9], was outed in January 2010. Jacobs had worked with Mark Kennedy on several occasions. According to comments posted on the UK *Indymedia* platform, Jacobs had been a member of Brighton's anti-capitalist *Dissent!* network until 2005 and took part in protests against the 2007 G8 summit and the 2009 NATO summit. "Jacobs", "Watson" and Kennedy were all active in the international *Dissent!* network, which has played a significant role in mobilising against G8 summits in Europe since 2005, and the NATO summit in 2009. Six days before his exposure, Kennedy had made inquiries to a French *Dissent!* group about mobilisations for the French G20 and G8 summits in 2011.

Simon Bromma, [10] another international police infiltrator, was exposed in Heidelberg, Germany, in December 2010. He was active at the *noborder* camp in Brussels in September 2010, where he had engaged in a public scuffle with Belgian plainclothes police officers, perhaps to provide authenticity to his undercover identity. [11] In five days in Brussels, he sent 25 text messages to a German mobile phone, which the German newspaper *Frankfurter Rundschau* [12] suspects belongs to the Baden-Württemberg *Landeskriminalamt* (regional crime authority). The police officer had taken part in the camp's organisation and was active in 'guarding' its entrance for several hours. This provided him with inside information about participants and visitors, although it is unclear whether he provided this information to the Belgian police. The attempted participation of *noborder* activists in an international trade union demonstration led to unprovoked mass arrests, which a police spokesman described as "preventative." [13]

When Bromma was exposed and confronted, he claimed his infiltration had served an undefined "information gathering and threat prevention" role. The regional interior minister added that Bromma had been tasked to spy on specific activists. [14] Following regional elections in March 2011, the Green Party's internal affairs spokesman offered a student newspaper an explanation for the increasing deployment of infiltrators abroad: he said that regional states governed by the conservative CDU (*Christlich Demokratische Union*) had agreed that police surveillance should focus on "Left-wing extremism." [15] Because the regional government provided so little information on Brommer's assignment, a faction of the *Die Linke* party pressed charges of deception against the police officer [16], saying he had taken part in one of its expert meetings on the future of the university, even claiming travel expenses.

An undefined "threat prevention" was also used to justify a surveillance operation against the Austrian animal rights movement. This involved a Vienna-based police officer, Stefan Wappel, who "controlled" an undercover officer using the false name 'Danielle Durand', who arranged temporary accommodation for activists in Vienna and the Steiermark region. To establish a background story Wappel conducted "internet research and conversations" to find out "how these people think." Intelligence gathered from 'Durand's' infiltration has been used – despite the expressed aim of "threat prevention" – in police investigations. Since March 2010 it has led to the prosecution of 13 animal rights activists [17] under Article 278 of the Austrian Criminal Code ("creation of a criminal organisation"). They were recently cleared on all charges.

Wappel received his orders from a Special Task Force.

'Danielle Durand' provided Wappel with information on planned actions, such as "animal transport blockades or disrupting hunts", by sending text messages and through regular written reports. [18] By using "threat prevention" as justification, the Austrian police were able to circumvent the need for a judge's order as stipulated by the Code of Criminal Procedure in such investigations, and instead organised the operation on the basis of police security law. However, amendments to the Austrian Code of Criminal Procedure that came into force on 1 January 2008 stipulate that undercover operations implemented for "threat prevention" also have to be authorised by a judge. Perhaps that is why the infiltrator was

"cautiously" extracted, as the responsible police chief stated in court.

Questioning of the chief of police in court brought to light details of the surprisingly short training period that undercover police receive. After police school, 'Danielle Durand' had joined the "Office for Undercover Investigations", where she underwent three-weeks of training before attending several advanced training sessions. Infiltrating the animal rights scene, she worked as an undercover officer in the fields of "drugs, counterfeit money and property offences."

Since at least 2002, the police agency Europol has focused on "Animal Rights Extremism" [19] and Austrian Special Task Force officers have participated in conferences on the subject several times a year. "Animal Rights Extremism" also appears in the Europol annual report *TE-SAT 2010: EU Terrorism Situation and Trend Report*. [20] Intelligence "relating to militant animal rights activists" is collected and analysed in the Europol *Analysis Work File DOLPHIN* (domestic extremism). [21] The Council of the European Union also demands a "high level of vigilance and alertness in respect of Animal Rights extremists." [22] It comes as no surprise then that 'Danielle Durand' was also used in cross-border operations. Stefan Wappel accompanied her to international gatherings of animal rights activists in the Dutch town of Appelscha and the Swiss city of Luzern. [23] 'Durand' was also equipped with a modified mobile phone through which, according to her testimony in court, Wappel was listening to conversations in real-time.

The deployment of 'Danielle Durand' abroad was "arranged with the [foreign] authorities." Wappel was responsible for obtaining the necessary authorisations for the cross-border deployment of the undercover investigator, but he claims there are no records of them. In his applications to the relevant foreign authorities, Wappel claimed that there was suspicion of the existence of a criminal organisation – there is no mention of "threat prevention". The Dutch authorities replied that he would have to apply for a new authorisation for each new investigation, while the Swiss authorities stated that the information gathered as a result of the deployment could not be used as evidence in court.

Initiative for the simplification of cross-border deployments of undercover officers

The long-established practice of cross-border police cooperation finds its legal base in the 2000 *Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union*. [24] Cross-border undercover operations are also listed in the *Convention*, although bilateral treaties specify the operating conditions. For example, according to the German government, the deployment or exchange of undercover officers in and from Germany is only regulated with the Netherlands, Austria, the Czech Republic, Poland and Switzerland. The relevant treaties stipulate the length of the deployment and the obligation to report back. The agreement between Germany and the USA on mutual legal assistance also includes a relevant regulation. [25]

While British undercover officers assisted in the infiltration of summit protests in Heiligendamm in early 2007, the German interior ministry, presiding over the EU at the time, initiated a Council Conclusion on "simplifying the cross-border deployment of undercover officers." [26] The Conclusion was adopted in June 2007 and aimed at eliminating legal barriers to the international exchange of infiltrators. It foresaw an initial problem analysis and EU-wide legal measures to intensify cooperation between the Member States. The Multidisciplinary Group on Organised Crime [27] (renamed the "Working Party on General Matters, including Evaluations" in 2010) was mandated to further examine the cross-border deployment of undercover officers.

The German initiative resulted in an EU-wide questionnaire [28] on the relevant regulations in the Member States. In a note to the delegations, the German presidency wrote that past experience had shown that "in certain circumstances, foreign undercover officers may find it easier to infiltrate criminal organisations." [29] Further, their deployment could "reduce the risk of discovery." The initiative has not led to concrete legislation, although the following areas have been identified as in need of regulation:

- the legal regulation of requirements and procedures for cross-border deployment; although deployments are regulated under Article 14 of the Mutual Assistance Convention, it merely enables Member States to reach an agreement bilaterally. The Convention is in force in all Member States except Italy, Greece and Ireland;
- the facilitation of "spontaneous cross-border deployment of an undercover officer" that is not regulated under the Convention;
- which authority should be notified of the intended deployment, what the contents of this notification should be;
- rules on carrying and using weapons and technical equipment, such as tracking devices, cameras or hidden recorders;
- cross-border assistance in providing false papers for undercover officers, such as the "entry of a bogus firm in a foreign commercial register, or opening an account with a foreign bank". These measures could "make a cover story so credible that criminal organisations are more likely to cooperate with the undercover officers".
- the question of judicial order, for instance to authorise entering private homes;
- solving the problem of legal uncertainty by giving foreign undercover officers the same legal status as domestic undercover officers; in Germany, for instance, the foreign infiltrator has the legal status of an informant, which implies they are not authorised to record private conversations with technical equipment; [30]
- the definition of undercover officers as "specially trained officers acting under covert or false identity"; informants who are not police officers will be excluded from any future legal measure;
- the protection of undercover officers' identity during police interrogations or by an examining magistrate, which are not anonymised in all Member States: when preliminary investigations are initiated, undercover officers might be exposed.

EU Working Party evaluates framework conditions for cross-border undercover investigations

In theory no government is allowed to deploy its police forces in foreign jurisdictions without prior consent. According to the German government, [31] "under the territorial principle of international law, the undercover deployment of a foreign police officer in Germany - as every state action of a foreign state - in principle requires the prior notification [of the foreign state] and approval by the relevant German authority". The aim of initiatives for EU-wide standardisation is therefore principally the elaboration of a model agreement for the prior approval by the requested Member State. Joint investigation teams (JITs), [32] which also conduct cross-border undercover operations, will serve as an example here.

The advantage is that within a JIT, judicial orders can simply be transferred to participating police officers from other countries, thereby eliminating a significant bureaucratic barrier. Requests for mutual assistance are also unnecessary. A joint Eurojust/Europol handbook supports JITs and their "informal exchange of expertise." The two EU agencies can be integrated in a JIT at any time or initiate their creation, to the mutual benefit of all participating parties. Europol, for example, can enter the

information gathered in its systems.

The "European Cooperation Group on Undercover Activities" (ECG) is responsible for international communications on the "use and exchange of undercover investigators." Germany participates through the Federal Crime Police Authority (*Bundeskriminalamt* - BKA) and the German Customs Investigation Bureau (*Zollkriminalamt* – ZKA). Its aim is the "professionalisation and coordination in international cooperation of the deployment of undercover investigators." Their main thematic areas are the fight against "organised" and "politically motivated" crime.

According to the German government, the ECG has existed since 2001 and meets annually. Meetings are rotated between ECG Member States. Almost all EU Member States are reported to participate, except Greece, Ireland, Luxemburg, Malta and Cyprus. International organisations such as Interpol or Europol do not attend, neither do "private organisations."

Its informal working groups, however, are not restricted to the EU: its members include Albania, Croatia, Macedonia, Norway, Russia, Switzerland, Serbia, Turkey and Ukraine. The German government says that the ECG is not "part of any national or intra-state institution/authority," and therefore is not subject to EU law. It cannot be controlled by the European Parliament only, at best, by national Member State parliaments. Until the fall of 2010, the group's existence was unknown to internet search engines, and presumably also to parliamentarians and the public sphere.

The "European Cooperation Group on Undercover Activities" held its first meeting in Poland, as an informal "East and West European meeting." A follow-up meeting in Belgium in 2002 consolidated the group. Subsequent meetings have taken place in the Czech Republic (2003), Croatia (2004), Hungary (2005), Germany (2006), Lithuania (2007), Turkey (2008), the Netherlands (2009) and Russia (2010). The meetings facilitated the "presentation of currently national situations" and recurring agenda points were the "presentation of legal, structural and organisational developments" and "information regarding training measures". The German government claims that the group does not deal with the "coordination or regulation of cross-border deployments," although it also says that "international cooperation" is debated through "case studies." Contacts made within the working group will most likely be central to relevant bilateral or multilateral agreements for planned deployments.

In 2003, the ECG instructed a working group to draft a model agreement to better synchronise cooperation between sending and receiving states. Details, such as the fact that foreign police officers are not allowed to commit crimes, will now be made in the form of a standardised Memorandum of Understanding (MoU), which will be signed for each deployment. This document for the "definition of commonly agreed principles for international cooperation" was presented to the ECG in 2004 by police officers from Germany, UK, Denmark, Belgium, Russia and Finland. The MoU also details how a deployment should be justified to the public in case of exposure, or if operations using *agents provocateurs* are possible.

In 2010, the German government confirmed the existence of a Cross-Border Surveillance Working Group (CSW} [33], which includes Europol. [34] The activities of this working group, however, remain obscure: Europol says its aim is "to encourage international cooperation and provide a forum for the discussion and development of safe and effective law enforcement surveillance techniques." The German government, on the other hand, said that it is a "platform for discussion," which aims at contributing to "the development of safe and effective surveillance techniques." However, in a reply to a parliamentary question [35] the government claimed that "expert presentations on cross-border surveillance" were given at the bi-annual CSW meetings with the aim of achieving the "optimisation of working procedures." Alongside the "operative and tactical possibilities", the "legal framework" of various Members States was also presented.

Foreign police officers become "informants"

According to its president Jörg Ziercke, the Federal Crime Police Authority (*Bundeskriminalamt*) acted as an agent in the deployment of the British undercover officers, under the authority of Mecklenburg-Vorpommern and Baden-Württemberg regional police forces, which hosted the G8 and NATO summits respectively. The regional states, however, remained silent on the matter, although Mecklenburg-Vorpommern did say that "Mark Kennedy, or rather, Mark Stone, was dispatched by the National Public Order Intelligence Unit (NPOIU)." [36] An agreement "between the responsible authorities of the British police and the responsible authority of the regional police force of Mecklenburg-Vorpommern" regulated the details; among other items they stipulated that "the operational costs (e.g. travel, accommodation and food costs)" will be reimbursed, and apparently no other payments were made.

