

MIREM Project

MIGRATION DE RETOUR AU MAGHREB

Britain and Algeria: Problems of Return

George Joffé

Analytical Report, MIREM-AR 2007/03

Research Project *Collective Action to Support the Reintegration of Return Migrants in Their Country of Origin*, co-financed by the European Union and the European University Institute

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ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES

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GEORGE JOFFÉ

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**COLLECTIVE ACTION TO SUPPORT THE REINTEGRATION OF RETURN MIGRANTS IN
THEIR COUNTRY OF ORIGIN**

ANALYTICAL REPORT MIREM-AR 2007/03

BADIA FIESOLANA, SAN DOMENICO DI FIESOLE (FI)

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MIREM

Le projet MIREM, ou «Action collective de soutien à la réintégration des migrants de retour dans leur pays d'origine», a été lancé en décembre 2005, grâce au concours financier de l'Union Européenne et de l'Institut Universitaire Européen. Il est hébergé au sein du Robert Schuman Centre for Advanced Studies (Florence, Italie). L'objectif majeur du projet MIREM vise à assurer une meilleure prise en compte des enjeux propres à la migration de retour et à mieux en valoriser l'impact à des fins de développement. Il s'agit, en premier lieu, de produire des outils d'analyse et de compréhension du phénomène de la migration de retour vers les pays du Maghreb (Algérie, Maroc, Tunisie) et, en second lieu, de rendre librement accessibles l'ensemble des informations produites.

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The 'Collective Action to Support the Reintegration of Return Migrants in their Country of Origin', henceforth the MIREM project, was created in December 2005, thanks to the financial support of the European Union and the European University Institute. It is hosted at the Robert Schuman Centre for Advanced Studies (Florence, Italy). The main objective of the MIREM project lies in better taking into consideration the challenges linked to return migration as well as its impact on development. Analytical tools will be provided to better understand the impact of return migration on the Maghreb countries (Algeria, Morocco, and Tunisia). All the data produced will be made freely accessible to stimulate a constructive debate on this issue.

MIREM PROJECT

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Abstract

Britain is not an obvious country to which Algerians migrate, although the crisis of the Algerian civil war in the 1990s was to make it an alternative to continental Europe, especially France. From 45 in 1991, asylum applications peaked in 1995 at 1,865 persons and then ran at a consistently high level up to 2002. They are now in steep decline. Return of Algerian asylum-seekers has not followed a similar pattern, however, and many Algerians in Britain are illegally here. In fact, they have ranged between 85 (1998) and 220 (2005) a year, with no figures being available for 1999 and 2000. The British government admits that the efficacy of its return policy has been very limited, although domestic pressure has led to a much more concerted effort to return failed asylum seekers in recent years.

However, the bare statistics must be seen against the growth of British security policies since 2001 and particularly since 2005. Fears of terrorism in Britain linked to the Algerian community here have led to a disproportionate arrest rate amongst Algerians, particularly in the ricin trial, the indefinite detention of Algerians on suspicion of involvement in terrorism without trial, agreements about mutual extradition, memoranda of understanding over the return of Algerians allegedly involved in terrorist activities and much closer cooperation between British and Algerian security services. This securitisation process has made the return of Algerians to Algeria much more problematic and has brought into question the British government's commitment to its obligations within the European Union.

The Algerian community and asylum in Britain

Britain is not an obvious destination for Algerian migrants to Europe, whether asylum seekers or economic migrants. Algeria's colonial links are with France and migration into France from Algeria has a long pedigree. It began during the First World War, as France sought labour to replace Frenchmen conscripted into the armed forces and to provide additional military forces to supplement the French army. Once the war was over, migrants continued to arrive, reaching 100,000 in 1924 and remaining at that figure until the Second World War¹. After the Second World War, labour demand in France despite the Algerian War for Independence ensured that the total number of Algerian migrants rose to 500,000 by 1962 and in 1990 was estimated to total around one million, even though formal labour immigration was ended in 1974².

There was no similar relationship with Britain. Even though Tunisians and Moroccans began to arrive in Britain in the 1960s, largely in response to labour shortages in the National Health Service, London Transport and the tourist industry, Algerians did not join them. The real beginning of the arrival of Algerians into Britain, to form a community estimated today at 25,000-30,000 persons³, begins with the October 1988 riots in Algeria and the subsequent army-backed coup which ushered in an eight-year-long civil war in 1992. Thus, in 1991, for example, there were only 45 applications from Algerians for political asylum, a figure which grew rapidly to a peak in 1995 of 1,865 applications. Although the annual total fell off significantly in the next two years, applications rose again in 1998, increasing thereafter to the end of the decade to 1,635 in 2000 and then beginning a gradual decline in the new decade to 255 in 2005⁴. The vast majority of the asylum applications were refused (see Table 1).

