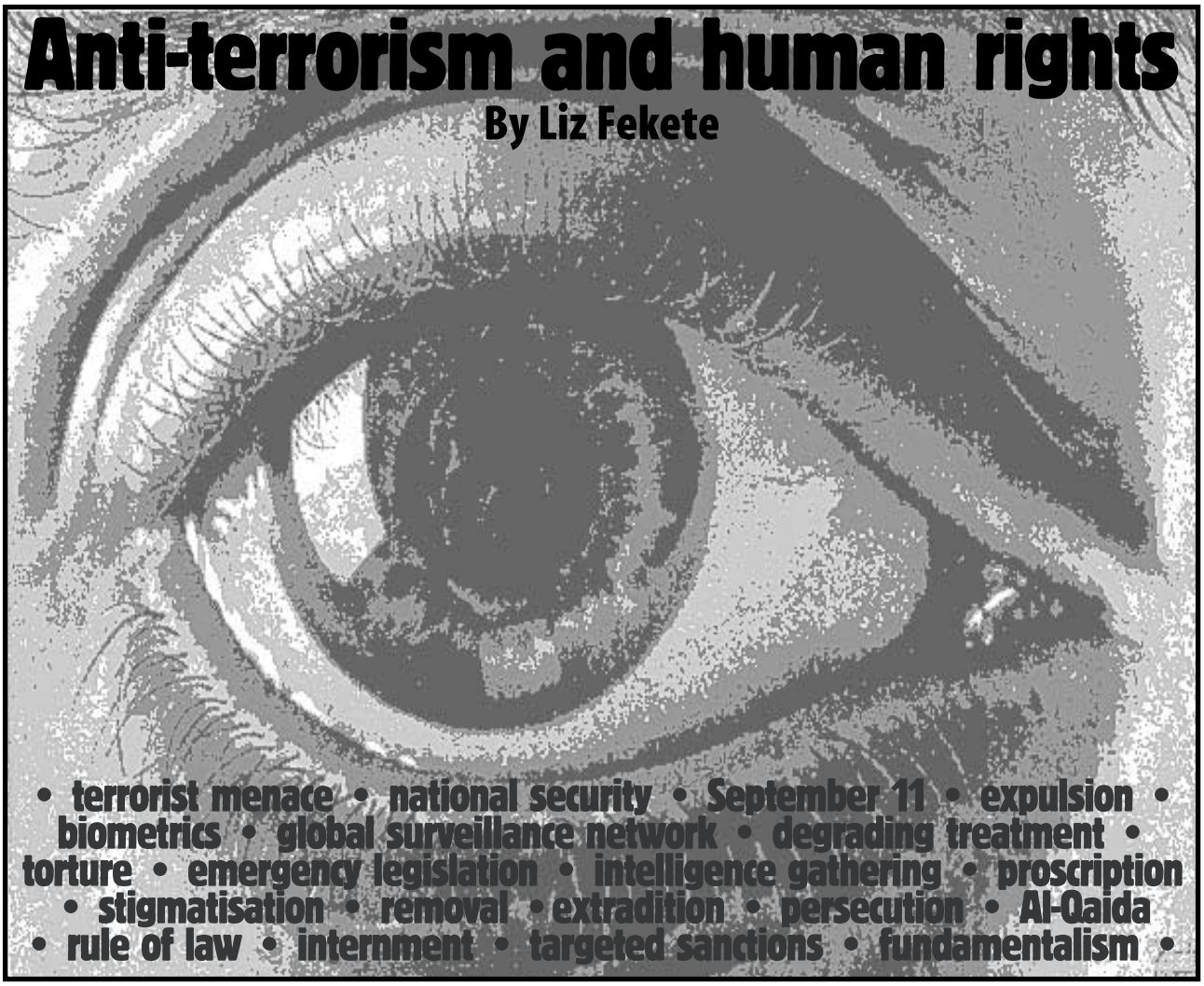
ISSN 1463 9696

Spring 2004 • Bulletin No 47

EUROPEAN RACE BULLETIN

INSTITUTE OF RACE RELATIONS



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Introduction

In 2002, the ERA brought out a major report on the impact of September 11 and the 'War against terror' on European political culture. It argued that European anti-terrorist laws, adopted post-September 11, were breeding a culture of suspicion against Muslims and people of Middle-Eastern appearance, eroding refugee rights and changing the parameters of government policies on race relations and integration. Since then, the US' approach to combating terrorism has come to predominate in the EU. In this, the first of two features, we investigate how anti-terrorist measures have impacted on human rights standards and the rule of law across Europe. The situation that we describe is as of the beginning of March 2004. The next Bulletin will examine the impact of anti-terrorist measures on Muslim and refugee communities and the wider implications for Europe's multi-faith and multicultural societies.

Acknowledgements

This report was written with help from Harmit Athwal, Georgios Antonopoulos, Jenny Bourne, Lee Bridges, Norberto Laguía Causus, Heather Clarke, Isabelle Coutant Peyre, Rhona Desmond, Imogen Forster, Margaret Goff, Trevor Hemmings, Lotta Holmberg, Vincent Homolka, Mieke Hoppe, Magnus Hörnqvist, Simon Katzenellenbogen, Changez A. Khan, Arun Kundnani, Victoria Lowes, Virginia MacFadyen, Nathalie Munn, Louisa O'Brien, Arnaud Vervoitte, Hazel Waters, Anna Wigenmark and Chris Woodall.

I should like to thank staff at Amnesty International and at the offices of Baroness Sarah Ludford MEP and Jean Lambert MEP for their help.

Special thanks go to Frances Webber for legal advice and to Tony Bunyan and the Statewatch staff for information and advice.

ISSN 1463 9696

ISBN 0 85001 065 9

The framework of global security laws*

At the US naval base in Guantanamo Bay on the southern tip of Cuba, eighteen Muslim EU citizens and/or residents are among the 650+ prisoners from thirty-eight different countries detained indefinitely without trial. Classified as 'unlawful combatants' and incarcerated in tiny corrugated metal units with lights blazing 24-hours a day, detainees from the UK, France, Sweden, Germany and Belgium are in a legal 'black hole' – neither soldiers with rights under the 1949 Geneva Convention on the Treatment of Prisoners of War, nor common criminals with a right to jury trial under US law. In the long term, the detainees face the possibility of trial by executive military commissions which have the power to hand down the death penalty. But even the 'resolution' of a military tribunal is not guaranteed. US Defense Secretary Donald Rumsfeld has intimated that the US may decide to detain the prisoners indefinitely, until, that is, the 'war against terror' is over.

The lack of a common EU approach to the US' extraordinary penal colony at Guantanamo Bay disturbs some European parliamentarians. On 30 September 2003, the European Commission, the US mission in Brussels, the Council of Ministers and representatives from member states were invited to a special public hearing organised by a cross-party group of parliamentarians and addressed by the families and lawyers of Guantanamo Bay detainees. There, strong criticism was made of the individualistic approach to Guantanamo Bay taken by most member states. Various governments had sought to negotiate better terms, including the lifting of the death penalty, for their nationals only, raising the prospect that the fate of Guantanamo Bay detainees rests not on the material evidence against them, but on the privileging of the detainees' nationality.[1]

Baroness Sarah Ludford MEP, the Liberal Democrat justice spokeswoman, has also warned that the EU's lack of a united response to Guantanamo Bay makes 'a mockery of common European external and internal justice and security policies'. Below we place the issue in the context of the incorporation into European law and practice of a global approach to combating terror which privileges US definitions of terror and runs against the grain of the EU's Common Foreign Security Policy (CFSP). For its objectives are 'to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principle of the United Nations Charter' and 'to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms'.

An interlocking world-wide anti-terrorist system

Post-September 11, the UN was put under enormous pressure by the US to act decisively against the terrorist menace that threatened the US by adopting a range of extraordinary anti-terrorist measures that would become obligatory for all UN member states. The formation of the US-led coalition against terrorism, initially to hunt down Osama Bin Laden and eradicate Al-Qaida in Afghanistan, was the beginning of an interlocking system of national, sub-regional, regional and international structures within a new UN global sanctions regime. In effect, national security concerns were made subservient to a global security regime.

Fundamental to the new global security regime was United Nations Security Council Resolution 1373 (UNSCR 1373). Passed on 30 September 2001, UNSCR 1373 effectively established UN jurisdiction over national security laws. It imposed, for the first time, an obligation on states to take a broad range of measures to prevent and suppress the financing of terrorist acts, to freeze and seize funds used for terrorism, to assist one another in related criminal investigations and to 'enhance the co-ordination of efforts, nationally and internationally' to strengthen the 'global response' over threats to international security. The Security Council also established the Counter-Terrorism Committee (CTC), chaired by the UK, to monitor the compliance of member states with UNSCR 1373. States were given no more than 90 days to report on action taken. The CTC instigated

* The focus of this report is the EU but, as EU anti-terrorist policy is being adopted by the EU's neighbours, the situation in other European countries is also considered.

The UK has been accused of setting up its own version of Guantanamo Bay in Belmarsh prison in south-east London and Woodhill prison near Milton Keynes where fourteen foreign nationals have been detained without trial. In December 2003, a cross-party group of privy counsellors set up by the home secretary to review the counter-terrorism laws called for part four of the Anti-Terrorism Crime and Security Act 2002, which allowed for the indefinite detention of terror suspects without charge, to be scrapped. The detainees have been charged with no crime; are unable to see the intelligence evidence against them; and are confined to their cells for up to 22 hours a day. The government used emergency legislation against them because it had insufficient evidence to mount a prosecution.

Lawyers for the men, who are all refugees, of whom some are torture victims, say they have been pushed 'beyond the limits of human endurance'. Most of the men have been on anti-depressant drugs for more than a year. Their families fear some may not survive the indefinite detention without trial. Two of the men are seriously disabled. The mental health of one North African man in his thirties, who suffered from polio since childhood, has deteriorated so much that he can no longer recognise or communicate with fellow inmates. The prison authorities have refused him a wheelchair and inmates' offers to carry him to classes and prayers have been rejected. The second disabled man is North African, he has no arms, and has to be helped by a fellow prisoner to carry out everyday tasks. A Palestinian detainee, Abu Rideh, was transferred to Broadmoor high security psychiatric hospital after trying to kill himself over a year ago, and has been there ever since.[2]

an immediate review of all measures taken by states to counter the financing of terrorism, and progress in ratifying existing international conventions and protocols against terrorism.