The deployment took place on the basis of a "conceptual framework for the implementation of specific coordinated police measures of the regional states and the federal state on the occasion of the German presidency of the G8 in the year 2007 as well as the German EU presidency of the first six months of 2007" [37] which included the "implementation of undercover police operations." A closed meeting of the Committee on Internal Affairs of Mecklenburg-Vorpommern's regional parliament revealed that the conceptual framework recommended the "increased use of infiltrators and the deployment of informants as well as undercover police officers." It stipulated that "in appropriate cases and in the framework of legal possibilities, informants and undercover investigators" should be used. "Deployment modalities" should be coordinated between the regional states and the Federal Crime Authority on the one hand and the foreign authorities on the other, on a case by case basis. "The increased collection of relevant intelligence and the consistent use of preventative police measures" were central to operations.

In Germany, the use of foreign infiltrators appears to take place mainly under the auspices of the regional states. Regional justice and home affairs ministers have passed "Common guidelines on the use of infiltrators" as well as on the deployment of informants and undercover investigators in the framework of criminal proceedings."[38] However, the guidelines do not contain more specific regulations for the deployment of foreign police officers. Nevertheless, the Federal government believes that the guidelines' "general requirements […] in this respect are also authoritative for the deployment of foreign informants in criminal matters." [39]

The German government hereby invokes a ruling by the Federal Court of Justice, which decided in 2007 that a "foreign police officer who is deployed undercover" should be considered to have the status of an 'informant' (*Vertrauensperson*). [40] This means the status of "private person whose long-term cooperation with the police is not known to third persons." However, this decision does not set a precedent; it merely clarifies whether evidence gathered by a foreign police officer could be used in a court of law. Furthermore, the court was referring to a deployment for the purpose of a criminal prosecution - which the German government now seeks to apply to threat prevention. The foreign police officers are therefore bound by fewer regulations than German infiltrators. However, like their German colleagues they are not allowed to use intimate or sexual relationships for the purpose of gathering information because this would violate basic privacy rights ("*Kernbereich privater Lebensgestaltung*"). [41] Even the BKA's internal

guidelines expressly forbid this, and it applies to undercover investigators as well as informants employed by the federal authorities. The German government claimed in May 2011 that it was not informed of any "tactical intimate relationship" in the case of "Kennedy" in Germany.

Federal Crime Police Authority dupes Berlin regional state

While speaking at a closed meeting of the Committee of Internal Affairs of the German Lower House, BKA president Jörg Zierke contradicted himself regarding Kennedy's activities in Germany. [42] It had been assumed that Kennedy was not active in Berlin and, as Ziercke claimed, "did not report" from the city. Despite Kennedy stating in an interview with the British *Daily Mail* newspaper that he had collected evidence (in the form of a "Manual on building incendiary devices and derailing trains"), the BKA president maintained that his presence in the capital served only to support his cover. Kennedy, however, is on record at the Berlin regional crime police authority (*Landeskriminalamt*) accused of having set fire to a dustbin at a demonstration at the end of 2007. He was arrested and preliminary proceedings were initiated, but were later halted. According to Berlin's interior minister, Ehrhart Körting, Kennedy did not inform the state prosecution of his real identity and throughout the whole procedure used his alias, "Mark Stone."

According to Zierke, the Berlin regional state had given "very explicit approval" for the common "action" which was intended to ingratiate the undercover officer to the militant scene. Berlin's interior minister, however, contradicted the BKA version that the state had given "explicit approval." This suggestion, Körting said, had not even been considered by the Berlin regional state at the time. The BKA had obviously interpreted this as an agreement and given the UK National Public Order Intelligence Unit the green light for the operation. Later, the Federal Government used the following wording: the BKA "notified the responsible regional crime police authority about the measures in question." [43] It concedes, however, that a possible arson attempt or other "crimes typical of the scene" were not mentioned.

Zierke also claimed that the "action" proceeded "without an interventionist character or intelligence gathering." The case has stalled because no additional information has been provided by the authorities. The Berlin Green Party intends to press charges because committing a crime is illegal, even for infiltrators. [44] It is still unknown whether Mark Kennedy made unlawful recordings of private conversations. *The Guardian* newspaper reported in June 2011 that Kennedy had made a recording of a meeting preparing the blockade of a power station using a 7,000 EUR Casio watch. [45] In the resulting court case against activists these recordings were concealed from the defence. If Kennedy recorded events in Germany, this could constitute an infringement of privacy legislation, [46] particularly because it was argued that the German deployment was for "threat prevention", rather than criminal prosecution.

According to the BKA president, his department did not receive reports on Kennedy's deployment. During the G8 summit in Heiligendamm, Kennedy and the police controller who accompanied him were integrated into the 'Kavala' special police unit that was set up for the occasion, through a BKA liaison officer. [47] Mecklenburg-Vorpommern alone, says Zierke, requested "three or four" infiltrators from the UK for the 2007 G8 summit, but he claimed to have no details about them. Recently it was revealed that a dozen other foreign undercover investigators were active at the G8 summit, some of them from private agencies.

In order to regulate the legal status of foreign infiltrators, the BKA proposed to the police committees of the annual regional interior ministers' conference (*Innenministerkonferenz der Länder* - IMK) to evaluate the "current practice concerning undercover deployments of foreign police officers in Germany" and "where appropriate develop possible optimisation measures." [48] The proposal will be discussed at the IMK conference in June 2011. In May 2011, the Berlin authority for internal affairs and sports made a proposal to this effect; the decision, however, will not be made public.

Police should act "internationally and conspiratorially"

BKA president, Jörg Ziercke, said that German undercover officers had been active abroad and during summit protests for some time. Five German officers were deployed for the G8 summit in 2005. They were 'borrowed' by the British at the request of the National Public Order Intelligence Unit (NPOIU) "amongst others" for the Gleneagles summit. This type of exchange is common, according to Zierke, and also takes place in the event of "hooliganism, around the World Cup or at other big sports events." According to the Federal Government, police cooperation in the exchange of infiltrators has previously occurred "with the Serious Organised Crime Agency (SOCA), with Her Majesty's Revenue and Customs (HMRC), [and] with the Metropolitan Police (Scotland Yard)". When asked which authority would take the place of the NPOIU, which can no longer coordinate infiltrators after their highly controversial investigation techniques were exposed, the Federal Government claimed it had "not yet been informed of any changes."

The British police launched its own initiative in the deployment of infiltrators at the G8 summit in Germany. According to the BKA president, German police had "received concrete information from within the anarcho-scene – also from Great Britain", that "very serious crimes" were planned. However, "very serious crimes" did not occur at the Heiligendamm G8 summit and the BKA did not indicate that they were to be expected. Zierke's retrospective justification, namely that "more than 400 police officers" were allegedly injured at the opening demonstration in Rostock on 2 June 2007, is also incorrect. This claim has been refuted by journalists and civil society groups – most of the police injuries resulted from its use of teargas. [49] The tautological argument that British undercover officers helped prevent the "threat of attacks" through the "timely identification of potential agitators, including localities" was then given, (i.e. political protest was infiltrated at the earliest stage).

The cross-border deployment of undercover British police officers not only served to infiltrate preparations for the G8 summit protests. If this had been the case, it would be hard to explain why the action to support Kennedy's "credibility", which was condoned by the BKA, took place six months after the summit protests. Ziercke informed the Committee on Internal Affairs that police officers should operate "internationally and conspiratorially" in future. He explained to parliamentary committee members that EU police forces were preparing their infiltrators to target "Euro-anarchists, militant left-wing extremists and [left-wing] terrorists". Zierke identified the "Europeanisation of the anarcho-scene", which apparently includes Greece, Spain, Great Britain, France, Denmark and Germany. The Federal Government added that the "Europeanisation of the anarcho-scene" was visible "in the cross-border posting of letter bombs" or the "transnational coordination of serious attacks."

"We hate it!"

The vocabulary used to describe international summit protesters is enlightening: the absurd term "Euro-anarchists", for instance, is new to German-speaking parts of Europe. The spectre of "Euro-anarchists" was (according to internet search engines)

first introduced by Italy's then interior minister Guiseppe Pisanu 2003 as a "cartel of European anarchist groups." [50] Prime Minister Tony Blair's description of the protests against the G8 summit in Gleneagles in 2005 was similar. [51] "We hate it!" Blair complained to the press, because leaders of the largest industrial nations had to hide behind a fence. Although hundreds of thousands of demonstrators blocked entrances to the conference venue, Blair held "small groups of international anarchists" responsible for the fact that the G8 leaders could not have photographs taken with local villagers. The French interior minister at the time, Michèle Alliot-Marie, created the term "anarcho-autonomous movement." [52] which she claimed had excellent international contacts. This construct served one of the most spectacular waves of repression in recent years [53] against anarchist and autonomous groups in 2008.

The term "Euro-anarchist" has since established itself in Germany. In early June, the Federal Office for the Protection of the Constitution (*Bundesamt für Verfassungsschutz* - BfV) informed several people retrospectively that they had been victims of a telecommunications interception from 2009. [54] The internal intelligence agency referred to them as "Euro-anarchists" and suspected them of being "members or rather supporters of an extreme left-wing circle." Preliminary investigations were initiated because of "indications of serious threats to the security of the Federal German Republic." To date, no legal proceedings have been initiated.

Perhaps the key to undercover cooperation against "Euro-anarchists" lies in existing EU cooperation in security matters at the G8, G20, NATO and COP 15 summits in Gleneagles, Heiligendamm, London, Strasbourg and Copenhagen. This is not implausible: it is common for police chiefs of responsible security authorities to "observe" prior to the event at other summits and exchange "best practices." [55] Brian Powrie, responsible for security at the G8 in Gleneagles in 2005, travelled to the 2004 G8 summit in Sea Island, USA. Knut Abramowski, responsible for security at the G8 summit in Germany, turned to his British colleagues beforehand.

Little is known, however, about the role of France in international undercover police cooperation. Undercover operations that participate with foreign police forces are managed by the *Service Interministériel d'Assistance Technique* (SIAT). It is very likely that the French authorities also deploy infiltrators at international summits or against climate change movements. German-French bilateral police cooperation has received the highest praise. [56] On the occasion of the NATO summit, four undercover investigators were deployed in France.

The role of international police organisations also remains unclear. While the BKA president told the Committee on Internal Affairs that Europol knew of Mark Kennedy, the Federal Government claims it worked "neither with Europol nor with Interpol."

Apparently it is not only EU police forces that cooperate with each other - otherwise it is hard to explain the *Indymedia* report that an FBI infiltrator attempted to make contact with an activist during the G8 Gleneagles protests. Her e-mails were published on the *Indymedia* site: "Greetings from America", a certain 'Anna' wrote, who was instrumental in the arrest of three US environmental activists from *Earth First!* [57] She lauded her fabricated experiences in preparation for the 2004 G8 summit in the USA.

British police officer Mark Kennedy is reported to have an unusually lengthy work visa for the USA (until 2013). Activists travelling though the USA coincidentally met him in New York when he was on his way to a meeting with organisers of protests against the G8 summit in Japan in 2008. Kennedy was also involved in protests against the 2008 Republican National Convention and visited at least one house that was later raided by police. [58]

Cooperation with Russia, also part of the G8, appears to have been unsuccessful because of continuing Cold War sentiments. Even though British undercover police officers "Marco Jacobs" und "Lynn Watson" infiltrated preparations in the UK for the 2006 G8 summit in Russia, they had to abandon their activities in St. Petersburg at short notice, according to the chronology published by *Indymedia*. [59] It is suspected that Russian authorities refused to grant them entry to the country because they were using false documents.

The German Federal Government has refused to provide detailed information on past G8 summits, or the NATO summit in Strasbourg, relating to the sending and receiving of infiltrators. It is therefore impossible to make a political evaluation because "considerations of state security and the protection of basic rights of third persons" supercedes "the right of parliamentary control." [60] This argument criminalises political dissent. Infiltrators and informants operate in "criminal and terrorist milieus […] for the purpose of threat prevention and criminal prosecution," and members of those milieus are characterised "by a high level of state estrangement, criminality as well as potential for aggression and violence." The exposure of undercover operatives real names should be avoided at all cost "as long as *these officers* have not already been exposed to the public, as in the case of Mark Kennedy or rather Mark Stone." In the Kennedy case, however, the UK government has kept its defences up: additional details of Kennedy's deployment remain classified, and when questioned about contradictions in their accounts, explanations are repeated and not clarified. The government also remains silent on the question of the consequences of crimes committed by Kennedy in Germany - according to a parliamentary reply, the "matter" was "discussed with the responsible authorities on the British side."

Zierke maintains that only "praise" was received "from political circles" about the work of infiltrators. When questioned about the source of this "praise," the government back-pedaled [61]: the "praise" referred to the "trouble-free progress," a result of "well-prepared and well-considered police actions." "Specialised crime police forces", such as undercover investigators, are not mentioned "for obvious reasons."

Private use of information gathered in police service

When evaluating the recently published overview of Kennedy's activities there appear to be two main themes [62]: summit protests (against the EU, the G8 and NATO) and campaigns against energy corporations and weapons manufacturers. The latter include the German energy company E.ON as well as Shell and BP.

The exposure of British undercover police operatives provided intelligence indicating the participation of private companies in the infiltration of political movements. According to press reports, Kennedy had spied for the private security firm Global Open, and founded the Tokra Company himself. [63] It is unknown which companies use the services of these private security companies. The multinational E.ON runs a power station that was targeted by Kennedy's later actions, but the company refutes reports about direct cooperation.

According to Kennedy's account, he stopped working for the British police in early 2010. He continued to be politically active on issues such as animal rights, the upcoming French G8 summit and the anti-repression conference in Hamburg. [64]

Kennedy's stay in Iceland during protests against Europe's largest dam project, the Kárahnjúkar Hydropower Plant [65], was particularly questionnable. The plant generates electricity for the US American steel conglomerate Alcoa, which exported its aluminium production to Iceland. It is unclear who instructed Kennedy to travel to Iceland, although it appears that the Icelandic police were not informed of his presence. The new interior minister has ordered the police to report on the matter [66], but the authorities are back-pedalling while denying

collaboration. [67]

In the context of his infiltration of the Icelandic climate movement, Kennedy wrote a chapter for a book on the *Saving Iceland* campaign, which was published by activists. He discussed police deployment: "The Icelandic police had very little experience in dealing with protests compared to police forces in other countries throughout Europe and further afield. They are also thin on the ground, a fact that had repercussions later on." The text is filled with rhetoric and, in retrospect, it is likely that this served to pressurise those employing him to continue to do so: "The environmental destruction that is happening throughout Iceland and beyond will continue to be protested and fought against regardless of police tactics or corporate intimidation." Kennedy also wrote an article on Iceland [68] for the *Earth First! Journal* (published in the USA) under the pseudonym of 'Lumsk.' *Earth First!* is partially classified as a terrorist organisation by the US authorities.

Secret weapon against dissent

Following globalisation protests in Seattle, Genoa and Gothenburg from 2000 onwards, left-wing activists became a cross-border problem for the governments that they criticised. The intensification and regulation of cross-border undercover investigations, which began in 2001, were accompanied by measures for dealing with mass protests at summits. Since early 2000, German police travel with water cannon and several hundred strong police units to summit protests and football matches in France, Austria and Switzerland. The German government expressly supports the use of its databases on known summit protesters at the EU level. [69] This implies that the 'Internationally operating violent-prone troublemakers' (International agierende gewaltbereite Störer, IgaSt) database [70], which holds information on German nationals, would be made available to other Member States, and extended to other national databases. The Upper House of the German parliament passed the relevant decision in 2007. [71]

Europol's 2010 annual *TE-SAT* report [72] comments that "anarchist extremists" were particularly active on issues such as anti-capitalism, anti-militarism and 'noborders.' In other countries, they were also active on environmental issues, climate change and squatting or migration.

On the basis of the information gathered by *The Guardian* newspaper, and Kennedy's statements (although these should be read with great caution), it appears that international police infiltrators are being used to undermine the European networking of anti-capitalist groups and are used by various states primarily at summit protests. It is noteworthy that Kennedy was not only deployed in several foreign countries for summit protests but he also appears to have been deployed in a cross-border context just before or during police raids. If the *Daily Mail* [73] is to be believed, Kennedy's mission in the UK was to secure more severe sentences for activists. Rather than trespass or criminal damage, police investigations would focus on conspiracy – a strategy that has been used internationally against activists since the G8 summit in Genoa in 2001. These more serious charges are used to justify police raids and anti-terrorism investigations.

The same mechanism is applied at the EU level (as well as in Turkey and Russia), where it has been used to justify the Anglo-German exchange of undercover police officers. Using self-fulfilling "risk analyses," a threat is created and a solution (the relevant cross-border apparatus) is brought into play.

Responsible national police forces, such as the German Federal Crime Police Authority, maintain an overview of this international exchange by participating in international structures. They have become – as the German example illustrates – unregulated brokers in cross-border undercover cooperation. Although they have not gained new powers, they work in informal working groups towards the improvement of framework conditions for international deployments. Parliamentary control is difficult because the path through which information is gathered by foreign infiltrators cannot be tracked and detailed information is only accessible through the sending state's parliament. At the same time, criminal prosecution methods increasingly bear the hallmarks of the intelligence services. For example, unlawful "crimes typical of the scene" are regularly committed to create authenticity for the infiltrator, while prosecution of the same offence is merely "discussed in the responsible committees."

Judicial clarification is prevented if it remains unclear to which German authority a relevant legal charge should be brought. In the case of Mark Kennedy.'s arson, for instance, should he be charged, his superiors in the NPOIU, the Association of Chief Police Officers (ACPO), the German BKA or the Berlin regional state?

Gilles de Kerchové, the EU's Counterterrorism Coordinator, believes that cross-border initiatives are insufficient. In his bi-annual "Recommendations" [74] he recently called for "the use of undercover agents or informers, the interception of telecommunications, the investigation of IT systems, the use of tracking devices and other recording equipment placed underneath or inside vehicles moving within the territory of several Member States."

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UK: Arrests, raids and wedding parades

by Chris Jones

The Coalition government's committment to restore freedom and rights i the face of increasing state power is thrown into question by the heavy-handed response to small protests on the day of the royal wedding

We will be strong in defence of freedom. The Government believes that the British state has become too authoritarian, and that over the past decade it has abused and eroded fundamental human freedoms and historic civil liberties. We need to restore the rights of individuals in the face of encroaching state power, in keeping with Britain's tradition of freedom and fairness.[1]

This was the statement made in May 2010 by the UK's Conservative-Liberal Democrat coalition in their *Programme for Government*. It was the quotation that opened the section on civil

liberties, and it was followed by a number of policies the coalition intended to enact. Included amongst these was a claim that 'rights to non-violent protest' would be restored. Very little has been done about this in the time that the coalition has been in power, a theme repeated with many of the other civil liberties commitments made by the coalition. [2] The policing of the recent royal wedding demonstrated the right to non-violent protest is far from protected. More alarmingly, arrests of individuals unconnected to anti-monarchist protests have been justified in the name of 'security."

The proposal

It was made clear by the police and the government from the moment the wedding was announced that security would be paramount. As with all other major public events, the risk of terrorism was cited as requiring a stringent security operation, which led to over 5,000 police officers being deployed in London on the day of the wedding. They were joined by "snipers on rooftops, undercover officers among the crowds and armed police trained to deal with a Mumbai-style terror atrocity in central London." The total cost of this was estimated at £20 million. [3] Stringent security measures of this sort are familiar to many high-profile events, such as visits from foreign dignitaries or major sporting events; next year's London Olympics seems likely to be a security paradise. What was different was the brazen attitude of the police regarding the tactics they would be using.

As the wedding drew closer, the Metropolitan Police openly admitted that they would likely be using pre-emptive arrests - 'proactive raids', [4] in official terminology - to deal with those perceived as a threat. Black-clad anarchists, Islamic extremists and dissident Irish republicans mingled freely in stories documenting the litany of threats to the wedding. The spectre of anarchism was a consistent theme of pre-wedding reporting. [5] Particularly beneficial for the media were the connections they could make between property damage and rioting during protests against public spending cuts in London on 26 March and the potential security risk to the wedding. Although a "Mumbai-style terror attack" was supposedly one of the primary concerns of the police, those subject to pre-emptive arrest seemed to be limited to anarchists and those of a similar radical bent.

The dichotomy between 'good' and 'bad' protestors that has dominated discussions of demonstrations in the last few months was clear during the policing of the royal wedding. Those who had contacted local authorities and police forces to organise 'republican street parties' were left well alone, with intimidation and arrests reserved for the unauthorised "bad protestors." Many of these individuals, however, were not planning to protest against the wedding at all – they simply happen to be politically engaged.

Something blue

The days before the wedding saw widespread use of pre-emptive arrests against potential protestors. A number of operations targeted squats in London. Officers from the Metropolitan Police were dispatched on 28 April, the day before the wedding, to three different locations. At an address in Camberwell 19 people were arrested - for the offence of "abstracting electricity." In Hackney, one person was arrested "in connection with the disorder following the TUC march" on 26 March. Perhaps the most absurd of the three raids took place at a squatted market garden site near Heathrow airport – essentially an eco-village – where the residents were woken at 8am by police officers (clad in full riot gear), who subsequently found no evidence of any criminality and were forced to leave empty-handed.

Neither were such raids limited to the capital city. Officers from the Metropolitan and Sussex police forces acted in concert to raid a squat in Brighton, arresting seven people. [6] A press release issued by the Met after these raids and arrests stated that they were "part of ongoing proactive work to tackle suspected criminality" and were "not specifically related to the Royal Wedding but have been brought forward ahead of the event." [7] Certainly, none of the warrants used in the raids related to the wedding itself. However, the fact that it was deemed necessary to conduct these operations before the wedding would seem to indicate that they were intended to prevent 'suspect' individuals taking part in any protests. The bail conditions given to those arrested – that they were not to enter Westminster, where the wedding took place [8] - only serve to confirm this theory.

Similar conditions were attached to the bail of a number of other people issued with charges in the same week. On 27 April, 12 people were issued with charges related to student protests during December 2010. [9] On 28 April five individuals were charged and provided bail only on the condition that they did not enter Westminster. [10] In total some 90 people received such orders.

Some arrests were more direct, with the police making use of charges related to potential disruption of the wedding. Three organisers of a protest planned to take place on the day of the wedding were arrested "on suspicion of conspiracy to cause public nuisance and breach of the peace." [11] In Cambridge one individual was arrested on the same charges, leading to a demonstration outside the police station in which he was held. [12] In a video of the arrest, it is pointed out to the two officers present that having spoken with the police the day before, the arrestee was told there was no intention of detaining him. [13] Inconsistent seems to be a theme of the policing of 'radicals' suspected of potential involvement in protests at the wedding.

The big day

None of the protests planned for the wedding day were due to take place anywhere near the wedding itself, and the majority of them were intended to be light-hearted attempts to make a point and have fun at the same time. One protest that perhaps unsurprisingly caught the eye of the police was billed as the Royal Zombie Wedding Orgy, with "rumpy pumpy and guillotines."[14] Despit the fact that three organisers had been arrested the day before, a number of others came to the proposed location on the day. The dozen or so people who gathered in Soho Square were met by an equal number of police officers. With no sense of irony, 12 police officers forcefully arrested someone who was singing a song with the lyrics "we all live in a fascist regime," and proceeded to do the same to a number of other people. [15]

A personal account of an arrest posted on the internet makes for disturbing reading. Standing outside Charing Cross train station, a group of people planning to attend a republican-themed street party were questioned by officers from both the British Transport Police and the Metropolitan Police. The group were then handcuffed and taken to a police station several miles from central London. Following this:

> *Four of us were led off the coach to be processed in the police station. We were searched again and had our personals confiscated and details taken. We were not at any point charged with any offence, nor was any indication given that we would be charged with any offence. A senior officer, giving some background to one of the desk officers who were doing the paperwork, explained that we were "anti-royalists" who had been planning to "commit a protest" near the wedding. [16]*

Interestingly, the article also claims that a police officer stated that the Metropolitan police "had been 'rounding people up' in advance of the royal wedding."

Five other people were arrested, again on the charge of "suspicion of planning a breach of the peace", seemingly due to

the fact that they were dressed up as zombies. One arrestee stated that "it is nice to dress up as zombies." [17]

"A threat to democracy"

The day after the arrests the Metropolitan Police Assistant Commissioner Lynne Owens felt free to state that "[w]hen we undertook any action, it was on the basis of intelligence."[18] If the intention of the policing was to ensure that individuals committing or planning to commit criminal acts were apprehended, then it may be suggested that in this instance, 'intelligence-led policing' seems to be something of an contradiction.

However, the balance of evidence seems to suggest that the policing operation was based on a political need to ensure that the event was as tightly-controlled as possible, with no room for 'unauthorised' dissent. The role of police intelligence was not restricted to dealing with individuals planning anything that should be considered an arrestable offence in a society apparently based on "freedom and fairness." Rather, intelligence on individuals and places with an active interest in politics was used to suppress 'dissent' before it even happened – and it is extremely doubtful that many of those arrested were even planning any involvement with anti-monarchist protests. The police publicly stated that the wedding day was to be "a day of celebration, joy and pageantry," and that they would "not tolerate the event being disrupted." [19]

It is likely that the arrests were used to try to obtain more information on the political activities of individuals and groups in which they are involved. During protests on 26March in London, some two hundred people were arrested. Following this, Assistant Commissioner Lynne Owens stated before a parliamentary committee that making so many arrests provided "some fantastic intelligence opportunities." [20]

In the case of the royal wedding, the policing model most frequently associated with international political and economic summits was applied to an event for which there was to be no significant physical manifestation of public opposition. Bob Broadhurst, Metropolitan Police Commander, stated the day before the wedding that "the threat to the wedding is a threat to principals [i.e. VIPs], it is a threat to democracy." [21] However, it seems clear that the policing operation undertaken to protect "democracy" involved the abuse of individual rights and democratic principles. Rather than enforcing the law, the police took on the role of ensuring the veneer of celebration remained in place. These forms of dissent that were tolerated were agreed in advance with the police and local government, and, it is worth noting, made heavy use of union jacks and other patriotic imagery. Anyone stepping beyond these bounds was deemed unacceptable and treated to a day in a cell.