Thus, UNSCR 1373, which ensures that anti-terrorist measures taken by individual nation states are locked into one overall system, had immediate consequences within Europe. In December 2001, the Council of the European Union (members of the fifteen EU governments), under pressure from the US, rushed through both a 'framework decision' and a 'common position' on combating terrorism. The framework decision on combating terrorism comprised an instruction to member states to include as terrorist offences a number of acts which could 'seriously damage a country or international organisation'. The common position on combating terrorism comprised an instruction to member states to prevent the public from 'offering any form of support, active or passive' to 'entities or persons involved in terrorist acts'. Both the framework and the common position were then incorporated into the law of member states leading to the introduction in some of emergency legislation and new anti-terrorist laws, while others preferred to amend existing public order, criminal justice and aliens legislation and extend police powers.[3] Crucially, the EU's new definition cited as terrorist, acts that were already criminal offences in the member states, thereby opening up the possibility of exercising state power unimpeded by normal legal procedures.

While the extension of anti-terrorist laws in Europe was a direct consequence of UNSCR 1373, it did not stipulate just who or what constituted a terrorist threat. But on this the EU has been influenced by other global trends.

For the new global consensus on terrorism argues that the greatest threat to international peace emanates not from states but from organisations, entities and associated individuals. This approach was set in motion prior to September 11 by the US. In 1996, in response to the Oklahoma bombing of 1995, the US brought in the Anti-Terrorism and Effective Death Penalty Act (AEDPA) which created blacklists of Foreign Terrorist Organisations (FTOs), the assets of which would be frozen. The AEDPA also blocked travel for any members or supporters of FTOs and criminalised any form of material support for an FTO which could include financial assistance, lodging or provision of expert advice or assistance. Other terrorist lists maintained by the US included the lists of Specially Designated Global Terrorists (SDGT) and Specially Designated Terrorists (SDT) which were both implemented under the International Emergency Economic Powers (IEEP) Act of 1995 and are maintained by the US Department of the Treasury Office of Foreign Assets Control (OFAC). SDGTs list individuals and entities with a suspected connection to an FTO, while the SDT list is specially oriented toward any person – individuals or entities – who threaten to disrupt the Middle East peace process.

Then, as Al-Qaida targeted US embassies in Kenya and Tanzania in 1998, the US appraisal of the terrorist threat began to saturate UN thinking, with the UNSC considering again its brief under the UN Charter. (Article 24 (1) of the Charter, gives the UNSC primary responsibility for the maintenance of international peace and security and authorises it to issue sanctions against states deemed a threat

to, or breach of, the international peace.) The salient question facing the UNSC was how the UN charter could be applied to non-state actors, now deemed the greatest threat to international peace.

The first shift in the UNSC's approach towards targeted sanctions against non-state actors was in Resolution 1267 (1999), which established the UN Sanctions Committee on Afghanistan to impose economic sanctions on the Taliban government for failing to surrender Osama Bin Laden who was already, prior to September 11, facing indictments in the US. This was followed by Resolution 1333 which allowed this newly-established Sanctions Committee to identify individuals and entities associated with the Taliban government and Al-Qaida so that 'targeted sanctions' could be applied against these individuals and entities directly. UN member states were instructed to freeze funds and other financial resources and assets of the individuals and entities listed by the Sanctions Committee and 'to bring proceedings against persons and entities within their jurisdiction that violate the measures imposed and to impose appropriate penalties'.[4] Targeted sanctions, as maintained by 'The UN Consolidated List of Individuals and Entities belonging to or associated with the Taliban and Al-Qaida organisation as established and maintained by the 1267 Committee' are legally binding under international law upon all member states. In order to ensure compliance, member states are instructed to amend national legislation accordingly. For EU countries this process is initiated by the Council of the European Union. It delegates powers to the European Commission to amend and implement the list of names from the UN Sanctions Committee in accordance with the decision of the UN Security Council. This is done through European Commission Regulations that take immediate effect in EU states. Hence, in June 2002, the Council of the European Union, issued a list of persons, groups and entities which would henceforth be subjected to specific measures to combat terrorism. This involved 'the unquestioning transposition into EC/EU law of the UN Sanctions Committee on Afghanistan's proscribed list of terrorists'.[5] The UN consolidated list of individuals and entities linked to the Taliban and Al-Qaida is regularly updated, ostensibly on information provided by governments and regional organisations. The EU list has been updated eight times,[6] but the names of organisations, individuals and entities added to the list go well beyond a network associated with Al-Qaida (see Section 2).

The US influence on UN and EU counter-terrorism measures

In fact, the Sanctions Committee on Afghanistan's proscribed list of terrorists seems to be based largely on US Terrorism Sanctions and Executive Orders as issued by the US Department of the Treasury Office of Foreign Assets Control (OFAC). It appears that the US Treasury Department names an entity or individual as a Specially Designated Global Terrorist (SDGT) and then faxes that information through to the UNSC Sanction Committee which then amends its list accordingly. It is a process which has, in the past led the UN Sanctions Committee to effectively 'rubber-stamp' US anti-terrorist blacklists, according to a prominent European legal expert.[7] But the EU can equally be accused of following the US in all areas of counter-terrorism. Soon after September 11, the Council of the European Union published an 'Action Plan on Counter-terrorism measures' updated in November 2002 in its 'Road map of all the measures and initiatives to be implemented under the Action Plan'. These stressed close collaboration with the US on all aspects of combating terror and acknowledged that the key EU objective was to strengthen its partnership with the US. To this end, experts on the EU's Second Pillar Working Party on Terrorism (COTER) meet US experts every quarter to analyse regional terrorist threats and decide what technical anti-terrorism assistance to give to other countries.

By June 2003, when the time of the first EU-US summit after the Iraq War was held in Washington, the EU was united, in public at least, in its support for the US approach to combating terror. A draft EU Security Strategy compiled by EU High Representative for Common Foreign Security Policy Javier Solana[8] was cited at the summit as evidence of the EU desire to work closely with the US on weapons of mass destruction, and 'failed states', with the EU promising to take its share of responsibility for global security.[9] The Washington summit also saw the signing of the EU-US Agreement on Mutual Legal Assistance (MLA) and the EU-US Agreement on Extradition whereby the EU agreed to hand over terrorist suspects to the US. These two documents were acknowledged by the EU as 'unprecedented agreements with the US. towards joint and complementary co-operation',

Over Christmas/New Year 2003/4 the UK and France grounded or delayed a number of transatlantic flights after the US Secretary of Homeland Security, Tom Ridge, put the US on a 'high risk' of terrorist attack. The French interior ministry revealed that American intelligence based its suspicions on passenger surnames alone. This led to a child with a name similar to a Tunisian terrorist suspect, a Welsh insurance agent and an elderly Chinese woman restaurant owner being questioned by counter-terrorist officers when several flights from Paris to the US were cancelled shortly before Christmas. Three other 'suspects' who were questioned were French citizens with Arab-sounding names. All the 'suspect' names, supplied by the US, were found merely to be homonyms – ie similar in sound or spelling – of wanted Al-Qaida activists.[10]

covering a 'wide range of areas, in particular: intelligence, law enforcement, judicial co-operation and transport security'.[11] The European Commission has committed European airlines to an agreement whereby US customs will have access to data on all passengers who travel to, from or through the US. European airlines must now give data to the US from Airline Passenger Name Records which includes information on forms of payment, address (including email address) credit card numbers and dietary requirements. According to *Statewatch* editor Tony Bunyan, the EU's data protection laws have served 'as a model for many countries around the world', while the USA 'has no data protection laws and no intention of adopting them'.[12] The introduction of biometric data stored in a chip on EU passports to allow foolproof identification through fingerprints, iris scans and facial recognition (which was already being discussed in the EU) has now been introduced at US behest. The US Enhanced Border Security and Visa Entry Reform Act (2001) requires all foreigners entering the US from visa-waiver countries to carry a biometric passport. Civil liberties lawyer Gavin Sullivan concludes that the aggressive role played by the US government in forcing other countries to create an 'interoperable global surveillance network' represents 'a massive extension of the policing and surveillance space of the United States into the European geopolitical terrain'.[13]

The protection of personal data is of fundamental importance to a person's enjoyment of his or her right to respect for private life which is protected by article 12 of the Universal Declaration of Human Rights, article 17 of the International Covenant on Civil and Political Rights and article 8 of the European Convention on Human Rights and Fundamental Freedoms. Storage, use and disclosure of information regarding individuals' private life, in particular medical information, is an interference with that right which must be justified by overriding requirements of public interest. (Z v Finland 1997)

How targeted sanctions work

The previous section showed how the EU's approach to combating terrorism was formulated in response to US-inspired global security laws and regulations. A key element of the global security regime is targeted sanctions. Here we examine the impact of such sanctions on organisations, communities and individuals in Europe and question whether adherence to a global system of targeted sanctions is compatible with independent EU foreign and security policy.

No clear definition of international terrorism

Targeted sanctions can now be invoked against organisations, individuals and entities. There is nothing new in European countries targeting organisations for specific sanctions. Proscription orders were an important component of anti-terrorist laws in many European countries and their overseas territories long before the formation of the UNSC Sanctions Committee on Afghanistan.[14]

But each country had its own approach, crucially, determined nationally not internationally. Within national emergency legislation, the banning of organisations had to be justified in terms of a specific threat, a public emergency threatening the life and safety of the nation. And such emergency laws, by their very nature, separated 'terrorist attacks' from 'criminal acts'. They also removed those suspected of carrying out terrorist acts (considered acts of war) from the ordinary rule of law and the relative safeguards provided by the ordinary criminal justice system.[15]

Today, the global consensus on combating international terrorism has extended emergency laws in a way which only a decade ago would have been inconceivable. First, the need for governments to justify anti-terrorist measures as emanating from a specific domestic threat has been removed. Second, more and more acts which would previously have come under the scope of criminal law are being treated under anti-terrorist legislation and regarded as motivated by terrorist intent. And because 'international terrorism' has never been defined at a global level, remaining an amorphous threat, an environment has been created for the US and now the EU to interpret terrorism in ways that justify the proscription of an ever-increasing number of foreign organisations, entities and individuals.

Both the EU and the US justify their (remarkably similar) approaches by citing obligations under UNSCR 1373. (It is true that, in and of itself, Resolution 1373, as a generalised call for action against terrorism, lends itself to the type of action promoted by the US and now the EU.) In theory at least, the approach taken by the UN Sanctions Committee on Afghanistan specifically targets only those individuals and entities which have a demonstrable link with the Taliban, Al-Qaida and Osama Bin Laden.[16] The US and the EU have sought to extend this more widely, to groups involved in conflict and civil war in countries that they are allied to in the International Coalition Against Terror. The EU is even putting itself at odds with its own foreign and security policy goals which commit it to promoting respect for fundamental freedoms under international law, of which the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) are vital components.