It has been noted by Naomi Klein with regard to police violence that:

> *If protestors are publicly treated like criminals enough, they start to look like criminals, and we begin, albeit unconsciously, to equate activism with sinister wrongdoing, even terrorism. [22]*

The same statement could easily apply to tactics that involve the pre-emptive and speculative arrest of people who have been consistently associated in the press with terrorists. With few exceptions, media coverage of the arrests surrounding the wedding was uncritical of the tactic used, and accepting of the justifications supplied.

Also indicative of the criminalisation of protest groups is the approach taken by the British policing establishment. One of many possible examples is the work of the National Extremism Tactical Coordination Unit (NETCU), which justifies the surveillance and infiltration of protest groups on the grounds that they may be 'domestic extremists', a term for which there is no legal definition. [23] Although NETCU is soon to be disbanded, an analysis of the unit concluded that "it is unlikely that [their] role… will disappear entirely." [24] It may well be the case that such work is absorbed into the proposed National Crime Agency.

Happy anniversary

Following the 2009 protests against the G20 in London, police tactics came in for heavy scrutiny and criticism. Parliamentary enquiries were undertaken, protestors demanded justice, reforms were promised, and a police officer is now due to stand trial on a charge of manslaughter. Two years on, and in the wake of illegitimate, abusive and anti-democratic policing tactics applied to ensure "celebration, joy and pageantry," the response from the public and the press has been far more muted. Such tactics may be less visible and visceral than outright police violence, but they are no less insidious to the rights of individuals.

As for the coalition government's commitment to civil liberties, it too should surely be called into question by such policing operations. It has been commented that the Home Secretary's own commitment to civil liberties is only "skin deep." [25] After one year in office, this seems increasingly to be the case. Indeed, letters from Theresa May to the high-ranking police responsible for the policing of the wedding make no mention of the pre-emptive and specious arrests that took place, nor the closing down of minor, peaceful, protests. Rather, she chose to comment on the fact that "the policing plan worked well, and is a testament to the professionalism and experience of the Metropolitan Police." [26] If this statement a yardstick by which to judge the rest of the government then "the face of encroaching state power" still looms large.

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UK: Collateral damage

Nick Moss

***"All forms of the state have democracy for their truth, and for that reason are false to the extent that they are not democracy"* Marx, *Critique of Hegel's Philosophy of Right* (1843)**

1. The quality of evidence

In February 2010, Ali Dizaei, a commander in the Metropolitan Police, was convicted of the offences of misconduct in a public office and doing acts with the intent to pervert the course of justice. The conviction followed allegations that "in the course of a minor and wholly personal dispute with a civilian he arrested the man for threatening behaviour when he knew there was no justification for doing so, thus abusing for personal reasons the considerable power given to him for public purposes."[1] On 22 and 23 March 2011, Dizaei appealed, relying on "material going to the general credit of the other party to the personal dispute, who was, inevitably, a principal Crown witness at the trial. It is said that it is material which was not available at trial and which is of such a nature that it renders the conviction unsafe." [2] Given that the material consisted of evidence that the witness had lied about his identity and origins and was now known to have committed substantial benefit fraud, it is not surprising that the Court of Appeal judges felt able to conclude that they "simply do not know whether this conviction is soundly based or not. In those circumstances we are driven to the conclusion that it cannot be regarded as safe."[3] However, it should be noted that the Court also observed that: "There is, in this case, a good deal of evidence independent of (the witness)" [4] and it has been the practice of the Court of Appeal in such circumstances time and again to do precisely what they properly refused to do in this case – "attempt to make itself into a jury in order to assess the whole case, on paper and without seeing the witnesses." [5]

In the first appeal by Michael Stone against conviction for what have come to be known as the Chillenden murders, it was revealed that "one witness subsequently retracted his evidence and was shown to be hopelessly unreliable. A second witness...had been paid money by a national newspaper and offered further money if the appellant were convicted." [6] At the subsequent retrial the court heard evidence from a witness Damien Daley about a purported cell confession. At Michael Stone's 2005 appeal, grounds were advanced that new post-trial evidence of Daley's "lies in evidence (about his use of heroin in prison) and his unreliability due to heroin addiction and instability" [7] meant that the defence had been unfairly deprived of a much greater opportunity to demonstrate the bad character and unreliability of the key witness in the trial. Daley had lied on oath about his drug use - which subsequent probation reports revealed had led to a heroin addiction and a dependency on Benzodiazepine in the form of Diazepam and Temazepam. Daley was, the Court of Appeal now accepted, "a hardened criminal, who lied when it suited him and he had, on his own admission, taken every type of drug. He had lied specifically about taking heroin at his first trial, because he thought it had no relevance to the evidence which he gave." [8] Nevertheless, so far as the Court of Appeal was concerned "in the light of Daley's admissions of lying, and about taking heroin, which we have already rehearsed, evidence that he lied to a greater extent than was apparent at the time of the second trial, does not, in our judgment, significantly affect the quality of his evidence."

Karl Watson cannot even get the Criminal Cases Review Commission (CCRC) to accept that the key witness against him is so discredited his case should now be referred back to the Court of Appeal. Watson's case was first submitted to the CCRC more than 13 years ago, when new evidence that had been kept secret from his original trial cast doubt on his conviction for the murder of John Shippey. Watson had originally been excluded from inquiries because he had an alibi. But two years after Shippey's murder he was arrested on the evidence of Bruce Cousins, a mechanic who worked with Watson in the motor trade

but who was wanted by police for other matters. Cousins was found in possession of what was described as a "script" which he had dictated to his 16-year-old girlfriend incriminating himself and Watson in the murder. He said that he saw Watson stab Shippey and then helped Watson dispose of the body. Cousins had mental health problems and psychiatrists had warned he would say anything "regardless of his memory of the facts." One expert was sufficiently concerned about Cousins' mental state and reliability that he alerted the Crown Prosecution Service (CPS). But this information was not passed to Watson's defence lawyers, either at trial or at his first appeal in January 1996, when Lord Taylor, then the lord chief justice, made clear that the conviction stood on the basis that Cousins was "a witness who could be relied upon." Karl Watson rightly contends that he was denied the chance at trial to explore whether Cousins was a fantasist or susceptible to false confession.

In 2005 Harriet Harman QC, then Minister of State at the Department for Constitutional Affairs, wrote to Watson's MP, Richard Ottaway, admitting that the material concerning Cousins' psychiatric state had been withheld from the defence. Then, in 2008, Watson successfully sued his former defence lawyers for negligence in their handling of his case. Mr Justice Owen ruled it "likely" that Watson had been denied a fair trial and ordered that his judgment be made available at taxpayers' expense to enable Watson to "deploy it." His new legal team duly did this – only for the CCRC to decide that although the judge was clearly saying Watson's trial was unfair, he did not express an opinion about whether or not the conviction was safe and his ruling was, therefore, open to interpretation. [9] As Karl Watson puts it "It seems evident to exponents of the Law that just like the truth, sometimes justice is expendable and should not get in the way of a good story."

It might be thought that the discrediting of the witness matters less per se than the status of the Appellant (a commander in the Metropolitan police in the Dizaei case - an ordinary working class man in the other cases detailed).

2. Pseudodialecticos

Most recently, the Supreme Court has tried to decide what constitutes a miscarriage of justice. Jean Luis Vives in his 1520 *Adversus Pseudodialecticos*, railed against the scholastic guardians of the "Christian mystery" for creating a language which formed a private idiom that deployed a meaning of words "contrary to all civilized custom and usage".

The formulation was set out in the linked cases *R (on the application of Adams) (FC) (Appellant) v Secretary of State for Justice (Respondent)*, in the *Matter of an Application by Eamonn MacDermott for Judicial Review (Northern Ireland),* in the *Matter of an Application by Raymond Pius McCartney for Judicial Review (Northern Ireland) (2011] UKSC 18* which concerned the application of the power of the Secretary of State to award compensation to victims of miscarriages of justice pursuant to section 133 of the Criminal Justice Act 1988. That section provides:

> *(1)...when a person has been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice, the Secretary of State shall pay compensation for the miscarriage of justice to the person who has suffered punishment as a result of such conviction.*

In each case the claim for compensation was refused by the Secretary of State, whose decisions were upheld on judicial review both at first instance and on appeal. The common issue that arises in relation to each appeal is the meaning of "miscarriage of justice" in section 133. In the case of Adams there was a second issue, which is the meaning of "a new or newly discovered fact". On 18 May 1993, Andrew Adams was convicted in the Crown Court at Newcastle of the murder of a man called Jack Royal and sentenced to life imprisonment. He appealed to the Court of Appeal and on 16 January 1998 his appeal was dismissed. Some nine years later his case was referred to the Court of Appeal by the CCRC on three grounds. The first, and only material ground, was that incompetent defence representation had deprived him of a fair trial. On 12 January 2007 the Court of Appeal allowed his appeal on this ground. In doing so the appeal judges stated expressly that their decision was not to be taken as finding that, if the failings on the part of the defence lawyers had not occurred, Mr Adams would inevitably have been acquitted. [10]

The issue for the Supreme Court therefore was how to construe a "miscarriage of justice." Section 133(1) reproduces, in *almost* identical wording, the provision in article 14(6) of the International Covenant on Civil and Political Rights 1966, which this country ratified in May 1976 ("article 14(6)" of the "ICCPR"). Lord Phillips focused on what he determined was a material difference between the two:

> *When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law... ("article 14(6)" of the "ICCPR").*

The reference to "a final decision" is accommodated by a provision in section 133(5) which defines "reversed" as referring to a conviction which has been quashed on an appeal out of time or on a reference under the 1995 Act. As the Supreme Court rehearsed, the meaning of "miscarriage of justice" in section 133 received consideration by the House of Lords in *R (Mullen) v Secretary of State for the Home Department [2004] UKHL 18; [2005] 1 AC 1* when rejecting a claim for compensation by Nick Mullen. He had been convicted of terrorist offences. His conviction had been quashed by an appeal out of time, because he had been seized and brought to the UK from Zimbabwe in circumstances that had involved a flagrant abuse of power. It was not suggested that there was any defect in the trial process itself. The House held that in these circumstances Mr Mullen's conviction had not been quashed on the ground of a "miscarriage of justice" within the meaning of section 133. Lord Steyn expressed the view that this phrase only extended to the conviction of someone subsequently shown to be innocent.

The circumstances of the Mullen case clearly troubled the appeal court. Nick Mullen was deported from Zimbabwe unlawfully - he was denied access to legal advice and denied any right of appeal against deportation. He was in effect kidnapped, brought to the UK, tried and convicted. At the appeal, Lord Justice Rose remarked "in our judgment, for a conviction to be safe, it must be lawful; and if it results from a trial which should never have taken place, it can hardly be regarded as safe. Indeed the *Oxford Dictionary* gives the legal meaning of "unsafe" as "likely to constitute a miscarriage of justice"2. [11] The House of Lords determination that "in these circumstances Mr Mullen's conviction had not been quashed on the ground of a "miscarriage of justice" within the meaning of section 133" departed from the logic of the appeal decision. The court observed in setting out the basis for this formulation, ""Miscarriage of justice" is a phrase that is capable of having a number of different meanings."[12] Lord Phillips:

> *In giving the judgment of the Court of Appeal in relation to Adams' case Dyson LJ divided the circumstances in which convictions may be quashed on the basis of the discovery of fresh evidence into four categories, which I shall summarise in my own words.*
>
> *(1) Where the fresh evidence shows clearly that the defendant*

is innocent of the crime of which he has been convicted.

(2) Where the fresh evidence is such that, had it been available at the time of the trial, no reasonable jury could properly have convicted the defendant.

(3) Where the fresh evidence renders the conviction unsafe in that, had it been available at the time of the trial, a reasonable jury might or might not have convicted the defendant.

(4) Where something has gone seriously wrong in the investigation of the offence or the conduct of the trial, resulting in the conviction of someone who should not have been convicted.

These four categories have provided a useful framework for discussion.

It is important to note the content of the arguments and interventions dismissed by Lord Phillips. One in particular should alert us to the intent of the (re) formulation. The law reform organisation JUSTICE, acting as interveners, contended that, in the Parliamentary debates around the clause that was to become s133, Earl Ferrers, then Minister of State at the Home Office, had been asked by Lord Hutchinson of Lullington "the very question that lies at the heart of these appeals." [13]

He contrasted a new fact which resulted in the quashing of a conviction because it raised a doubt in the mind of the Court of Appeal about the safety of the conviction and a new fact which caused the Secretary of State to advise that a defendant should be pardoned because he had been shown to be innocent. Which, he asked, amounted to a miscarriage of justice under the clause? This, he stated, was a crucial point.

Ferrer's response was succinct:

The normal course is to refer cases to the Court of Appeal and to regard its view as binding.