The AEDPA (1996) empowered the US Secretary of State to create a list of designated foreign terrorist organisations, defined as those engaged in any activity which threatens 'the national defence, foreign relations or economic interests of the United States'. (An individual can be designated by the Secretary of State as a terrorist after consultations with a 'friendly foreign government'.) The position taken by the Council of the EU is similar to the US approach.[17] The Council also imposes restrictive measures on overseas terrorist organisations, entities and persons with no demonstrable link with Al-Qaida, the Taliban or Osama Bin Laden.

In fact, the names of organisations and individuals seem to appear on the EU proscribed list primarily by dint of having already been proscribed by the US Treasury Department's Office of Foreign Assets Control (OFAC). However, whereas in the wake of September 11 there was overwhelming support for the US approach, increasingly, criticisms are being voiced in the European parliament and in the member states. In fact, the attempt by the US to establish that a

The EU Network of Independent Experts in Fundamental Rights (CFR-CDF) was set up by the European Commission in September 2002 following a recommendation by the European parliament. In a report issued in May 2003, the CFR-CDF criticised the imprecise definition of terrorism contained in the EU framework decision on combating terrorism and warned that unless terrorism were defined precisely there was a 'risk of arbitrariness' in its use leading to restriction of individual freedom. Emergency legislation, the CFR-CDR argued should be temporary and targeted precisely so as 'not to affect other phenomena or … other categories of persons, on the pretext of the terrorist threat'.[18]

number of disparate movements are linked in a shadowy network of international terrorism could fracture the global consensus on combating terrorism. Divisions are emerging between the EU and the US, between the EU and the member states, and between the US and the UN. There are signs of dissent over the way the lists are compiled and maintained, as well as the reliance on US intelligence sources. Even a committee of experts, set up by the European Commission itself, has expressed grave concerns about the EU's definition of terrorism (see box). Some of the non Al-Qaida-related organisations listed by the EU have been supported in bringing actions against the European Commission and European Council (see Appendix A) by civil liberties organisations and prominent individuals. There is a growing awareness that bracketing together a number of disparate movements, with complex roots, under the umbrella of 'international terrorism' forecloses on intelligent discussion about the causes of violence, prevents any consideration of why a banned organisation may have taken up arms in the first place and even undermines international law.

Proscription of organisations not linked to Al-Qaida

As of December 2003, the Council of the EU cited thirty-five groups and entities and forty-five 'persons' in terrorist lists. The proscription of non-Al-Qaida related overseas organisations, without any attempt at parliamentary debate, has aroused controversy. The human rights lawyer Gareth Peirce has said that 'The device of a blanket ban reduces highly complex political situations to simplistic caricatures that would be a disgrace in a comic book'.[19]

The main areas of controversy to date have been the EU's listing of a) the New People's Army, the Philippines Communist Party (CPP) and its ideologue, Professor Jose Maria Sison; b) the Liberation Tamil Tigers of Eelam; c) the Kurdish Workers Party (PKK); and d) Hamas. In proscribing these organisations, the Council of the EU has not argued that any of the organisations involved are planning atrocities in Europe or pose a threat to the EU. None of these groups appear on the UN Consolidated List, as none of these groups have any demonstrable link with Al-Qaida, Osama Bin Laden or the Taliban.[20] On the other hand, every one of these groups was proscribed in the US prior to being outlawed in Europe.

It is arguable that in all four cases we examine below, the proscription policy is incoherent in that it undermines both EU foreign and security policy and previous European support for peace processes in the Philippines, Sri Lanka, and the Middle East. In each case, proscription has arisen as a result of intense pressure from an ally of the US and the EU in the International Coalition Against Terror.

New People's Army and Jose Maria Sison

In August 2002, the US listed the Communist Party of the Philippines (CPP), the New People's Army (NPA) and Professor Jose Maria Sison as terrorists. Within days, the UK and Dutch governments placed the CPP, NPA and Sison on their own lists, freezing all assets and prohibiting any support, direct or indirect. In December 2002, the EU proscribed the NPA (but not the CPP) and added the name of Sison to its list.

The government of the Philippines, which is a close ally of the US, had lobbied hard for the

The UDHR and the ICCPR establish civil, cultural and political rights to self-determination. Article 1 and article 27 of the ICCPR also enshrines the cultural, religious and linguistic rights of national minorities. In addition, the ICCPR (article 26) the UDHR (article 2) and the ECHR (article 14) uphold the fundamental right of non-discrimination in the enjoyment of the protected rights, and this includes the right to be treated differently where necessary.

The Archbishop of Utrecht, Most Rev. Dr. Joris Vercammen of the Old Catholic Church of the Netherlands, a Co-Third Party Depository of the peace negotiations between the Republic of Philippines and NDFP, has called on president Bush and Dutch prime minister Balkenende to repeal the blacklisting of the CPP and NPA, to respect the national sovereignty of the Philippines and the desire of the Filipino people to continue the peace negotiations.

outlawing of the CPP, NPA and Professor Sison, despite the fact that it has been engaged for ten years in peace negotiations with the National Democratic Front of the Philippines (NDFP), a coalition which includes the CPP and the NPA. Members of the European parliament from Denmark, France, Germany, Greece, Italy, Netherlands, Portugal, Spain and Sweden have criticised the listing (at both EU and member state level) for seriously jeopardising the Philippines peace negotiations which have been hosted and facilitated by the Dutch, Belgian and Norwegian governments and supported by European parliament resolutions in 1997 and 1999. In the UK, Lord Nicolas Read, member of the all-party parliamentary human rights commission, has argued that movements in the Philippines should not be classified on the same level as Al-Qaida.

The Liberation Tigers of Tamil Eelam (LTTE)

In Sri Lanka, the denial of civil, cultural and political rights to the Tamil minority, gave rise to a twenty-year civil war, in which one movement, the Liberation Tigers of Tamil Eelam has emerged as a victor in the northern part of the island. The cease-fire agreed between the LTTE and the Sri Lankan government in February 2002 has led to a greatly improved human rights situation across the whole island. The EU has passed successive resolutions in support of the peace process and implicitly recognised the LTTE as a legitimate partner and pledged development aid through the Tokyo Conference on Reconstruction and Development. Yet the LTTE, proscribed by the EU in December 2001 (following its earlier proscription in the US) remains on the proscribed list.

The Norwegian government (not an EU member) had acted as a facilitator in peace negotiations and five Nordic countries – Norway, Finland, Sweden, Denmark and Iceland – had set up the Sri Lanka Monitoring Mission (SLMM) to verify the implementation of the agreement through on-site monitoring. Yet the EU has, in effect, already indicted one party to the peace process as 'terrorist'.

In February 2004, US District Judge Audrey Collins, ruling on a case brought by the Humanitarian Law Project, declared unconstitutional a section of the USA Patriot Act that prohibits the giving of expert advice or assistance to groups designated foreign terrorist organisations. The judge's ruling said the law, as written, does not differentiate between impermissable advice on violence and encouraging the use of peaceful, nonviolent means to achieve goal. The ruling specified that the plaintiffs seek to provide support to the 'lawful nonviolent activities' of the PKK and the LTTE.

Kurdish Workers' Party (PKK)

At the 1923 Lausanne Conference, Kurdistan was divided between what are now the four countries of Iraq, Iran, Turkey and Syria. Today, around 20 million Kurds live in south-east Turkey, in an area they regard as Kurdistan. Despite the fact that the PKK was already outlawed in France, Germany and the US,[21] the Kurdistan National Congress (KNK) has considerable support in many European countries for its case against proscription of the PKK. On 31 July 2002 the PKK and the KNK launched an action against the Council of the EU, requesting the Court of First Instance of the European Communities to overturn the proscription order. The PKK rests its case on the fact that the proscription was a breach of internationally recognised rights of self-determination, of cultural civil and political rights. Furthermore, it argues, the proscription represents a misuse of power, in that the Council's inclusion of the PKK on the list was as a result of political pressure from Turkey and

A resolution, approved by the European Parliament on 19 November 2003, criticised Sri Lankan President Chandrika Kumaratunga for imperilling the ceasefire agreement by provoking a constitutional crisis, while welcoming the commitments given by the LTTE to maintain the ceasefire agreement and respect the peace process.

also a breach of other principles of human rights Community Law such as proportionality, certainty, equality and right to a fair hearing (see below). As part of its action, the PKK pointed out that since July 1990 it has abandoned armed struggle, dropped its demand for Kurdish independence and had merely sought recognition, through peaceful and political means.

Many parliamentarians, would agree that the Kurds have a valid cultural, ethnic and linguistic claim to statehood and that their right to self-determination is upheld by the UN charter.

'If we are terrorists in Turkey, we are now also terrorists in Europe. But against who are we exercising this terror?'.

Asize Asan, Kurdish Community Centre, London.[22]

Hamas

Hamas, which is not on the UN consolidated list, was only added to the EU list of proscribed organisations on 12 September 2003 after considerable disagreement amongst member states, especially France, Belgium and Greece, over the case for proscription. Hamas has long since been proscribed in the US and its proscription in the EU came after intense pressure from the US and Israel.

Till September 2003, the EU had proscribed Islamic Jihad, but allowed that Hamas did vital social and charitable work in aid of impoverished Palestinians in the West Bank and Gaza. This was in line with the EU's general approach to the Middle East, which is more critical of Israeli policy than is the US', and mindful of UN resolutions on the Israeli occupation of Palestinian territories. The EU came under strong criticism from Israel for this stance. In particular, the Israeli government had complained that the EU's policy of providing infrastructure and welfare support in areas governed by the Palestinian Authority amounted to funding terrorism, as some of the money ended up in the hands of those planning terror attacks in Israel. In order to investigate similar claims raised by some MEPs, the European Parliament set up, in August 2003, a working party made up of members of the foreign affairs, budgets and budgetary controls committees. This reported that there was no material evidence to back claims that EU funding was aiding Palestinian terrorists. Nevertheless, the European Commission announced changes in the way in which it would provide aid to the Palestinian Authority, while denying claims that the changes were prompted by previous allegations. Throughout summer and autumn of 2003, a downward spiral of violence, involving Israeli attacks on Hamas activists and Hamas suicide bombings, led the US to demand a 'sea change' in Europe's attitude on Hamas.

Proscription of individuals

Since 2001, individuals have been targeted for sanctions by the UNSC, the US and the EU. The cases of Abdi Abdulaziz Ali, Abdirisak Aden and Garad Jama in Sweden, and professor Jose Maria Sison in the Netherlands, have raised fundamental questions about proportionality and due process in the listing of individuals, not only by the EU and the US, but by the UNSC, too.

Abdi Abdulaziz Ali, Abdirisak Aden, Garad Jama

On 9 November 2001, the UN Sanctions Committee on Afghanistan, acting on information received from the US government, added the names of Abdi Abdulaziz Ali, Abdirisak Aden and Garad Jama to its Consolidated List, at the same time as naming the Barakat Enterprise as an entity linked to terrorism.[23] The three men, now dubbed 'the Somali three' in Sweden, were partners in the Stockholm branch of Barakat Financial Company. Based in Somalia, and run by a wealthy Somali, this telecommunications company has forty branches throughout the world transferring

Proportionality is a principle both of Community Law (or EU law) and of human rights law, which holds that, while unqualified rights (eg the right not to be tortured or enslaved) can never be breached, qualified rights (right to liberty, privacy, freedom of expression, association, assembly etc) may be interfered with but only where the interference is (i) for a legitimate aim such as prevention of crime or protection of national security, (ii) in accordance with principles of law such as certainty, transparency and due process and (iii) necessary in a democratic society ie proportionate to its aim.

Hainz-Jurgen Schneider, a lawyer who has defended members of the PKK in Germany, was found guilty in 2003 of breaking the law of association after an incident in 2001 when he accompanied a Kurdish delegation to hand over a petition to the Department of Justice against the proscription of the PKK. Those who signed the petition were attempting to highlight the injustice of the law using the Spartacus defence of 'I belong to the PKK'. In January 2003, the state prosecutor ruled that Schneider had been part of an action that served to support a banned organisation and that even though he was not a member of the PKK he had been guilty of 'conscious and deliberate' cooperation with the other participants. The state prosecutor dismissed Schneider's defence that he had taken part in the action in order to provide advice as a lawyer, arguing that Schneider could just as well have used the argument to justify his presence at a bank robbery. Schneider, who will appeal, was fined, and must pay 40 instalments of 100 Euros.

Church organisations and teachers formed a campaign to stop the deportation of Mr and Mrs Bekirogullari and their four children to Turkey. Mr Bekirogullari was arrested and sentenced to over five years in prison in Germany for participation in a protest at the abduction of PKK leader Ocalan from Kenya. He was accused of membership of the PKK. If deported, he would be immediately arrested in Turkey.

remittances from immigrant Somalis to their home country. The US claimed that some of the funds were being channelled to Al-Qaida, but only listed the three Swedish Somalis as terrorists connected to the project. The Swedish government, under intense pressure from lawyers for the three men, objected to both the UNSC and the US government over the listing of the three Somali Swedes, pointing out that without any information from the US it could not bring a case itself against Abdi Abdulaziz Ali, Abdirisak Aden and Garad Jama. The Swedish government then launched its own investigation. It concluded that 'the Sanctions Committee didn't have any information whatsoever when they took their action', apart from that supplied by the US. When the Swedish authorities asked their US counterparts to provide evidence in order to bring a case against the 'Somali three', they were sent a 27-page dossier that the US Treasury claimed constituted conclusive proof against the men. Twenty-three pages of the dossier consisted of news-release material issued by the US Treasury. A packet of background documents on Barakat was also provided, including a statement by President Bush on Al-Qaida and a transcript of a briefing made by the Secretary of State. The only mention of the Somali Swedes came in a flow-chart of Barakat's structure. A further four pages sent to the Swedish government remain confidential, but a Swedish police spokeswoman said that the authorities found nothing on the pages that would warrant any charges, including criminal charges against the men.

Lawyers for the three Somalis issued a writ against the European Commission and the European Council in Brussels, accusing the bodies of overstepping their authority when requiring member states to make violating UN targeted sanctions a crime. An action was also brought before the UNSC, urging it to remove the men's names from the list. At first only three of the UNSC permanent members – the UK, the US and Russia – objected to the names being removed from the list. Finally, in August 2002, the UNSC passed Resolution 7490 which allowed for the deletion of Adi Abdulaziz Ali, Abdirisak Aden and Garad Jama from the list of Taliban-related terrorists. Three entities including, Barakat Enterprise, were also removed from the list.

In Sweden, the case of the 'Somali three' became a *cause célèbre* since it brought into the public domain the arbitrary nature of the sanctions

The treatment of Abdi Abdulaziz Ali, Abdirisak Aden and Garad Jama contravenes:

Article 6 of the ECHR which guarantees the right to a fair trial; to be presumed innocent until proven guilty according to law; to be informed promptly and in detail of the nature and cause of an accusation; to examine or have examined witnesses and to obtain the attendance and examination of witness under the same conditions as witnesses.

Article 17 of the UDHR, Protocol 1, article 1 of the ECHR which also guarantee the right to peaceful enjoyment of property.

Articles 7 and 8 of the UDHR, article 2 of the ICCPR and article 13 of the ECHR which guarantee the right to effective remedy against interference with rights.

mechanism when deployed against individuals. While those accused of a criminal offence have certain legal rights, individuals suspected of terrorism have no right to hear the evidence against them and are not even formally charged. Although UN sanctions can take months or even years to affect a nation, on individuals, effects, are immediate. Until their names were removed from the UNSC list, the three Somalis felt the stigma of 'terrorist' at great personal cost.

Mr Aden first learnt of his predicament when he awoke to find reporters camped outside his apartment. When he tried to withdraw money from a cash machine, he found he was not entitled to withdraw money from his own bank account. The university he attended revoked his registration and the Swedish government ended welfare payments on behalf of his family. Nevertheless, the bills kept coming in. As Mr Aden commented 'Nobody can pay me, but we have to pay them'. He survived on small donations made to a fund set up to support the three Somalis and their families. Even that came under threat, when a far-Right political party demanded the fund be frozen and its organisers prosecuted for violating UN sanctions. Fortunately, the Swedish government refused. By this time the Somali three had wide support in the immigrant suburb of Stockholm in which they lived, and Mr Aden had been adopted as a parliamentary candidate for the Social Democratic Party.

Professor Jose Maria Sison

Professor Jose Maria Sison, who resides in the Netherlands where he has refugee status, was cited as a terrorist by the US Treasury in August 2002, despite the fact that there were no outstanding criminal charges against him in the Philippines. Within days, the Dutch and UK governments had added his name to terrorist lists, and in December 2002, Sison's name was added by European Council regulation to its proscribed order list. Lawyers for Sison and the NPP and the CPP have taken a case to the European Court (see above). Further challenges have also been made on Sison's behalf. In particular, the Dutch government's decision to withdraw all social benefits to Professor Sison and his wife has been challenged. Professor Sison is not allowed to seek employment in the Netherlands; he has effectively been rendered destitute. A UN Security Council Resolution 1452 has since stated that termination of an individual's welfare was not intended under UNSCR1373. The blocking of Sison's account, lawyers argue, violates the principle of proportionality as Sison's bank account does not involve the transfer of large amounts of money, but of small sums in lieu of social benefits – approximately 201 euro a month. Sison's case against proscription is ongoing.

Proscription of charities

The final item of concern is the appearance on the US Treasury list of Specially Designated Global Terrorists (SDGTs) in August 2003 of four European Muslim-run charities – the **Committée de Bienfaisance et de secours aux Palestiniens** (CBSB) in France, the **Association de Secours Palestinien** (ASP) in Switzerland, the **Palestinian Association** (PVOE) in Austria, and the **Palestinian Relief and Development Fund**, also known as **Interpal**, in the UK. All four charities are involved in humanitarian work in Palestine and were accused by the US of providing support for Hamas. None are included on the EU list or that of the member states in which they operate. Yet not one European government has, to date, challenged the US Treasury to provide information to justify proscription. Indeed, the UK and Dutch interior ministers have even legitimised the US argument that 'Hamas allies are operating under charitable cover', by calling, in 2003, for 'strict curbs on European charities raising funds for Hamas'. Which charities they had in mind, and on what evidence they made this claim, was not specified at the time.[24]

All the charities vigorously deny any link to Hamas. In Austria, a spokesman for the interior minister said that the PVOE has been registered as a charity in Austria since 1993 and that an earlier inquiry had cleared it of any wrongdoing. Both the ASP in Switzerland and the CBSB in France argue that all activities are transparent and its funds registered and controlled by Swiss and French charity law. In the UK, the Charity Commission issued a press release saying that it had found 'no evidence' of Interpal's supposed links to Hamas and since 'the American authorities were unable to provide evidence to support their allegations', the Commission had unfrozen the charity's bank account and closed the inquiry. This was after Interpal had suffered months of intrusive investigation, including having to ask the Charity Commission for permission each time it transferred any funds to Palestine – to support schools, hospitals and bereaved families.

Civil rights groups in Denmark warn that a pamphlet put out by the Police Intelligence Service entitled 'Your donation may be misused' could put off Danes from supporting humanitarian work abroad. The pamphlet states that 'it is a punishable offence to support humaniarian projects that indirectly support terrorist activity', but does not provide a list of those groups named as terrorist on EU lists.

There is a strong belief within the Muslim community that the targeting of these charities is politically motivated and discriminatory; i.e. that these charities have been singled out because they are Muslim-run and to discourage Muslim support for the Palestinian cause. Even though no action has been taken in the EU against them, these charities now face a future in which the stigma of terrorism has been attached to their humanitarian work.[25]

For Interpal, the US Treasury designation as terrorist was followed by a similar designation in Canada and Australia, both of which have cited obligations under UN Resolution 1373. Interpal staff have not only had their work disrupted, but individual trustees who are legally responsible could be charged if they travel outside the UK. US Treasury press releases, fact-sheets from the Office of Public Affairs, lurid stories in US and European newspapers are widely available on the web, asserting the most damaging claims – not only that Interpal is linked to Hamas but that it is also linked to Al-Qaida.

Muslim organisations are not the only groups concerned at this targeting of Muslim charities involved in emergency relief work in Palestine. The British Overseas Network for Development Organisations (BOND) is concerned that a move against one NGO, working in one particular country, may have implications for all NGOs working in the fields of emergency relief, medical aid, education development and social welfare programmes. BOND has called on the British government to safeguard the rights and integrity of British organisations working in the field of emergency relief and to seek talks with the US Treasury in order to ensure that Interpal is removed from its list of SDGTs. Roger C Simmons, attorney for the Global Relief Foundation, a Muslim charity in the US which has been listed as a SDGT, argued that the logical outcome of the ruling against the Foundation is for a government to shut down a charity like the Red Cross which might be working in terrorist hot spots, on the grounds that some aid might benefit terrorists or their families.