Mr Bailin QC, for JUSTICE, contended that, in accordance with Lord Hope's observations on the use that can be made of parliamentary material in R v A (No 2) [2002] 1 AC 45 at para. 81, this statement binds the Secretary of State to accept that the question of whether there has been a miscarriage of justice must be determined from the judgment of the Court of Appeal in the particular case and that, as the Court of Appeal does not and cannot rule on whether the defendant is innocent, that cannot be the test of whether there has been a miscarriage of justice. However obvious this might seem, Lord Phillips was having none of it. Seeking refuge from the obvious in the French Code de Procédure Pénale and the Travaux Préparatoires of the International Covenant on Civil and Political Rights, he asserted:

It is, I believe, possible to make some more positive conclusions about what it was that the states who were involved in the drafting of article 14(6) were trying to achieve. They were concerned with the emergence of a new fact after the completion of the trial process, including review on appeal. Article 14(5) provides that everyone convicted of a crime shall have the right to have his conviction and sentence reviewed by a higher tribunal according to law. Article 14(6) applies to the discovery of a new fact after that final decision. Compensation was only payable where the new fact demonstrated conclusively that there had been a miscarriage of justice. Thus miscarriage of justice had to be the kind of event that one could sensibly require to be proved conclusively.[14]

This interpretation appears to fly against the Government's view as clearly put forward by Ferrers. For Lord Phillips:

It would have been possible for the contracting parties to have agreed that any person whose conviction was reversed by reason of a newly discovered fact should be given compensation for the consequences of the conviction. This could have been justified on the basis that the reversal of the conviction raised a presumption of innocence and that compensation should be paid on the basis of that presumption. The parties did not take that course. The fact that they did not do so, and the requirement that the miscarriage of justice should be established conclusively, indicates so it seems to me, an anxiety not to agree to an entitlement to compensation that would result in compensation being paid to those who had in fact committed the crimes of which they were convicted, at least on a substantial scale.[15]

This then is the logic of the formulation put forward - the presumption of innocence remains in place until conviction. But reversal of conviction does not restore the presumption. Thus, as we will see, the matter of innocence becomes politicised - it becomes a matter not for, (as per Ferrers) the Court of Appeal, but for the determination of the Secretary of State. For the purpose of s133, the judgement of the courts is displaced by the judgement of the executive.

In Mullen, on the facts, Lord Bingham held that:

It is for failures of the trial process that the Secretary of State is bound, by section 133 and article 14(6), to pay compensation [16]

Lord Phillips at least goes further than this in recognising :

It is not the failure of the trial process that constitutes a miscarriage of justice, but the wrongful conviction that may be caused by it. A wrongful conviction is capable of amounting to a miscarriage of justice whether or not it has been caused by a failure of the trial process. I do not believe that Lord Bingham can have intended to exclude from the ambit of section 133 convictions quashed as the result of the discovery of new facts in circumstances where there has been no failure of the trial process. That, I believe, is the situation with which section 133 is, at least primarily, concerned.[17]

If the decision is one for the executive then whether by failure of process or discovery of new facts, the issue becomes posed in the terms set out by Lord Brown in his dissenting judgement:

"Naturally I recognise that the application of the innocence test will exclude from compensation a few who are in fact innocent. Even on the majority's test, of course, some who are innocent will be excluded. That, however, seems to me preferable to compensating a considerable number (although mercifully not so many as would be compensated on the category 3 approach) who are guilty...Why should the state not have a scheme which compensates only the comparatively few who plainly can demonstrate their innocence – and, as I have shown, compensate them generously – rather than a larger number who may or may not be innocent? That, at all events, is the scheme which in my opinion Parliament enacted here." [18]

It is clear that Lord Phillips intends a more nuanced interpretation than this, but once he departs from the intent expressed by Earl Ferrers (and in so doing restoring to the Secretary of State a power Ferrers in formulating the clause appears explicitly to seek to renounce) the end result will be the same.

Lord Phillips rules that what he has defined as Category 3 and Category 4 cases (as per above) are outside the scope of s 133:

I think that the primary object of section 133, as of article 14(6), is clear. It is to provide entitlement to compensation to a person who has been convicted and punished for a crime that he did not commit. But there is a subsidiary object of the section. This is that compensation should not be paid to a person who has been convicted and punished for a crime that he did commit. The problem with achieving both objects is that the quashing of a conviction does not of itself prove that the

person whose conviction has been quashed did not commit the crime of which he was convicted. Thus it is not satisfactory to make the mere quashing of a conviction the trigger for the payment of compensation (Para. 37)

Re category 4:

As I understand it, the category embraces an abuse of process so egregious that it calls for the quashing of a conviction, even if it does not put in doubt the guilt of the convicted person. I would not interpret miscarriage of justice in section 133 as embracing such a situation. It has no bearing on what I have identified as the primary purpose of the section, which is the compensation of those who have been convicted of a crime which they did not commit. If it were treated as falling within section 133 this would also be likely to defeat the subsidiary object of section 133, for it would result in the payment of compensation to criminals whose guilt was not in doubt." (Para 38)

Re category 3:

The situation under consideration is one where the fresh evidence reduces the strength of the case that led to the claimant's conviction, but does not diminish it to the point where there is no longer a significant case against him. I would not place this category within the scope of section 133 for two reasons. The first is that it gives no sensible meaning to the requirement that the miscarriage of justice must be shown "beyond reasonable doubt", or "conclusively" in the wording of article 14(6). It makes no sense to require that the new evidence must show conclusively that the case against the claimant is less compelling. It is tantamount to requiring the Secretary of State to be certain that he is uncertain of the claimant's guilt. (Paras 39-0)

Lord Phillips then moves to consider Category 1 cases – those where fresh evidence clearly shows that the defendant is innocent of the crimes of which s/he was convicted. In doing so he finally acknowledges (in referencing the debate in the Court of Appeal for Ontario in *R v Mullins-Johnson* 2007 *ONCA 720; 87 OR (3d) 425)* the constitutional importance of the question the issue raises per se:

[A] criminal trial does not address "factual innocence".The criminal trial is to determine whether the Crown has proven its case beyond a reasonable doubt. If so, the accused is guilty. If not, the accused is found not guilty. There is no finding of factual innocence since it would not fall within the ambit or purpose of criminal law. Just as the criminal trial is not a vehicle for declarations of factual innocence, so an appeal court, which obtains its jurisdiction from statute, has no jurisdiction to make a formal legal declaration of factual innocence.

But the "constitutional dilemma" is not the one Lord Phillips foresees. While the court may have no jurisdiction to make a formal declaration of innocence, one would logically assume that the reversal of a conviction restores the presumption of innocence. For s133 it does not - "But the decision whether there has been a miscarriage of justice within section 133 is not for the court but for the Secretary of State. He should have no difficulty in deciding whether new evidence that has led to the quashing of a conviction shows beyond reasonable doubt that the defendant was innocent of the crime of which he was convicted. Where the prosecution has satisfied the jury beyond reasonable doubt that a defendant is guilty, evidence that demonstrates beyond reasonable doubt that he was in fact innocent will not be equivocal." The "constitutional issue" is precisely the politicisation of the notion of "innocence" such that it becomes the property of the executive. The presumption of innocence - *Ei incumbit probatio qui dicit, non qui negat* [19] - as embodied in Roman Law and set out in the *Universal Declaration of Human Rights*, article 11 as: "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which they have had all the guarantees necessary for their defence" - stands thus honoured solely in the breach. Lord Phillips draws up a definition of "miscarriage of justice" which is a muddled combination of Categories 1 and 2 that he sets out as:

A new fact will show that a miscarriage of justice has occurred when it so undermines the evidence against the defendant that no conviction could possibly be based upon it. *This is a matter to which the test of satisfaction beyond reasonable doubt can readily be applied. This test will not guarantee that all those who are entitled to compensation are in fact innocent. It will, however, ensure that when innocent defendants are convicted on evidence which is subsequently discredited, they are not precluded from obtaining compensation because they cannot prove their innocence beyond reasonable doubt.[emphasis added]*

But this purportedly "robust" test will be determined not by the Court of Appeal's decision to reverse a conviction but by the interpretation of that reversal by the Secretary of State.

3. Plastic bags on heads

The issue has greater significance than Lord Phillips' semantic flailings might suggest – and not only for Andrew Adams, whose claim for compensation was thereby rejected as a result of the evasions recounted. The Criminal Cases Review Commission was established as a result of the Runciman Report (the 1991 *Royal Commission on Criminal Justice*). The intent in establishing the CCRC was to depoliticise the issue of miscarriages of justice, by removing the matter of referral to the Court of Appeal from the Home Office to a nominally independent body. We should recall that the Runciman Report was a response to a crisis in the criminal justice system brought about by a series of appeals and the campaigns around them, which exposed a pattern of fitting-up, corruption, brutality, and judicial and political acceptance/encouragement of these. The Guildford 4, the Maguire 7 and the Birmingham 6 won their freedom through the exposure of forensic incompetence, manufacture of evidence and confessions adduced through physical force. There then followed the disbandment of the West Midlands Serious Crime Squad, following 91 documented cases of beatings, plastic bags being placed over heads to induce suffocation, fabrication of evidence, denial of access to legal advice etc. A series of further appeals - the Taylor sisters, the Cardiff 3, the Darvell brothers, the Tottenham 3, had brought the criminal justice system's real face to light.

We now have therefore a system of appeal administered by the CCRC which is designed to remove the issue of miscarriages of justice – and the law enforcement practices which lead to miscarriages of justice - from the realm of the political. Following *Adams, MacDermott* and *McCartney*, the issue of compensation is restored to the domain of the executive - so that the process of overturning a conviction is a matter of administration, but the compensation due is a matter of political judgement - the politicisation of the concept of "the presumption of innocence." The only proper response to this is to seek the re-politicisation of the issue of miscarriages of justice per se: to refuse to submit to the dead hand of CCRC bureaucracy. We should also pause to consider the issue of miscarriages of justice in a wider context. Lord Brown's comment in *Adams* that "Naturally I recognise that the application of the innocence test will exclude from compensation a few who are in fact innocent" recalls that of Lord Denning when the Birmingham 6 pressed charges against West Midlands police in 1977, which were rejected in the Court of Appeal on 17 January 1980 by Lord Denning, as Master of the Rolls sitting with Lord Justice Goff

and Sir George Baker under Issue Estoppel. In his judgment Lord Denning said:

> *Just consider the course of events if their [the Birmingham 6's] action were to proceed to trial...If the six men failed it would mean that much time and money and worry would have been expended by many people to no good purpose. If they won, it would mean that the police were guilty of perjury; that they were guilty of violence and threats; that the confessions were involuntary and improperly admitted in evidence; and that the convictions were erroneous. That would mean that the Home Secretary would have either to recommend that they be pardoned or to remit the case to the Court of Appeal. That was such an appalling vista that every sensible person would say, "It cannot be right that these actions should go any further." [20]*

Clive Walker has suggested that a "miscarriage" means literally a failure to reach an intended destination or goal. A miscarriage of justice is therefore, *mutatis mutandis*, a failure to attain the desired end result of "justice." [22] What if this presumption is entirely wrong? What if miscarriages of justice function precisely as an "intended goal" – the collateral damage of a system that purports to rationality but is in fact entirely irrational; that purports to equality of arms but is rooted in systemic inequality, racism, gender discrimination etc? The symbolic value of the "There but for the grace of god" aspect of miscarriages of justice ought not to be underestimated as a means of enforcing quiescence in working-class communities, serving as the obverse of the oft-parroted "if you've nothing to hide, you've nothing to fear" of the "more CCTV" proponents - that if you insist on being out on the streets, you're only a step away from the plastic bag over the head, and the coin-toss of the "innocence test."

Footnotes

1. Dizaei v R [2011] EWCA Crim 117 para 1
2. ibid para 2
3. ibid para 28
4. ibid para 28
5. R v Stone [2005] EWCA Crim 105 para
6. ibid para 29
7. ibid para 39
8. For further information on Karl Watson's case, see Private Eye no. 1276, 23 November 2010 and insidetime October 2010
9. Marx, Wage Labour and Capital (1847)
10. [1999] EWCA Crim 278 para 66
11. (2011] UKSC 18 para 9
12. qu Lord Phillips ibid para 11
13. ibid para 21
14. ibid para 24
15. R (Mullen) v Secretary of State for the Home Department [2004] UKHL 18; [2005] 1 AC 1 para 8
16. (2011] UKSC 18 para 28
17. ibid para 281
18. "The proof lies upon the one who affirms, not the one who denies."
19. Stephen Sedley A benchmark of British justice The Guardian 6.3.99. Paragraph 15.
20. Clive Walker and Keir Stamer (eds) Miscarriages of Justice (Blackstone Press) 1999 page 39
22. George Tenet "DCI Statement on the Belgrade Chinese Embassy Bombing House Permanent Select Committee on Intelligence Open Hearing", Central Intelligence Agency [22.7.99]

Viewpoint

Ten years after the G8 summit in Genoa [1] by S. Palidda, Genoa University

Ten years on, many people are still trying to understand the reasons for the terrible violence that sections of the Italian police force inflicted on those demonstrating against the G8 summit in Genoa. Asking why is understandable but, to be frank, is not only naive but a cause for concern because it shows they do not realise the extent of the neo-conservative experiment in the management of social and political protest. They fail to recognise that acts of brutality, torture and violations of fundamental rights by a sizeable portion of the police force have become commonplace over the last decade. This may be due to narcotisation, or the "short-term memory" that the media produces.