Extradition, expulsion and deportation

Individuals are not just affected by targeted sanctions. Soon after September 11, the US called on the UN and its allies to ease the laws on extradition of terrorist suspects. Thus, on October 16 2001, President Bush wrote to Romano Prodi, president of the European Commission, suggesting forty measures to combat terrorism, including a request to bypass the extradition process and 'explore alternatives to extradition including expulsion and deportation'.[26]

The road to removal

The US was soon seeking ways to pressure the EU to accede to what were quite controversial demands. As part of the road map of all measures and initiatives to be implemented under the Counter-Terrorism Action Plan, the EU adopted on 13 June 2002 a Framework Decision on the European Arrest Warrant and Surrender Procedures. From 2004, individuals can be extradited from one member state to another without any evidence having to be produced that they have committed a crime.[27] The US, which had already entered into negotiations with the EU on matters of judicial co-operation, seized on the opportunity provided by the move towards a European arrest warrant to demand that it be afforded the same rights as EU member states – extradition on demand with no appeal against the information provided by the requesting states.

The US request, which overlooked the fact that the US is not subject to EU law or the European Convention on Human Rights, was opposed by the European parliament. It passed a critical report on the EU-US agreement – and called for the signature to the agreements to be made conditional on finding a fair solution for those held at Guantanamo Bay, with an absolute guarantee that authorisation for extradition could not be given where a person might be brought before a military tribunal or face the death penalty. However the EU-US Extradition Agreement which was eventually ratified, provided for extradition to the US of anyone convicted of an offence incurring just a one year sentence and had no guarantee on the use of military tribunals. Since the signing of the extradition agreement, member states have had to amend previous agreements with the US. Whereas these newer agreements are, significantly, made within the EU framework, provisions in the UK-US Extradition Treaty far exceeds those in agreements with any other EU country. It accepts, for instance, the abolition of the evidence requirement from the US side (but not vice versa). Nothing, it seems, has been learnt from the case of the French Algerian pilot, Lotfi Raissi, who was arrested in the UK on 21 September 2001, after US intelligence services claimed that he had been the key flight instructor of four of the September 11 hijackers (see below).

Abandoning the principle of non-refoulement

Extradition arrangements between the US and EU mean that the minimal safeguards and judicial oversight provided in extradition law are being bypassed to further the speedy removal of terrorist and criminal suspects sought by the US. In practice, however, these suspects are not being removed to the US; instead they are being returned to countries which are key allies of the EU in the war against terror. We have followed the cases of twenty-two individuals caught up in the expulsion process since September 11 (see Appendix B). Of these, fourteen have been expelled from the EU and returned to Egypt, Algeria, Morocco, Senegal, Turkey and Peru.

This negates the EU's own commitment to human rights standards, in particular the principle of non-refoulement whereby foreign nationals

In the UK, the French Algerian pilot Lotfi Raissi was held for five months without charge in Belmarsh top security prison, locked in a dark cell for 23-hours a day, while the US sought his extradition. In six separate court appearances, the US was invited, and declined, to bring evidence against him. Raissi was eventually released, on the grounds that the link between the defendant and terrorism had not been substantiated. The 'terrorist' accusation made by the US against Raissi, had a devastating impact on his life. Whilst in prison, his wife lost her job and was forced to vacate the flat where they had been living because the landlord would not rent to 'terrorists'. Sixteen months after his release, Raissi was still unemployed.

cannot be extradited to a state where they risk persecution, the death penalty, torture or other degrading treatment or punishment. Egypt, Algeria, Morocco, Senegal, Turkey and Peru have been criticised by Amnesty International for their position on the death penalty and for the use of torture against detainees.[28] By returning a suspect to a country that practises the death penalty, torture and other forms of cruel and degrading treatment, the EU becomes party to the abuse of that suspect's human rights.

To understand how the EU can justify abandoning the non-refoulement principle we examine five of the cases which apparently lend most credence to the EU's stance. These are the cases of Sheikh Omar Abu Omar (also known as Abu Qatada) Sheikh Abu Hamza al-Masri (popularly known as Abu Hamza) Metin Kaplan, Najm Faraj Ammad (popularly known as the Mullah Krekar) and Abdel Kader Faddalah Mamour. Each of the five men is controversial. Mainstream Muslim organisations have disassociated themselves from their fundamentalist preaching and the kind of inflammatory statements they routinely make are only supported by fringe elements within religious fundamentalist movements. Abu Hamza, an Egyptian born cleric, was, as a teenager, jailed for three-years in the Yemen in connection with bomb attacks and later fought against the Russians in Afghanistan. Today, he is a British citizen and preaches at the Finsbury Park mosque in north London. Abu Qatada, a Palestinian-born cleric, who was sentenced in absentia in Jordan to life imprisonment in connection with bomb attacks in the 1980s, has also preached at the Finsbury Park mosque. British and Spanish intelligence sources allege that Abu Qatada is the spiritual inspiration behind the September 11 attacks.[29] Mullah Krekar, an Iraqi Kurd, who lives in Norway is one of the founders of Ansar al-Islam which set up a Taliban-style militia in the north of Iraq. He studied Islamic Law in Pakistan and is a religious leader who allegedly follows the teachings of Abdullah Azzam, who was also a mentor of Osama Bin Laden. Metin Kaplan, of Turkish origin, is the leader of the fundamentalist movement Caliphate State and is sometimes referred to as the Caliph of Cologne. He is sought by the Turkish government in connection with a bomb attack on the Ataturk museum and has also served several years in a German prison for incitement to murder. Abdel Kader Faddalah Mamour, previously the imam of Carmagnola, a city north of Turin, has made a number of provocative assertions and even claims to have fought alongside Bin Laden in Bosnia in the early 1990s.

Doubtless, each of the five men has a background in religious fundamentalism which led them to oppose foreign governments. And it is alleged that they have all embraced terror tactics. But, in fact, in only two cases have legal cases been made to the effect that the men have engaged in terrorist or criminal activities in Europe.[30] But all five men have made provocative and inflammatory statements, particularly post September 11, which could be prosecuted under public order law. But the climate of heightened security since September 11 means that actions which would previously have come under the scope of public order law and led to prosecutions in a court of law, now fall under anti-terrorism legislation, effectively removing the perpetrators from the ordinary processes of law. This shift towards anti-terrorist regulations coupled with the heightened sensitivity about the danger of inflammatory rhetoric from provocative Islamist scholars and preachers, provides the *raison d'être* for European governments' willingness to override extradition law in favour of a hasty expulsion of terrorist suspects.

It appears, then, that the cases of the very few obvious extremists are being allowed to colour the whole context for present extradition. And when each of the twenty-one cases are considered individually, disentangled from a highly prejudicial public debate, a pattern emerges of EU-wide abuse of international law on human rights.

Whereas the UN Refugee Convention excludes from refugee status those who have committed acts against the principles of the UN (eg acts of terrorism), the European Court of Human Rights has said that the prohibition of torture and inhuman treatment includes a prohibition on expulsion to torture or inhuman or degrading treatment whatever the individual has done and whatever danger he or she might pose to national security. And expulsion to a real risk of inhuman or degrading treatment or punishment or torture has been repeatedly held to be in breach of the ECHR.

Breakdown of cases

These twenty-one cases involve either extradition, expulsion or deportation. Of the twenty-one, four are either Egyptian nationals or of Egyptian origin (**Mohammed Alzery**, **Ahmed Agiza**, **Muhammad 'Abd Rahman Bilashi Ashri**, **Abu Hamza**), four Algerians (**Nacer Hamani**, **Salah Achour**, **Mohammed Chalabi**, **Bouchraa Charef Macine**), six Moroccan (**Noureddin Lamor**, **Kalid Assam**, **Nabili Hamrad**, **Mbarek Boutkayoud**, **Assedine Sadraoui**, **Said Bouchraa**) one Chechen (**Akhmed Zakayev**), one Iraqi Kurd (**Mullah Krekar**), one Turkish Kurd (**Nuriye Kesbir**), two Turkish (**Metin Kaplan**, **Kemal Alev**), one Peruvian (**Adolfo Olaechea**) one of Palestinian origin (**Abu Qatada**) and one disputed, although the Italian authorities claim he is Senegalese (**Abdel Kader Fadallah Mamour**). All but one of the twenty-one are male. Nineteen are classified by the authorities as 'radical Islamists', while the remaining two (**Adolfo Olaechea** and **Nuriye Kesbir**) are members of left-wing political movements. Three of the twenty-one are known to be asylum-seekers, while a further two (**Akhmed Zakayev**[31] and **Nuriye Kesbir**) claimed asylum after the extradition process was set in motion. A further two (**Mullah Krekar** and **Metin Kaplan**) were officially recognised refugees, but both have been stripped of their refugee status. And the remaining are as far as one can ascertain foreign nationals.

Cause of concern

a) Refoulement

All twenty-one cases involve expulsion or the threat of expulsion to countries which practise torture and the use of the death penalty, in violation of the principle of non-refoulement. In many of the cases where expulsion has actually taken place, human rights groups and lawyers have criticised the expulsions for undermining the principle of non-refoulement and for having been carried out with scant regard for national and international law. The Swedish Foundation for Human Rights and the Swedish Helsinki Committee for Human Rights believe that the Swedish government had interpreted UNSCR 1373 in such a way as to allow for the deportation of **Mohammed Alzery** and **Ahmed Agiza** (both asylum seekers) without due process on mere allegations of terrorism and without respect for human rights. They also point out that the summary exclusion of **Ahmed Agiza**'s wife Hanan Attia and her five children from refugee status was in flagrant breach of her rights as an asylum seeker, as she herself was not suspected of any terrorist activities, or any other crime. As Human Rights Watch points out, Hanan Attia and her children are also at risk of torture and ill-treatment if returned to Egypt (see Appendix B).[32]

The German government's repeated attempts to deport to Turkey **Metin Kaplan** has been challenged by the court which has ruled that he cannot be sent back to Turkey because evidence against him may have been obtained by torture by the Turkish police. The interior minister Otto Schily has travelled to Turkey to seek assurances that if Kaplan is deported he will not be tortured and has announced that legal changes will be enacted in Germany to ensure that Metin Kaplan can be deported.

b) Removal of political safeguards

International law makes a distinction between those involved in criminal offences and those accused of offences of a political nature. Those accused of political crimes used to be protected from extradition or expulsion to countries which could not provide access to fair and open legal procedures.

In absentia trials by a military tribunal, where the legal safeguards and the independence and impartiality of that tribunal were questionable, would probably in earlier times have protected people accused of political offences from extradition. But the Egyptian request to Sweden for the extradition of **Mohammed Alzery** and **Ahmed Agiza**, was based on *in absentia* convictions in front of military tribunals, although it is not even clear, in the case of Ahmed Agiza, whether he was actually convicted by the military court.[33] Likewise, the request by Egypt for the extradition of **Muhammed 'Abd Rahman Bilashi Ashri** from Austria was on the grounds that he had been sentenced, in absentia, by the State Security Emergency Court to fifteen years in prison for supporting Egyptian Islamic Jihad. In the case of **Adolfo Olaechea**, the extradition request from the Peruvian authorities was, it would seem, a renewal of a warrant first issued in 1992 (rejected at this time by the UK government) and based on Olaechea's *in absentia* conviction by a military tribunal.

Out of these five cases, only **Muhammed 'Abd Rahman Bilashi Ashri** managed to avoid extradition or expulsion. The Egyptian authorities withdrew their extradition request in August 2002, and the UNHCR confirmed that the Egyptian was a genuine refugee. **Mohammed Alzery** and **Ahmed Agiza** were not even guaranteed the relative protection of the extradition procedure; they were forcibly expelled in December 2001. **Adolfo Olaechea** was also forcibly expelled from Spain to Peru in August 2003.

c) Citizenship and banishment

The cases of **Nacer Hamami**, **Salah Achour**, **Mohammed Chalabi**, **Abu Hamza**, **Mullah Krekar**, **Metin Kaplan** and **Abdel Kalder Fadallah Mamour** also raise important questions about the nature of refugee status, citizenship and residency laws in Europe. Such expulsions are only possible of foreign nationals. But what of those with dual nationality, refugee status, or who are effectively stateless? Is it a possibility to deport someone who, while originally a foreign national, had since gained citizenship? In the US, citizenship proposals being discussed under further legislation (Patriot Act II) could revoke citizenship from North Americans found to have contributed 'material support' to organisations deemed by the government, even retroactively, to be terrorist. Under Patriot Act II 'the intent to relinquish nationality need not be manifested in words, but can be inferred from conduct'. In the EU, things have not yet come to this pass. However, the UK, responding to the case of the British citizen Abu Hamza, introduced S4 of the Nationality Immigration and Asylum Act 2002 whereby British nationals who are entitled to hold dual nationality can be stripped of their British citizenship for behaviour 'seriously prejudicial' to British interests. Legislation is also under consideration in Denmark whereby naturalised immigrants can be stripped of their citizenship if they threaten the independence or security of the state.

Mullah Krekar's refugee status and his right of residence have been revoked on the grounds that he had spent substantial periods back in his home country and is therefore no longer eligible for refugee status. And in August 2003, a Cologne court rescinded **Metin Kaplan's** refugee status, while at the same time forbidding his deportation on the grounds he would receive an unfair trial in Turkey and that witness statements obtained under torture would probably be used against him. Kaplan has appealed the rescission of his refugee status, while the German government has appealed against the ban on his deportation.

The deportations from France of **Nacer Hamami**, **Salah Achour** and **Mohammed Chalabi** have been criticised by human rights groups as constituting 'banishment'. Under the French practice of double punishment (where you are effectively punished twice for the same offence, by sentence and deportation), immigrant youth of North African descent convicted of a criminal sentence serve this sentence in France and are then served with a prohibition from territorial France order on their release. **Nacer Hamani**, who has three French children, has lived in France since 1978, while **Mohammed Chalabi**, who was convicted in 1999 during a trial which was condemned as unfair by the International Federation of Human Rights Leagues (see below), has four French children, was also born in France. In the case of Chalabi, his lawyer pointed out he was the son of an Algerian who had fought for France during the second world war, and had been decorated with the Cross of the Combatant. Furthermore, Chalabi had spent all his whole forty-

Mohammed Chalabi was one of 138 men and women who stood trial in France in 1999, accused of being Islamic militants intent on aiding terrorism. The trial of the 138 in a temporary court protected by 300 gendarmes was widely referred to as the 'Chalabi trial'. Under French anti-terrorism laws, a suspected terrorist can be interned on the word of a senior police officer only, and twenty-seven of the 138 defendants had been imprisoned for nearly four years during which time no evidence supporting their detention was made public. Mohammed Chalabi was convicted of raising money and arms for anti-government forces in Algeria, but according to his lawyer, Isabelle Coutant Peyre, no proof was ever given of her client's connection with fundamentalist groups. Defence lawyers argued that many people had been interrogated on vague charges of 'association with wrong-doers' and that the only established link between the 138 accused was the Muslim religion. None of the defendants was ever charged with a terrorist act and the defence lawyers described the 'mass trial' as a political show trial designed to show support for Algeria's military-backed regime. In fact, defence lawyers felt so strongly that the holding of a single trial for the 138 accused was undemocratic and a violation of the European Convention on Human Rights that at the start of the trial they declared they would boycott the proceedings. 'Never before on this scale have so many black robes been thrown off simultaneously in one single act of anger', commented *Libération*.[34]

five years in France, and was married to a French national with three French children. Nevertheless, on serving his sentence he was effectively 'banished to Algeria', arguably in violation of his right to lead a normal family life, as guaranteed by Article 8 of the European Convention on Human Rights. Further unease has been raised by the deportation of **Abdel Kader Fadallah Mamour** to Senegal. In this case, the Senegalese embassy issued a statement prior to the deportation claiming that Mamour was not a citizen of Senegal.

d) Extradition as a political tool

All but five of the twenty-one cases involve expulsion, as opposed to extradition. Extradition, which involves the surrender of individuals for whom a prima facie case of involvement in criminal or terrorist activities has been made, is a far lengthier process with in-built safeguards. It also necessitates an Extradition Treaty with the country making the request or an international convention to which both parties are signatories. But a detailed examination of three cases involving extradition (**Mullah Krekar**, **Akhmed Zakayev** and **Nuriye Kesbir**) suggests that it is not always being used as part of an internationally-agreed legal system to bring terrorists or criminals to justice.

The case of **Mullah Krekar**, who currently has residency status in Norway, has been rumbling on for months. He went to Norway as a refugee in 1991 but later travelled back and forth to Northern Iraq several times and ultimately led the Kurdish guerrilla group Ansar al-Islam. These activities created controversy both in and outside Norway. US officials alleged Ansar al-Islam had links to Al-Qaida and Saddam Hussein, and, in February 2003, Ansar al-Islam was added to the UN Consolidated List on the basis of US allegations.[35] However, despite this, and despite being arrested several times both in the Netherlands and Norway, the evidence against Krekar has so far been insufficient to mount a successful prosecution to the dissatisfaction of the US administration. There is a strong suspicion in Norway that the US was behind a request from Jordan to have Krekar extradited from the Netherlands to Jordan under a UN Treaty on Drug Trafficking.[36] The Netherlands has no extradition treaty with Jordan because of concerns over human rights abuses, and the only legal way of extraditing him would have been under this UN Convention for extradition in relation to drugs crime which both Jordan and the Netherlands had signed. Following the extradition request, Krekar spent several months in detention in the Netherlands, but was eventually released on the grounds that the Jordanians had failed to make a strong enough case to warrant his extradition. However, the Norwegian government has now launched proceedings to have Krekar extradited to northern Iraq. Lawyers argue that the extradition would not be safe because the Kurdistan Democratic Party is now in control of Northern Iraq, and that Iraq is not (yet) a state in its own right, so that extradition to Iraq would in effect be extradition to the US occupation force, and the US has the death penalty.

The use of the extradition process against **Nuriye Kesbir** and **Akhmed Zakayev**, who have no connection with the war in Iraq, is even more controversial. As a member of the PKK's presidential council, and therefore a member of a European proscribed organisation, Nuriye Kesbir was extremely vulnerable when she sought to enter the Netherlands and seek asylum. She was immediately detained at Schipol airport, with the Turkish government seeking her extradition. A Dutch court, however, ordered her release from detention while the extradition process was ongoing. Nuriye Kesbir has since gone into hiding. She has not attended any hearings where the extradition request is discussed. There is a strong suspicion that the Dutch are embarrassed by the whole procedure. AI has recorded the use of rape

Article 8 of the ECHR (art 12 UDHR, art 17 ICCPR) protects the right to family and private life, and expulsion which separates someone from their family and severs the ties they have built up in the country of residence must be justified by a pressing social need, ie it must be proportionate to a legitimate aim such as protecting national security or prevention of crime or disorder. In many cases, the EctHR has ruled that expulsion of 'integrated aliens' who have committed serious criminal offences, from countries where they grew up, to the country of their nationality where they have few if any ties of family, language or culture, is disproportionate and violates the right to family and private life.

and sexual torture of female PKK prisoners in detention in Turkey and the Dutch may prefer that Nuriye Kesbir simply disappear, rather than face the shame of expelling her to a country that humiliates and degrades female Kurdish political prisoners.

Another case that is instructive is that of **Akhmed Zakayev**. Zakayev was a minister in the last elected Chechen government and is currently the European representative of the Chechen resistance. A respected opposition figure, he had briefed the European Parliament rapporteur on Chechnya and had even had secret peace talks with the Russians. But in October 2002, the Russians put pressure on Denmark to arrest Zakayev while he was in Copenhagen where he was attending the perfectly legal World Chechen Congress. After several months in prison he was released by the Danes on the grounds that the Russians had provided insufficient evidence to justify his extradition. Zakayev travelled on to the UK where he was immediately rearrested, although granted bail. British courts, like their Danish counterparts, refused to accede to the Russian extradition request, on the ground that Zakavev would not face a fair trial and could even face torture in Russia. In November 2003, Zakayev was granted asylum in the UK.

The year-long extradition process had served to neutralise Zakayev as an effective voice for Chechens at a time when the Russian military offensive in Chechnya had escalated.(It should also be noted that several of the men interned in the UK's Belmarsh prison under the 2001 ATCSA are suspected of fundraising for the war against Russia in Chechnya.)

Security depends on natural justice

All twenty-one cases involve extremely serious allegations of support for terrorism. While the accused were denied natural justice (the right to a fair trial, see page 20), national security is also ill-served by a system of expulsions that ensure that allegations against suspects are never tested in a court of law. For if the accused were a part of some widespread terror plot, then it is in the interests of Europeans to see the accused and any accomplices tried and convicted. What has happened instead, post-September 11, is the creation of a shadow criminal justice system devoid of the crucial components and safeguards in the criminal justice system. The result neither safeguards the rights of the accused, nor protects the security of society.