However, when recalling episodes of police violence, we should also remember other acts of violence carried out against working people. For example, the neighbourhoods afflicted with toxic waste dumps or the residents of Val Susa affected by large public works like the *Gronda* in Genoa, [2] who are anguished by the asbestos the building programme releases into their environment. Let us also recall the blows inflicted on the l'Aquila earthquake victims (who travelled to Rome to protest to the government about the tragedy to which they have been abandoned), or the Sardinian shepherds, the residents of Quirra, or the "No dal Molin" and "No Ponte" campaigners.[3] We should also remember the students, teachers and researchers who education minister Maria Stella Gelmini branded terrorists or quasi-terrorists because they dared to express hostility towards her "reforms." How many incidents of this kind have there been? They do not occur just in Italy - think of the police operations against social and environmental campaigns in Spain, the UK, Germany, France and elsewhere.

There are an endless amount of texts, images, videos, in-depth reports and laws surrounding the Genoa G8 summit (see http://www.processig8.org/). But the research has not been given adequate resources. The considerable funds available for European research are usually directed at *embedded* research to improve military-police repressive capabilities.

The Genoa G8 summit marked a new peak in the neo-liberal/neo-conservative experiment in the violent management of protest in a so-called democratic country (see, Pepino, 2001; Palidda 2001 and 2008, as well as Amnesty, 2001). The imperative was to destroy the momentum which, from Seattle onwards, had fed an international anti-G8 movement that had gained support even among the middle classes and sections of the bourgeoisie. This was unacceptable to an international world order that expects the freedom to use its police forces to crush G8 protests and any other mobilisation expressing dissent. Hence, the Genoa G8 was not an "exception," a unique case or a democratic "incident," it was not just the accrual of an unfortunate coincidence of mistakes and clumsy acts at a wretched juncture; it was the predictable outcome of a multiplicity of acts and behaviours - which may have sometimes been incidental - but were nonetheless conditioned and guided by the game played by strong actors within a framework that, in fact, explains its outcome. Unfortunately, hardly anyone predicted what this *framework*, which has been forged since the late 1970s, would produce. We were already in the context of total war that the neo-conservatives made permanent after 11 September 2001. Thus, it was "normal" for the right, which had gained power only two months before the Genoa event, to consider that it had a "duty" to do more than the centre-left,

(particularly Massimo D'Alema and Gerardo Bianco) [4] had already done.

The RMA (*Revolution in Military Affairs*) also involved a "revolution in police affairs," creating a police-military hybrid that shapes global policing and its practices (see Dal Lago and Palidda, eds, 2010). Hence, demonstrators at the G8 were treated, or likened to, supporters of the "absolute enemy" ("rogue states," terrorists or mafias), rather than peaceful protestors to be negotiated with over mobilisations, as should be the norm in so-called democratic countries. Thus, in Genoa, we found special police units comprised of officers who had already distinguished themselves in the same zone where Italian military personnel had tortured Somalis and where Ilaria Alpi and Miran Hrovatin were slain (see http://www.ilariaalpi.it). These units consisted of police officers who learnt their methods in operations against mafia syndicates and hooligans or during the evictions of Roma people. They were familiar with the use of force and dubious in terms of their professional ethics.

This was accompanied by the militarisation of the terrain, the suspension of the democratic rule of law and a media campaign linking protest to terrorism. Derogation from the rule of law became legitimate, and these derogations included torture. In Italy this is an offence that is liable to incur only a light sentence (with charges such as bodily harm) that when proven is subject to the statute of limitations. Those responsible for acts of torture in Bolzaneto benefited from this, [cf. M. Calandri], as did the Parma "traffic wardens" [5] and the authors of this sort of treatment in prisons, police stations and detention centres, regardless of the so-called "fast trial" (see http://www.osservatoriorepressione.org, Amnesty's annual reports, Palidda, ed., 2010). This asymmetry of power allowed the police forces to go on the rampage without hesitation or fear, certain of impunity if not reward. This scenario remains true today.

Although shared by all countries (power invariably legitimates and directly or indirectly safeguards its praetorian guards to carry out the dirty work needed to protect it), this fact seems more overt in the Italian case. The scandal of the policing of the Genoa G8 summit did not lead the Italian political and administrative authorities to produce even a token scapegoat, despite comparisons between the events at Ranieri barracks in Naples, piazza Manin, the Diaz school, Bolzaneto and Abu Ghraib and Guantanamo Bay. Moreover, police officers responsible for violence have even been promoted to important positions. This procedure, which is reminiscent of a fascist or mafia-run regime, has become customary, further heightening the impotence of those who defend the democratic rule of law.

Although never acknowledged by the respective chains of command, the tactics used by the police at the G8 lacked coordination due to conflicts and competition, particularly between the state police and the *carabinieri* (police force with military status). Each police force pursued its own strategy to crush the demonstrators, some even attacking Catholic pacifists. The freedom granted to members of the *black bloc* was not accidental, and they were able to carry out actions that lacked the justifications proclaimed on its websites. The *bloc's* behaviour served as a means by which to justify the actions of police forces.

After a decade of trials, the *carabinieri* and *guardia di finanza* (customs and excise police) emerged unscathed. As for the media, they supported preparations for the G8 summit by stirring hatred against the "no globals" among the police rank and file and encouraging the fears of conformists. During and immediately after the G8, reports of police violence were given attention; but once the emotion had passed the chorus against violent demonstrators started up again. In the prosecuting magistrate's final address, 25 demonstrators were held responsible for all of the violence and destruction committed at the summit, rather than just the offences for which there was evidence of their guilt. In the final court case, six were convicted and given sentences that ranged from seven to 15 years for acts of destruction rather than violence against people (such lengthy sentences are rare in cases involving killings not to mention serious financial, health or environmental damage caused by white-collar workers). The outcome of the trials served to confirm that the justice system was deferential towards the police forces. Only on appeal was there a partial atonement by some of the investigating magistrates. Ten years on, the trials corroborate the message that the police forces are always right (cf. the legitimate defence ruling on the killing of Carlo Giuliani) and that any violent gesture by demonstrators is unacceptable, even if in response to unlawful violence by the police.

In Italy, this view is so widely held that it attains near unanimity in media outlets and among political parties and opinion leaders. The Italian justice system did not have a word to say about whether the police upheld the democratic rule of law, thus endorsing justicialism (a fascistic theory of government in Argentina under the Peron administration involving government intervention and economic control to ensure social justice and public welfare) in which abuses are carried out "with good intentions." It is the logic of the new champions of "law, order, hygiene, decorum and morality," of zero tolerance to create a conformist citizenry. It strikes at the weak, the first victims of genuine insecurity. It follows the logic of the oxymoron ("just" or "humanitarian wars"), of philosophers descended from Tocqueville who prescribed the extermination of Algerians who were refractory to French civilisation.

In Italy there has never been a liberal-democratic tradition (not to be mistaken for a neo-conservative free trade policy). The left seems to have turned to justicialism and is uninterested in effective democratic control of the police forces, whereas the right is reactionary, defending the police and military powers to the hilt. Most politicians seek to indulge these coercive forces in order to win their favour. Therefore, Italy has little respect for the human rights that are often violated by police forces, which mainly harm the weakest social subjects. It should be noted that so-called victimisation surveys are merely telephone inquiries of a sample that only includes holders of telephone landlines. They are conducted in Italian and therefore the marginalised, the Roma and migrants (especially those termed "illegal"), who are most likely to be victims of abuse and violence, are never "surveyed." None of the questions acknowledge the possibility that an author of a violent act could belong to the police force.

Despite exasperation at the asymmetry of power, the weakening of political representation and the trade unions, there has been a revival in mobilisations in some western countries and even more in other countries, for example the revolutions in Tunisia, Egypt and elsewhere. However, power in the dominant countries appears "armoured" or "immunised" (see, A. Mastropaolo), unaffected by protests thanks to the heightened asymmetry of power that is nourished by a weak parliamentary opposition that is influenced by *think thanks* advocating free trade. Nonetheless, collective dynamics have re-emerged with a growing section of society no longer able to bear the consequences of free trade policies.

Meanwhile, at a supranational level, at a time when there is no single political authority, a "European *gendarmerie*" is being formed (http://www.eurogendfor.eu/, see, A. Iacuelli, http://www.altrenotizie.org/esteri/4005-la-strana-polizia-europea.html). This development has been ignored, not just by the public, but also by parliamentarians. What is of concern is that *Eurogendfor* is not known for its democratic principles or its transparency but is being shaped, despite being a force dependent on a military hierarchy, to carry out a role in managing public order and to intervene against demonstrations and uprisings.

The neo-liberal claim to manage dissent by ruling out negotiations to promote the peaceful management of protest, cannot last. Even those who work in this field realise that the police forces have been distracted from many of their

competencies over the last 20 years. These tasks are indispensable for their survival as social institutions and require a degree of popular support, or at least social neutrality. Without this, the outcome will be an increase in underground economies, tax evasion, work-related injuries and diseases, pollution, environmental mafias, etc. Thus, real insecurity is produced. However, this is concealed by the dominant discourse on insecurity that blames those who are marginalised or "subversive", and who must be persecuted.

This current neo-conservative juncture is destined to end, but it is an illusion to believe that we may be heading towards a new "New Deal" (as Barack Obama's election in the USA led some to believe). What is clear is that it is impossible for the majority of the population to passively suffer the devastating effects of neo-liberal policies. Like in Bourghiba Avenue, Tunis or Tahrir Square, in Puerta del Sol (Madrid) and other European squares, new hope is being primed. The practice of peaceful (although not pacifist) resistance shows that the asymmetry of power can be overturned - albeit partially and temporarily - through mass political action without the need for heroism or extremism, or for leaders and large traditional organisations.

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"Le quattro giornate di Napoli" contro il Global Forum, De

Endnotes

1. This text was first published in Italian in Alfabeta magazine, July 2011. Publication of a more extensive analysis by the author, "Twenty years of distraction of the police forces and justice system from effective protection of the democratic rule of law", is forthcoming from Statewatch.

2. A large motorway project involving extensive works.

3. The first against the expansion of a U.S. army base, the second against a large high-speed railway development in Val Susa in Piedmont.

4. Two leading figures in the centre-left government coalition when a demonstration in Naples was violently repressed in March 2001.

5. By beating him.

Mandatory data retention: update and developments

by Chris Jones

Opposition mounts in Member States and the Council of the European Union decides that in its defence head-

Directive 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks more frequently goes by the name of the Data Retention Directive.

The Directive requires service provider to keep communications data concerning: phone-calls, faxes, mobile phone calls (including location) and internet usage – it should be noted that the monitoring of internet usage also reveals the content.

This highly controversial legislation was passed in 2006, its path cleared by the terrorist attacks in London and Madrid. Both these occasions provided the Council with the opportunity to introduce EU-wide data retention measures.[1] Within the structures of the European Union and its Member States, there is a significant history of law enforcement agencies and their political allies attempting to obtain increased access to the telecommunications data of individuals.[2]

Perhaps the most well-known comment on the Data Retention Directive is that of the European Data Protection Supervisor, who referred to it as "the most privacy invasive instrument ever adopted by the EU in terms of scale and the number of people it affects."[3] This statement reinforced the arguments made by numerous civil society organisations, individuals and politicians.

It is because of the highly invasive nature of the surveillance and monitoring permitted by mandatory data retention that the directive was annulled or suspended by court decisions in several Member States. This has happened in Bulgaria, the Czech Republic, Germany and Romania. Sweden has yet to implement the provisions, and its government's recent decision to postpone implementation for another year puts the administration at risk of being fined up to €68 million by the European Commission. Austria also refused to implement the directive, but after facing the Commission at the Court of Justice in 2010 it has now done so.[4] The Belgian transposition of the legislation is ongoing. A case brought by *Digital Rights Ireland* against the directive is waiting to be heard before the European Court of Justice.