For instance, if European governments believe that these suspects are terrorists, then by expelling them they merely displace the terrorist threat onto a non-EU country. Since his expulsion from Italy, **Abdel Kader Faddalah Mamour** has declared a 'jihad' against Europeans and is now boasting that he has 9,000 Africans under his command.[37] To date, the UK stands alone in the EU for choosing internment as an alternative to forced expulsion to countries that practise torture and the death penalty. However, the ATCSA, which allows for detention without trial, provides detainees with the option of leaving the country voluntarily, although many would argue that this option is nothing more than a disguised expulsion. A report by the Privy Council has concluded this provision of the ATCSA could end up displacing the terrorist threat onto another country.

Another area of concern is the way that the cases of terror suspects are being debated in the media. There can be a steady trickle of accusation against the accused, often emanating from unnamed security sources.

Seven cases of expulsion from Italy echo this trend. **Abdel Kader Fadallah Mamour**, an Imam from Turin, condemned himself when he boasted to an Italian newspaper that he knew Osama Bin Laden and warned that if Italian troops were not pulled out of Iraq, there could be a bomb attack in Rome. Within hours of giving the newspaper interview, the Imam was sent out of the country on a deportation flight. He could have been prosecuted under public order laws, but, instead, the media mounted its own very public prosecution – reporting, quoting intelligence sources, that he had been under police investigation for three years on suspicion of being an intermediary in passing funds to terrorist groups. Did anyone ask why such a long-term police investigation had failed to result in arrest, charge or prosecution? Naturally this led to suspicion within the Muslim community that Muslims were being subjected to injustice and discriminatory treatment. This was exactly the claim made by the Imam of Portapalazzo, Bourichi Bouchta who has made it clear that while the Turin North African community has no time for Abdel Kader Fadallah Mamour's rhetoric, they will challenge his deportation as an 'unjust measure' and support his wife and children (while they remained in Italy).

The six Moroccans (**Noureddin Lamor**, **Kalid Assam**, **Nabili Hamrad**, **Mbarek Boutkayoud**,

Assedine Sadraoui, **Said Bouchraa**) and one Algerian (**Bouchraa Charef Macine**) returned from Italy to Casablanca and Algiers have also been tried and convicted in their absence by the media. The media reported a three-year police inquiry that had amassed considerable evidence – including taped telephone conversations to prove that the accused were part of the Al-Qaida network and had established a 'logistical' cell in Turin. Beneath the headlines, however, lies a tiny piece of information – that a previous police request to an examining magistrate for their arrest for 'subversive association in the preparation of terrorism' was refused, owing to insufficient evidence. The deportation of the seven men makes it impossible to establish their innocence or guilt. But the media have already identified Noureddin Lamor as the group's leader, claiming, on the evidence of unnamed intelligence services, that Lamor had been collecting funds for suicide bombers, recruiting militants to be sent to fight in Afghanistan and making new followers for Osama Bin Laden in Turin's mosques. The media had even printed extracts from intelligence service taped phone conversations. Thus, the men are tried and convicted by the media on the evidence of unnamed intelligence sources.

The right to liberty and security of persons, and not to be arbitrarily detained without access to a court which can determine the lawfulness of detention, is a fundamental right enshrined in article 9 of the Universal Declaration of Human Rights (UDHR), article 9 of the International Covenant on Civil and Political Rights (ICCPR) and article 5 of the European Convention on Human Rights and Fundamental Freedoms (ECHR). The right to liberty may be curtailed during a public emergency threatening the life of a nation (article 4 ICCPR, article 15 ECHR) but even then, no one may be detained indefinitely without any access to a court. The European Court of Human Rights (EctHR) has said that detention without access to a court for four days was unlawful (Brogan v UK, 1989) and 14 days without access to a court was excessive even in the context of a state of emergency (Aksoy v Turkey, 1996). Additionally, an independent court or tribunal with the power to release the detainee must be able at regular intervals to check whether detention remains lawful, including reasons for the continued detention, and the detainee is entitled to legal representations for this purpose. Chahal v UK (1996)

Appendix A

Cases brought before the European Commission and European Council

1 Case no. T-306/01 (Abdirisak ADEN e.a. v. Council and Commission)

2 Case no. T-315/01 (Yassin Abdullah Kadi v. Council and Commission)

3 Case no. T-318/01 (Othman v. Council and Commission)

4 Case no. T-206/02 (Congrès National du Kurdistan v. Council)

5 Case no. T-253/02 (Chafiq Ayadi v. Council and Commission)

6 Case no. T-229/02 (Ocalan/PKK and Vanly/KNK v. Council)

7 Case no. T-228/02 (Organisation des Modjahedines du Peuple d'Iran v. Council)

8 Case no. T-333/02 (Gestoras Pro Amnistia e.a. v. Council)

9 Case no. T-338/02 (SEGI e.a. v. Council)

10 Case no. T-47/03 (SISON v. Council)

11 Case no. T-110/03 (SISON v. Council)

12 Case no. T-150/03 (SISON v. Council)

13 Case no. T-327/03 (Al Aqsa v. Council)

Cases no. 1, 2, 3, and 5 concern measures adopted pursuant to UN Security

Council resolutions. Cases 4, 6, 7, 8, 9, 10, 11, 12 and 13 concern the autonomous measures adopted by the Council (Regulation (EC) 2580/01), of which cases 11 and 12 specifically concern the question of access by the applicant to the file. (Cases in chronological order of filing)

Appendix B

The Alternative report to 'Comments by the Government of Sweden on the Concluding Observations of the Human Rights Committee' (CCPR/CO/74/SWE) written by the Swedish NGO Foundation for Human Rights and the Swedish Helsinki Committee for Human Rights reveals the following.

At the time of the deportation of Mohammed Alzery and Ahmed Agiza, the Egyptian authorities gave their Swedish counterparts a diplomatic assurance they would not be tortured and would be afforded a fair trial. The Swedish Foundation for Human Rights and the Swedish Helsinki Committee have been following the case and record these concerns.

Evidence of torture and cruel and degrading treatment: Relatives of Mohammed Alzery say that after eighteen months in prison, the district attorney discontinued the preliminary investigation against Alzery. But, he has not been released. Ahmed Agiza still suffers from a back injury allegedly caused during expulsion when a Swedish security service officer jumped on his back. When being expelled, he was allegedly suspended by his wrist while shackled and remained in that position for eight hours till he reached Cairo. Ahmed Agiza's mother alleges that once returned to Egypt he was kept in an underground room with a microphone and told to write down what was dictated; when he refused, he was beaten and given electric shocks. He claims that he suffered all types of torture – sometimes he was laid naked on a mattress made of sponge while his hands and feet were tied, electricity was applied to his body and a doctor was carrying cream to apply to the areas of burn resulting from the electricity (to prevent scarring). During eighteen months in prison, Ahmed Agiza had only met his lawyer once. In discussions with the Egyptian government, the Swedish authorities had sought guarantees that Agiza and Alzery would receive a fair trial and that the Swedish embassy would be allowed to visit the men in prison and attend the trials. But the aide memoire that was issued by Egypt in response to this request was vague.

Failure of the diplomatic assurance guarantee: The mechanisms that the Swedish government claims would protect the men's rights have proved insufficient. It seems that while the Swedish government asked for access to the men, they did not specify how often, for how long or in what manner. After expulsion, the Swedish ambassador agreed with the commandant at Tora Prison that he would be allowed to visit the men once a month after giving notice several days in advance. Until the middle of February, the men were imprisoned by the State Security Intelligence at an interrogation centre outside Cairo; the first prison visit, five weeks after expulsion, took place at the Mazaat Tora Prison. Subsequently, the visits have been less frequent, and during holidays there were intervals of two months. None of the visits have taken place in private – but in the commandant's office, where there have sometimes been up to ten officials present. The embassy has not had the men examined by a physician, they have not asked permission to bring a doctor to the prison to perform a medical examination; the men must speak to embassy staff through an interpreter despite the fact that they speak Swedish.

Appendix C

Name & age	Immigration Status	Country of Removal	Receiving Country	Outcome	Accusation
Mohammed Alzery	Asylum-seeker since 1999	Sweden	Egypt	Expelled from Sweden. Currently in Egyptian prison	Connection to organisations with responsibility for terrorism
Ahmed Agiza	Asylum-seeker since 2000	Sweden	Egypt	Expelled from Sweden. Currently in Egyptian prison	Connection to organisations with responsibility for terrorism
Muhammed 'Abd Rahman al Rahman Bilashi Ashri	Asylum-seeker	Austria	Egypt	Released from detention after UNHCR intervention	Membership of illegal organisation connected to terror
Akhmed Zakayev	Chechnyan, on arrest claimed asylum	Denmark. UK	Russia	Russian extradition request eventually refused. Granted asylum in UK	Connection to terrorism, related incidentsin 1995 and 2000 when Chechnya was fighting for independence.
Nacer Hamami	Foreign national living in France since 1978	France	Algeria	Deported after serving prison term in France (double punishment). Detained for eleven days in Algeria. Since release, refuses to speak about experience	Connection to a criminal gang connected with a terrorist act
Salah Achour	Foreign national	France	Algeria	Deported after serving prison term in France (double punishment)	Association with criminals in relation to a terrorist plot
Mohammed Chalibi	Born in France, but of Algerian origin	France	Algeria	Deported after serving prison term in France (double punishment). Held for several months in pre-trial detention on terrorism related charges. Stood trial in 2002	Head of European support network for GIA
Mullah Krekar	Refugee (Iraqi Kurd)	Neths. Norway	Jordan	Extradition request to Jordan refused	Accused of drug-trafficking
Nuriye Kesbir	Turkish-Kurd. On arrest, claimed asylum	Netherlands	Turkey	Extradition request pending. Released on bail and gone into hiding	Membership of PKK
Mustafa Kamel Mustafa (Sheikh Abu Hamza al-Masri)	British citizen of Egyptian origin	UK	Yemen	Attempt to strip him of British nationality failed, therefore no deportation as yet	Connection to terror attacks
Omar Uthman Abu Omar (Abu Qatada)	Refugee (Palestinian)	UK	Spain/ Jordan	Currently detained under UK's ATCSA	Spanish judge accused him of being Al-Qaida's spiritual leader in Europe. Wanted for questioning in Jordan
Adolfo Olaechea	Peruvian. Lived in UK for 20 years	Spain	Peru	Peruvian Terrorism tribunal has released him on bail because evidence against him is not compelling	Connections to the Communist Party of Peru (Maoist Shining Path)