Opposition in Member States

National controversy over the directive has arisen more recently in the Netherlands, where the Dutch Senate approved in July a shortening of the retention period to six months. At the same time, the Senate published its correspondence with the Dutch Minister of Security and Justice on the topic of April's evaluation report on the directive. The Senate considered the evaluation "unsatisfying", "unconvincing" and "disappointing". Noting that the evaluation fails to demonstrate the necessity and proportionality of the retention measures, the Senate asked the Minister explicitly whether the Directive should be withdrawn. The Senate noted furthermore that it was possible for law enforcement bodies to obtain traffic data before the implementation of Directive 2006/24/EC, and thus its blanket retention is both unnecessary and unjustifiable.[5]

In Germany the suspension of the law implementing the Directive has come under fire from a number of conservative MPs, who would like to see "unrestricted data storage". Citing the terrorist attacks in Norway, they argue for the lifting of the ban on data retention as proposed by the EU. Opposing this are MPs who are in favour of a more restricted storage of data. Members of the Free Democratic Party would like to see the storage only of telephone and internet data of "suspects in crime and terror investigations."[6] However, the idea that data retention and greater surveillance of telecommunications will help in the "fight against terrorism" is persistent, and seems to be resonating across Europe. The situation in Norway and the failure of police and security services to prevent the attacks has given rise to a number of arguments for enhanced surveillance of the internet.[7]

At the EU level, there remains a significant lobby opposing any comprehensive re-thinking of how data retention should work, or whether it is necessary at all. A number of Member States are strongly in favour of retaining the Directive as it stands – a recent leaked paper drafted by France, Ireland and the UK states that data retention "has played a key role in maintaining public security throughout Europe."[8] The paper attempts to justify current data retention legislation on numerous grounds, not least through recounting tales of specific cases where retained data has been successfully utilised. Yet it may have been entirely possible to solve these cases without mandatory, blanket retention of all telecommunications information by targeting suspects. Alternative options include a process known as "quick-freeze", whereby law enforcement bodies are able to ensure the retention of specific telecommunications data after an investigation has begun. Those in favour of blanket data retention are quick to dismiss less intrusive options, but a study by the German Parliament "found no practical effects of data retention on crime clearance rates in EU Member States."[9]

Forget statistics, rely on head-line stories

The differences between Member States were reflected at a recent meeting of the Working Party on Data Protection and Information Exchange.[10] Following a presentation by the European Data Protection Supervisor on the Commission's evaluation, a number of Member States "intervened to express their support for the Data Retention Directive, which, in their view, was a necessary instrument in order to effectively combat "serious crime." Other Member States were "less positive" about the Directive, noting the data protection concerns around the legislation, as well as "the lack of comparable data" available to demonstrate the usefulness of retention.

This lack of data may well lead to a minor change of tack in the arguments of those in favour of continued blanket retention. Those wanting to maintain the Directive noted that it is difficult "to provide legal evidence of the necessity/indispensability of traffic data". With this in mind, certain delegations pointed out that:

> *[T]he necessity to store such data could not be argued on the basis of statistical data… the gravity of the offences investigated thanks to traffic data, rather than the mere number of cases in which traffic data were used should receive due attention. Quantitative analysis should be complemented with qualitative assessment.*

In other words, prosecutions for particularly serious crimes in which retained data has been used as evidence will be highlighted, in order to try to convince people of the necessity of an instrument of mass surveillance. It remains to be seen whether the original Directive will be amended or repealed in order to better respect the rights to privacy and data protection provided by Articles 7 and 8 of the European Charter of Fundamental Rights, and the right to privacy outlined in Article 8 of the European Convention on Human Rights. The issue remains on the 18 month programme of the Council, running from 1 July 2011 to 31 December 2012. It is interesting to note that despite a previous Court of Justice ruling that declared provisions relating to the single market were the correct legislative basis for the Data Retention Directive, it is filed under the heading "Internal Security" in the work programme. Moves by legislatures across the globe to introduce various forms of data retention may provide a basis for those in favour of the current arrangement to further argue their point.[11] The challenge for those opposed is to mount a campaign strong enough to overcome these entrenched institutional arguments.

Footnotes

1. European Council, Declaration on Combating Terrorism, 25 March 2004; Declaration on the EU response to the London Bombings, 13 July 2005

2. Statewatch News Online, Europol document confirms that the EU plans a "common law enforcement viewpoint on data retention", May 2002

3. European Data Protection Supervisor, The "moment of truth" for the Data Retention Directive: EDPS demands clear evidence of necessity, 3 December 2010

4. Jan Libbenga, Sweden postpones EU data retention directive, faces court, fines, The Register, 18 March 2011

5. European Digital Rights Initiative, Dutch Senate "Disappointed" With Data Retention Directive Evaluation, 13 July 2011

6. John Stonestreet, German MPs pressure minister on data retention, Forex Yard, 7 July 2011

7. Cyrus Farivar, More online surveillance needed, officials in Europe say, Deutsche Welle, 26 July 2011

8. France, Ireland and the United Kingdom, The Data Retention Directive 2006/24/EC, p.1

9. European Digital Rights, Shadow evaluation report on the Data Retention Directive (2006/24/EC), 17 April 2011, p.7; see also Matthew J. Schwartz, ISP Data Retention Doesn't Aid Crime Prosecution, Information Week, January 28 2011

10. Working Party on Data Protection and Information Exchange, Summary of discussions, 30 May 2011

11. For example, Australia is currently attempting to implement stringent data protection provisions: see Michael Lee, Data retention not a month's work: Telstra, ZDNet, 1 August 2011; in the US, proposals for data retention have been strongly opposed but legislation was recently passed: Declan McCullagh, US House panel approves ISP data retention bill, ZDNet, 29 July 2011

New material - reviews and sources

Civil liberties

Mugsborough Revisited: author Robert Tressell and the setting of his famous book, 'The Ragged Trousered Philanthropists', Steve Peak (SpeaksBooks) 2011, pp. 56. This is a new biography of the author, Robert Tressel, whose seminal novel, *The Ragged Trousered Philanthropist*, was published in 1914. It is authored by Hastings historian, Steve Peak, whose encyclopaedic local knowledge fills many of the gaps in Tressell's biography and gives a location to many of the site's mentioned in the original novel. Published to commemorate the one hundredth anniversary of Tressell's death, this book is a labour of love but also a crucial document of labour movement history. Available for £7.50 (+ £1 post) from 36, Collier Road, Hastings TN34 3JR.

Revealed: US military's scheme to infiltrate social media with fake online identities, Nick Fielding and Ian Coburn. *The Guardian* 16.3.11. This article discusses how the US Central Command (Centcom) "is developing software that will let it secretly manipulate social media using fake online personas designed to influence internet conversations and spread pro-American propaganda." Centcom has awarded a California corporation a contract to develop an "online persona management service" permitting "one serviceman or woman to control up to 10 separate identities, apparently based across the world, at once." Centcom spokesman, Commander Bill Speaks, said that none of the interventions would be in English "as it would be unlawful to "address US audiences" with such technology".

Japanese nuclear power plant explosions and their relevance for the UK, Friends of the Earth. *Briefing* (March) 2011, pp. 5. This briefing paper examines the Japanese earthquake and tsunami and the subsequent damage to a number of nuclear reactors at the Fukushima Daiichi power plant. The organisation, which does not think that nuclear power is necessary or cheap "suggests politicians should take a long cool calm look at the Japanese nuclear accident and think again on whether they should be quite so effusive about the role of nuclear power in the UK. They should ask themselves, and taxpayers, whether they should spend quite so much of our money supporting it." Available at: http://www.foe.co.uk/resource/briefings/japanese_nuclear_explosions.pdf

Immigration and asylum

Detained and Denied: The clinical care of immigration detainees living with HIV, Jon Burnett, Eden Fessahaye, and Anna Stopes. Medical Justice pp. 44 (ISBN 978-0-9566784-1-6). This report presents the findings of an investigation into the clinical care of immigration detainees living with HIV in the UK. The detainees all faced removal to countries where they would potentially be unable to continue treatment. While the UK is the fifth richest country in the world and sees itself as a key partner in the international effort to prevent and reduce HIV/AIDS, this report shows that, contrary to the rhetoric: "the treatment of people detained for immigration purposes has been so detrimental that it may have left them requiring complex clinical care for their HIV infection. UK and ECHR law and policy nonetheless allows for the removal of people to countries where this level of care is unlikely to be available."

Immigration: the Points Based System – Work Routes. Amyas Morse, March 2011, pp36. Deals with the Home Office designed Points Based System for immigration, which the UK Border Agency became responsible for implementing in 2008. It awards points for youth, salary, qualifications and talent, or those "who have most to contribute to the UK". Frances Webber observed: "This brave new world [is] a wonderful world for the young, fit, educated, white and middle-class, [but] is not open to the poor, the sick, the disabled, the old. In Cameron's Britain, as in Thatcher's and Blair's, and in the globalised, privatised, marketised world, those who can't work will find their lives squeezed out to mere existence - just like asylum seekers."
http://www.nao.org.uk/publications/1011/points_based_immigration.aspx

Europe

Report on the Application of the EU Charter of Fundamental Rights. *European Commission* (30.3.11), pp. 11. The Lisbon Treaty legally binds EU institutions to the provisions of the Charter of Fundamental Rights of the European Union. This report covers progress made by the EU in ensuring that "the Charter [is] respected at each-stage of law-making in the EU". This is the first in a series of annual publications. It notes that a major problem is that while the Commission receives a vast number of letters (approximately 4,000 in 2010) from individuals seeking legal redress, around three-quarters of the complainants' problems should be dealt with through national institutions, rather than at European level. It thus makes proposals for ensuring that citizens are more aware of their legal rights and the options available for redress within their own countries. According to the report, the chief concerns in 2010 related to "data protection, access to justice, the integration of Roma and promoting equality". Examples are provided of situations in which the EU has taken action to try and resolve issues in these areas of concern. One of the report's closing statements is that that an annual report will help to "ensure that the EU maintains an impeccable fundamental rights record". Available at:
http://ec.europa.eu/justice/policies/rights/docs/com_2011_160_en.pdf

Law

The proposed changes to Legal Aid and what they could mean for migrants' access to justice. *Migrants' Rights Network* **(**March 2011), pp. 5. The Ministry of Justice plans to substantially cut Legal Aid (the public funding that aims to ensure that everybody can have access to legal advice and representation). Under the proposals, the majority of immigration cases that are not asylum related will be ineligible for Legal Aid funding, as will be other areas of law such as employment, housing and family law. If these proposals go ahead, the changes will have a significant impact on migrants and asylum seekers who need advice and on the groups and organisations that support them. This briefing outlines the impact that the proposed changes could have on migrants, asylum seekers and the community organisations supporting them and provides recommendations on what people can do: http://www.migrantsrights.org.uk/files/publications/MRN_Legal_Aid_briefing_March_2011.pdf

Military

US Army apologises for horrific photos from Afghanistan, Matthias Gebauer and Hasnain Kazim. *Speigel online* 21.3.11. This article reports on a Stryker tank unit which embarked on a campaign of killing against Afghan civilians as part of the US contribution to the War on Terror. Twelve members of the self-styled "kill" team are on trial in Seattle for the murder of three civilians and the case has resulted in the publication of "trophy" photographs in the German newspaper. The

images of US soldiers posing with the defenceless bodies of murdered civilians recalls the photographs of US soldiers at work in Abu Ghraib prison. It should also be recalled that dozens of other photographs of the US military at work (and play) have never been published by the US military because they are considered too sensitive: http://www.spiegel.de/international/world/0,1518,752310,00.html

"Crossfire": continued human rights abuses by Bangladesh's Rapid Action Battalion. Human Rights Watch 2011, pp. 59. The British trained Rapid Action Battalion (RAB) was set up as an elite crime fighting force with members drawn from Bangladesh's military and police. Since its formation in 2004 it has routinely engaged in extrajudicial killings and torture of people in custody, (according to RAB's own figures, the force has gunned down well over 600 alleged criminals since 2004). This report documents the outfit's ongoing human rights violations in and around Dhaka after the current Awami League-led government came to power; nearly 200 people have died at the Battalion's hands since January 2009. The authors call for the death squad to be made accountable or disbanded within 6 month period. This report follows up the earlier Human Rights Watch report, Judge, Jury, and Executioner: Torture and Extrajudicial Killings by Bangladesh's Elite Security Force (2006). Available as a free download at: http://www.hrw.org/en/reports/2011/05/10/crossfire-0

Scrutiny of Arms Export Controls (2011): UK Strategic Export Controls Annual Report 2009, Quarterly Reports for 2010, licensing policy and review of export control legislation. First Joint Report of Session 2010-2011. *House of Commons Business, Innovation and Skills, Defence, Foreign Affairs, and International Development Committees,* 22.3.11, pp. 84. The Committee reviews the UK government's arms export policy, with this report being the first since the coalition government came to power in May 2010. It is noted that "the promotion of arms exports is a key part of the government's business strategy" (p.14). This may help to explain evidence from the rest of the report that indicates an approach to arms exports even less concerned with human rights obligations than that of the Labour government. "Priority markets" for 2010/11 include Algeria, Iraq, Kuwait, Malaysia, Oman, Pakistan, Saudi Arabia and a number of others. There is concern noted that the UK's criteria for arms exports are in fact weaker than the EU criteria from which they are derived, although the government rebuffs this criticism. A section dealing with on-going negotiations at the UN for an international Arms Trade Treaty notes that while the previous government played a "leadership role" at preparatory committees, "the Coalition Government appeared to have stopped performing that leadership role" (p.40), with one witness before the committee stating that the UK's statements perhaps indicate that an Arms Trade Treaty should be more concerned with trade and less with human rights and humanitarian issues. Prioritisation of trade seems apparent from another conclusion that "the Government has failed to demonstrate satisfactorily whether, and if so how, it assesses the risk that individual arms exports may be linked to bribery and corruption during the licence approval process" (p.49). There is further recognition that the coalition's policy on exports to Israel "appears to be confused" (p.52), given that contradicting statements were received by the committee. There is also the rather kindly statement that "both the present Government and its predecessor misjudged the risk that arms approved for export to...North Africa and the Middle East might be used for internal repression" (p.55). Annex 4 provides details of now-revoked export licences to different countries in the region. Available as a PDF at http://www.reprieve.org.uk/static/downloads/2011_03_05_PUB_Export_Control_Report.pdf

The Predator Paradox, Ken MacDonald and **Response: we mustn't ignore the fact that British drones kill too**, Chris Cole. *The Guardian* 6.5.11 and 13.5.11. In the wake of the US execution of Osama bin Laden in Pakistan, MacDonald notes the President Obama vetoed a Predator drone bomb attack on the al Qaeda leader because "the risk that innocents would die in full view of the watching world was too much to contemplate." MacDonald expresses regret at the US president's hypocrisy and asks why he does not apply the same caution to the many innocents killed in Obama's massively escalated use of drone strikes in Pakistan, where civilian deaths have increased massively. In his piece, Cole acknowledges MacDonald's questions over the morality and legality of the US campaign, which is estimated to have killed several hundred innocent people, but also reminds us of the "virtual wall of silence" over the UK's complicity in the indiscriminate carnage: "We do know that between June 2008 and December 2010, more than 124 people were killed in Afghanistan by British drones. We know this not because of any ministerial statement, parliamentary question, or Freedom of Information request, but because of a boastful, off-the-cuff remark to journalists by the prime minister during his last visit to Afghanistan."

The Great Game: the reality of Britain's war on Afghanistan, Mark Curtis. *War on Want* (February) 2011, pp. 28. The NATO-led occupation of Afghanistan is in its tenth year and, as this report observes, has led to many thousands of casualties ("unnecessary collateral damage") and a mounting human rights crisis. The report cites US Lt Col David Kilcullen stating that US aerial attacks on the Afghan-Pakistan border have killed 14 al-Qaida leaders at the cost of over 700 civilian lives. It also reports on the private military and security companies which are profiting from the "privatisation of key sectors of the economy is designed primarily to benefit multinational investors rather than the Afghan people." The report outlines the impact of the war on the people of Afghanistan, whose country had already been devastated by decades of warfare and foreign interference. Finally, it calls for the immediate withdrawal of NATO troops. Available at: http://www.waronwant.org/attachments/afghanistan_the_great_game_war_on_want.pdf

Policing

Facilitating Peaceful Protest. *Joint Committee on Human Rights* 22.3.11, (HL Paper 123, HC 684), pp. 44. The report includes evidence to the Joint Committee on the policing of recent protests and preparations for the Trades Union Congress (TUC) march which took place on 26 March. It expresses concern "about kettling and the use of batons: clearer operational guidance is needed on both of these if the police are to meet their commitment to human rights successfully." It also observes that: "there appears to be no specific guidance setting out the circumstances in which the use of the baton against the head might be justifiable", and expresses surprise at this situation. On the controversial use of undercover police officers in peaceful protest movements, it states: "we asked the Metropolitan Police to confirm that undercover police officers are not being used in the trade union movement. The response to our questions was that the Metropolitan Police are "not in a position to confirm or deny what level of undercover officers will be deployed in the event." The report is available at: http://www.statewatch.org/news/2011/mar/uk-jhrc-report-facilitating-peaceful-protests.pdf

Surveillance Equipment, Mike McBride. *Police Product Review* Issue 42 (April / May) 2011, pp. 27-29. This article reviews new products for police surveillance of public activity covering direct surveillance (optical equipment, thermal images, passive millimetre-wave scanning and combinations of these technologies), Tracking (RFID devices – "As these devices are used on authorised covert operations it would be improper to disclose more information about the here.") and Electronic Eavesdropping (electronic listening devices (bugs) and spycams for transmitting audio and video covertly).

European Police Science and Research Bulletin Issue 4. *European Police College* (Winter 2010/2011) pp. 27. The edition of the quarterly journal of the European Police College contains two particularly interesting articles. The first deals with a training programme in Denmark that "is designed to enhance the policing of major events [where] an approach [is] developed from the latest knowledge on the social psychology of crowds and police good practice". The dominant approach is now based on the idea that crowds adopt "social identity", through which "peaceful crowd members become collectively 'violent' where they find the actions of police illegitimate". Thus, "there is an increased likelihood of perceptions of police illegitimacy emerging among crowds in situations where the police have not been capable of conducting ongoing and dynamic risk assessments". This necessitates the need for increased dialogue between police and crowd, with research suggesting that "the extent to which police can achieve the

proportionate use of force and maintain perceptions of police legitimacy among crowds is increased through dialogue and communication". The Danish East Jutland Police Force has adopted some of the findings of the research and associated training programme. The second article is entitled 'Police Versus Civilians – Growing Tensions in the Dutch Public Domain 1985-2005'. It concludes that both civilians and police have "different perception[s]" of what constitutes proper behaviour. While "civilians...do not tolerate officers who immediately proceed to issue citations, make arrests, or take similar actions", the police "attempt to demand respect through decisive action [and] have become quick to adopt an authoritarian or dominant attitude". Available at: http://www.cepol.europa.eu/index.php?id=science-research-bulletin

Prisons

Young people's views on restraint in the secure estate. Office of the Children's Commissioner and User Voice (March) 2011, pp. 24. This report presents the "stark reality" of some young people's experience of being physically restrained by staff in the secure juvenile estate. The Children's Commissioner recognises "that members of staff in the secure estate can work with some of the country's most troubled children. We are not ignorant of the fact that on some occasions, restraining a child can prevent them from causing harm to themselves, members of staff and other children and young people. However, physical force should only ever be used as a measure of last resort and must be done in the safest possible way. It should be used to de-escalate situations without causing further harm or trauma." He continues: "I was therefore disheartened and concerned to read in the words of the young people who took part in this research some grim personal accounts of their experiences of being restrained. While some understood the reasons why at times restraint was necessary to keep them safe, its use generated both strong emotional responses and bad memories in most participants." Available as a free download at: http://www.childrenscommissioner.gov.uk/

Teenage deaths in custody are needless, Deborah Coles. *The Guardian* 6.5.11. This article discusses the needless deaths of five teenagers in prison custody over a period of five weeks - all apparently took their own lives. Coles, the co-director of INQUEST, argues for "a complete overhaul of the way we treat young people in conflict with the law." She continues: "These latest are not isolated cases. Since 1990 we have seen the deaths of 31 children aged 14-17 and 117 aged 18-19, the majority self-inflicted." Coles calls for a holistic public inquiry into this dire situation, observing that: "The fact that successive governments have not seen fit to hold such an inquiry smacks of unaccountability and makes it impossible to learn from failures that have cost children and young people their lives. We can only hope that the deaths of five teenagers in prison and Young Offenders Institutions in as many weeks, shocks the government into decisive action". Inquest: http://www.inquest.org.uk/

Racism and Fascism

Action undermines far-right ploy to penetrate French trade unions. *Labour Research* Volume 100 no. 4, 2011, p. 8. Article on the how the French extreme right Front National (FN) has created a "national circle for the defence of unionised employees" which it hopes to use to infiltrate the trade union movement by bringing together members who are trade unionists. France's two largest confederations, supported by other union groups, have denounced the FN policy and have acted against individuals standing for the FN in elections. The CGT's general secretary, Bernard Thibault, has argued that the FN "cannot be considered a political party like any other" and that its policies, such as the so-called "national preference", are incompatible with the union's commitment to freedom of expression. The "deeply racist and homophobic" FN is described as "the absolute enemy" by CFDT general secretary, Jean-Luis Malys. *Labour Research* website: www.lrd.org.uk

Unveiling the Truth: why 32 women wear the full-face veil in France. *Open Society Foundation***, (**April) 2011, pp. 178. As part of the At Home in Europe Project (which "examines the position of minority and marginalised groups in a changing Europe"), this report outlines the experiences and opinions of 32 Muslim women in France who wear the full-face veil. Released at the same time as the French law banning face coverings in public places came into force, the main findings are that of the 32 women (30 of whom were born in France, 29 of them are French citizens), "none of the respondents were forced into wearing the full-face veil", and the decision to do so "was made independently by the women". The media attention devoted to the issue in France "encouraged a number of interviewees, especially younger ones, to adopt the full-face veil". The vast majority of women interviewed have "suffered some form of verbal abuse from members of the public", including from other Muslims who have accused them of giving Islam a bad reputation. A minority have been physically assaulted. A number of the interviewees believe that hostility towards their choice of clothing increased after the debate over the full-face veil began in April 2009: http://www.soros.org/initiatives/home/articles_publications/publications/unveiling-the-truth-20110411

On the Brink, Nick Lowles. *Searchlight* No 432 (June) 2011, pp. 8-13. Article on the BNP's "electoral disaster" at May's council elections which saw the far right organisation "losing almost all the council it was defending without gaining any new ones. It was an electoral defeat that leaves [party leader] Nick Griffin clinging onto power by his fingertips and the party on the brink of collapse." The collapse of the BNP's electoral strategy may well presage the return of the "foot soldier" and an increase in racist attacks.

Le Pen, Mightier than the Sword? *The Economist* 7.5.11., p. 37 This article is a short case study of the leadership of the French Front National by Marine Le Pen, daughter of Jean-Marie Le Pen. It notes that she is "an intriguing study in how to make extremist politics marketable". During her time as leader she has attempted to move towards a more PR-friendly image in both appearance and politics, stepping away from outright racism on the surface at least. Her proposed transformation of the Front National into a majority party would "draw not only on anti-immigrant feeling but on latent French Euro-scepticism and disillusion with the elite". *The Economist* concludes that "under scrutiny, many of Ms Le Pen's ideas, when not toxic, are deeply flawed."

Security and Intelligence

"The Rosemary Nelson Inquiry Report", Sir Michael Morland (Chair). The Stationery Office, pp. 505, (ISBN: 9780102971071). Rosemary Nelson, a prominent lawyer and human rights defender, was demonised by loyalists, threatened by police and finally assassinated in a car bomb attack on 15 March 1999. As had been widely predicted, the Moreland Inquiry found "no evidence of any act by or within any of the state agencies we have examined" that "directly facilitated Rosemary Nelson's murder" but did concede that "the state failed to take reasonable and proportionate steps to safeguard the life of Rosemary Nelson". As Amnesty (24.5.11) has pointed out, the government interpretation of these conclusions as meaning that the authorities have been completely cleared of collusion in the killing, is disingenuous: "This response is, sadly, an example of the United Kingdom government glossing over the inconvenient findings of an inquiry and failing to learn fully from the lessons of its past in Northern Ireland." Available as a free download at: www.official-documents.gov.uk

Up to a quarter of US hackers are secret service informers, Ed Pilkington. *The Guardian* 7.6.11. Interesting article which claims that: "The underground world of computer hackers has been so thoroughly infiltrated in the US by the FBI and secret service that it is now riddled with paranoia and mistrust, with an estimated one in four hackers secretly informing on their peers."

Assessing the Effects of Prevent Policing: a report to the Association of Chief Police Officers, Martin Innes, Colin Roberts and Helen Innes (with Trudy Lowe and Suraj Lakhani). Universities' Police Science Institute and Cardiff University (March 2011) pp. 100. In his study Spooked: How not to prevent violent extremism Arun Kundnani described the Prevent programme as "one of the most elaborate systems of surveillance ever seen in Britain." This Cardiff University study was commissioned by the Association of Chief Police Officers (ACPO) and it gives an assessment of the effects of Prevent informed by analysis of the British Crime Survey.

CONTENTS

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Contributors

Statewatch, was founded in 1991, and is an independent group of journalists, researchers, lawyers, lecturers and community activists. Statewatch's European network of contributors is drawn from 17 countries.

Editor: Tony Bunyan. Deputy Editor: Trevor Hemmings. Reviews Editor: Nadine Finch. Lee Bridges, Paddy Hillyard, Ben Hayes, Steve Peak, Phil Scraton, Joe Sim, Mike Tomlinson, Frances Webber, Ida Koch, Catherine Weber, Dennis Töllborg, Francine Mestrum, Kees Kalkman, Christian Busold, Heiner Busch, Peio Aierbe, Mads Bruun Pedersen, Vassilis Karydis, Steve Peers, Katrin McGauran, Yasha Maccanico, Frank Duvell (PICUM, Brussels), Nick Moss, Max Rowlands, Eleanor Rees, Nicos Trimikliniotis, Thomas Bugge, Staffan Dahllöff, Eric Toepfer, Ann Singleton. Liberty, the Northern European Nuclear Information Group (NENIG), CILIP (Berlin), Demos (Copenhagen), AMOK (Utrecht, Netherlands), Kommitee Schluss mit dem Schnuffelstaat (Bern, Switzerland), Journalists Committee (Malta),

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

Tel: (00 44) 020 8802 1882
Fax: (00 44) 020 8880 1727
e-mail: office@statewatch.org