• Kalid Assam • Nabili Hamrad • Mbarek Boutkayoud • Azzedine Sadraoui • Said Bouchraa	Labourers	Italy	Morocco	Deported	Proselytising on behalf of 'terrorist organisations with an Islamic origin'
Bouchraa Charef Macine	Farm labourer	Italy	Algeria	Deported	Proselytising on behalf of 'terrorist organisations with an Islamic origin'
Abdel Kader Fadallah Mamour (Imman of Carmagnola)	Regularised worker of, (presumed) Senegalese origin, married to an Italian whose family born in Italy	Italy	Senegal	Deported, even though Senegal claims he is not a Senegalese citizen	Public nuisance and danger to national security
Kemel Alev	Probably Turkish citizen	Bulgaria	Turkey	Extradition	Membership of the Revolutionary People's Liberation Front (DEVR)
Metin Kaplan 'The Caliph of Cologne'	Turkish	Germany	Turkey	Deportation proceedings ongoing/ stripped of refugee status	Accused of bombing the Ataturk Museum and other terrorist related offences

References

1 Delivering the FA Mann lecture at Lincoln's Inn on 25 November 2003, Lord Steyn, one of the most senior judges in Britain, criticised the concession extracted by the attorney general, Lord Goldsmith, that the British detainees would not face the death penalty as giving a new dimension to the concept of 'most favoured nation'. 'How could it be morally defensible to discriminate in this way between individual prisoners?', he asked.

2 See Martin Bright,'Britain's Camp Delta', *Observer* 6-14.12.03.

3 In December 2002, the central and east European countries associated with the EU, the associated countries Cyprus, Malta and Turkey, and the EFTA countries, members of the European Economic Area, declared that they shared the objectives of the Council of Europe on the application of specific measures to combat terrorism; national policies would subsequently conform with those of the EU. (*Bulletin* EU 12-2002)

4 The UNSC had previously deployed targeted sanctions against 157 individuals associated with UNITA via the Angola Sanctions List. The Sierra Leone and Liberia Sanctions List also targets individuals. But the targeted sanctions deployed by the UNSC Sanctions Committee on Afghanistan are qualitatively different in that there is no connection between the targeted groups/individuals and any territory or state. See Iain Cameron, 'Targeted Sanctions and Legal Safeguards,' Uppsala University, Faculty of Law.

5 See Statewatch Submission to the Network of Independent Experts on fundamental rights in the EU, October 2003.

6 At the time of writing, the last update was on 24 December 2003.

7 See Iain Cameron, *op cit*.

8 One of Solana's chief advisers is Robert Cooper, the Director General for External Affairs in the General Secretariat of the Council of Europe who had argued in the *Observer* (7.4.02) for a new 'colonialism' or 'liberal imperialism' to impose order on behalf of 'civilisation' against 'chaos.' Cooper has also argued that regime change is 'our only defence against the possibility of terrorists acquiring weapons of mass destruction' and that 'The domestic governance of foreign countries has now become a matter of our own security' in 'Civilise or Die' *Guardian*, 23.10.03.

9 Behind the scenes, however, the EU was divided over a clause in Solana's paper which sought to define when and how the EU would intervene in future conflicts. The UK advocated a US-style pre-emptive approach to conflicts that would approve a military strike in order to deter enemies. But Germany and France approved a new clause, which was accepted, whereby the EU would engage in 'preventive' not 'pre-emptive' intervention. See *Deutsche Welle*, 8.12.03.

10 Paul Webster and Owen Boycott, 'Terror suspect turned out to be a Welsh insurance agent', *Guardian* 3.1.04.

11 *Statewatch News Online* 'EU-USA agreements – the drafts on the table' <http://www.statewatch.org>

12 *Statewatch News Online* <www.statewatch.org/news/2003/dec/11euuspassengerdeal.htm>

13 See Gavin Sullivan, 'Your body is your Password: Biometric surveillance and the Terrain of Power', *Greenpepper Information Issue*, 2004.

14. In the UK – where banning orders had been widely deployed in the colonial period – proscription has been used in the post-war period against Irish nationalists. And Spain brought in emergency measures in the Basque Country. Germany's wide-ranging Law of Assembly, used in the post-war period to outlaw neo-Nazi parties and the Red Army Faction, has, since, been extended to cover overseas organisation, such as the Kurdistan Workers Party (PKK) and the National Liberation Front of Kurdistan (ERNK) in the 1990s. France has also proscribed the PKK, as well as various Algerian organisations. In the 1990s, a series of bombings on the Paris metro, blamed on international terrorists, were linked to the conflict in Algeria. In response, the French government outlawed support for the Algerian Islamic Salvation Front (FIS), suspended the civil liberties of FIS supporters, banning publications and holding prominent exiles under house arrest.

15 See Magnus Hörnqvist., 'The birth of public order policy' *Race & Class* (forthcoming).

16 In specifically targeting these groups only, the UNSC would have been mindful of its obligations under the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) which uphold the inalienable right of all peoples to self determination and recognises that rebellion against tyranny may be necessary as a last resort.

17 The EU common position and framework decision on combating terrorism appear to be modelled on the 2001 US Patriot Act which created new crimes of terrorism and new laws for use against both domestic and international terrorists.

18 *Statewatch News Online* <http://www.statewatch.org> 15.5.03

19 Liz Fekete, 'The Terrorism Act 2000: an interview with Gareth Peirce', *Race & Class*, Vol 42, no 2, October-December 2001.

20 Robert Cooper provides some sort of explanation

for the EU's approach to overseas organisations not linked to Al-Qaida. Commenting on the situation in Palestine and Sri Lanka, Cooper argues that fanaticism and terrorism have 'come out of hopeless wars' and that such 'unresolved conflicts are a source of danger to us, no matter where we live'. (*Statewatch*, Vol 13, no 6, November-December 2003.)

21 On 13 January 2004, the US State Department also put the Kurdistan People's Congress (KONGRA-GEL) on its list of FTOs on the grounds that it was an 'alias' for the PKK.

22 'Wishing to have a Kurdish identity can't be that bad', Asize Asan in *Listen to the refugee's story: How UK foreign investment creates refugees and asylum seekers,* Ilisu Dam Campaign Refugees Project et al, November 2003.

23 Information in this section is taken from Alternative report to 'Comments by the Government of Sweden on the Concluding Observations of the Human Rights Committee', UN press release SC/7490 '1267 Committee approves deletion of three individuals and three entities from its list' and *Wall Street Journal*, 6.5.02.

24 In January 2004, the Dutch government froze all assets of the Al-Aqsa charity claiming it had classified evidence linking the charity to terrorist organisations. A German government ban on the Al-Aqsa charity in 2002 was temporarily invalidated by the Leipzig federal court in 2003. It found no evidence that the actions of the charity represented a threat to national security and referred the case to the Supreme Administrative Court for a final verdict regarding the legality of the ban. (*IslamOnline* <http://www.islamonline.net/English/index.shtml> 25.7.03 and 2.2.03.)

25 Hamas does not appear on the UNSC list which indicates that whatever the US and the EU might think, the UNSC is not convinced that Hamas has links with Al-Qaida, Osama Bin Laden, the Taliban or 'international terrorism.'

26 Extradition, expulsion and deportation are separate legal processes in terms of international law. Extradition is part of the international criminal justice system, which applies to citizens and non-citizens, It involves sending people to another country with which there is an extradition agreement to face trial or sentence abroad (usually for offences committed there). Expulsion, or deportation, relates to states' power to control the entry and stay of aliens. It may follow from failure to abide by immigration conditions, from the commission of criminal offences or from a decision that expulsion is desirable on national security or political grounds.

27 This harmonisation of EU extradition law – based on the principle of mutual recognition of member states' legal systems – was not accompanied by the harmonisation of EU rules to safeguard individual rights in criminal proceedings. The criminal justice systems of the various member states are not based on the same legal tradition. Certain offences (such as performing an abortion) are crimes in certain EU states and perfectly legal elsewhere.

28 In 2003, Turkey abolished the death penalty for crimes committed in peace time but retains it for crimes in times of war or imminent threat of war. Similarly, Peru is abolitionist on the death penalty for ordinary crimes only.

29 The security services told the Special Immigration Appeals Commission that video tapes of Abu Qatada's sermons were found in the Hamburg flat used by three of the men alleged to have hijacked the planes that crashed into the World Trade Centre.

30 The two are Metin Kaplan and Mullah Krekar. Metin Kaplan has served a three-year prison sentence for the criminal offence of inciting the murder of a rival Islamist leader in Germany and Mullah Krekar was recently charged by the Norwegian authorities under anti-terrorist legislation with complicity in a suicide attack carried out by Ansar al-Islam in Northern Iraq.

31 In January 2004, Zakayev's asylum claim was upheld and he is now an officially-recognised refugee in the UK.

32 Sweden: call for full and fair asylum determination. Letter to Swedish government on behalf of Hanan Attia 17.12.03.

33 Ahmed Agiza may have merely been suspected of a crime by the military tribunal.

34 *IRR European Race Bulletin*, no. 29, March 1999.

35 The US has alleged that Ansar al-Islam was behind attacks on the US-led occupation of Iraq and is one of the groups suspected of the suicide bombing of the Irbal headquarters of the two main Kurdish political parties. However, some Iraqi experts dispute the US' evaluation of the threat posed by Ansar al-Islam, and claim that the group was all but wiped out by American bombing early on in the war but that it suits the coalition's purposes to link any spectacular attack in Iraq to groups associated with Al-Qaida rather than more generalised resistance.

36 The original extradition request filed by Jordan cited 'criminal conspiracy to commit crimes against individuals'. A day later, the request was changed to be only drugs related, presumably to give a legal basis to the extradition. It later emerged that Jordan was also looking for Krekar in relation to a bomb attack although this information was not given to the judges or the defence team, who were led to believe that the extradition request was based entirely on drug related crimes. As the Netherlands does not have an extradition treaty with Jordan, only people suspected of drugs related crimes can theoretically be extradited there because both countries have signed the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. (*Statewatch*, Vol 13, no 6, November-December 2003.)

37 See *Al-Sharaq al-Awsat,* 28.1.04.

Institute of Race Relations

2-6 Leeke Street
London
WC1X 9HS
Tel: 020 7837 0041
Fax: 020 70623
Email: info@irr.org.uk
Web: www.irr.org.uk