Official statistics for the actual community in Britain suggest that there was considerable immigration which was probably unrecorded. According to the census returns, which cannot be accurate because of those who refuse to complete census forms, usually because of their illegal status, there were 3,453 Algerians in Britain in 1991. Ten years later, the number had risen, according to the 2001 census, to 10,672, an annual increase of 20.9 per cent! Even more striking, 70.5 per cent of the 2001 population were male and 44.4 per cent were between the ages of 30 and 39 years – an age range that suggests that many of them were economic migrants, rather than asylum-seekers. The vast majority of Algerians in Britain are located in London, either in Finsbury Park, where the Algerian Refugee Council is located, as was the infamous Finsbury Park Mosque, or in Waltham Forest, where the Algerian Welfare Association is located. Algerian asylum-seekers have been dispersed under the government's asylum dispersal policy to Bournemouth, Leicester, Glasgow, Manchester, Sheffield and Birmingham⁵

What is striking about the asylum figures (see Table 1 for details) is that, with the exception of 1996 and 1997, they mirror exactly the increasing and decreasing violence of the civil war in Algeria itself. In other words, it does not seem to be the case that many of those who came were simply

¹ MacMaster N. (1997), *Colonial migrants and racism: Algerians in France 1900-1962* (Basingstoke)

² Collyer M. (2003), *Explaining change in established migration systems: the movement of Algerians to France and the UK*, Sussex Migration Working Paper No. 16, Sussex Centre for Migration Research (Brighton); 3

³ <http://www.icar.org.uk/?lid=1135> According to the census returns, which cannot be accurate because of those who refuse to complete census forms, usually because of their illegal status, there were 3,453 Algerians in Britain in 1991. Ten years later, the number had risen, according to the 2001 census, to 10,672, an annual increase of 20.9 per cent! Even more striking, 70.5 per cent of the 2001 population were male and 44.4 per cent were between the ages of 30 and 39 years.

⁴ Zetter R. Griffiths D., Ferretti S. and Pearl M. (2003), *An assessment of the impact of asylum policies in Europe 1990-2000*, Home Office Research Study 259, Home Office Research, Development and Statistics Directorate (London) (June 2003); 88

http://www.statistics.gov.uk/cci/nugget_print.asp?ID=261

⁵ <http://www.icar.org.uk/?lid=1184>

economic migrants who used the migration route to overcome Britain's rigid immigrant regulation. There certainly were economic migrants as well, although it is extraordinarily difficult to extract statistics about them from the overall national statistics. In fact, given the government's focus on combating what it sees as an overall abuse of the asylum system, only indirect national statistics appear to be available.

Thus, in 2004, according to the Information Council on Asylum and Refugees, 60 per cent of Algerians removed from Britain were removed for non-asylum reasons – they were economic migrants in short – 31 per cent were removed as failed asylum-seekers, 4 per cent were their dependents and 5 per cent involved assisted voluntary returns, returned to Algeria under an International Organisation for Migration (IOM) programme. Thus over half those returned from Britain to Algeria were non-asylum-seekers⁶. According to Home Office figures, 510 Algerians were removed from the United Kingdom in 2005, 330 to Algeria, 170 to other European countries under the Dublin Convention and 10 to other, unspecified destinations⁷.

Yet it is clear that asylum was not the only driver and Algerians themselves have suggested other factors, some of which, such as access to English in a rapidly-globalising world, mirror Algerian government policy! The Algerian authorities have long sought to break the country's dependence on France and, from the 1960s onwards, have sent university-level students to Britain and, latterly, to the United States to study in an Anglophone environment. Since the beginning of the civil war – which coincided with a major crisis in Algeria itself – this pro-Anglophone move has been amplified by popular pressure, aware of the dominance of English within the global environment.

Alongside this is another reason, the ease of finding work in Britain and the relative lack of security controls once migrants have entered into British society⁸. In addition, too, the Bouteflika regime has gone out of its way to encourage improved relations with the United States and, to a lesser extent, Britain⁹. But perhaps the most striking reason is that Algerians perceive that they face less racism in London, not because Britain is a less racist society than, say, France but because the community here is relatively so small that it is virtually unnoticed by the host society¹⁰. That is, however, an assumption which has been profoundly undermined since contemporary terrorism has become an issue in Britain and Algerians have been considered to be heavily involved in it!

Illegal immigration and removal

One consequence of the relative lack of internal controls – at least, until the start of this decade – has been that there is a very large illegal immigration in Britain. It is made up of people smuggled into the country, of those who entered on false identity documents and of failed asylum-seekers who have escaped from the normal controls designed to aid their deportation or repatriation. Both issues – illegal immigration and failures by the authorities to remove failed applicants for political asylum – have caused major domestic political crises. Over the former issue, there is now a significant public debate as to whether an amnesty for illegal immigrants should be called; this seems very unlikely, largely because many of those opposed to such action claim that the only consequence would be to encourage

⁶ Ibid.

⁷ <http://www.mirem.eu/datasets/statistics/maghreb/graphg10>

⁸ Collyer, *op. cit.*; 14

⁹ The Bouteflika regime went out of its way to improve relations with the United States after the events of September 11, 2001, handing over names of 350 identified Algerian terrorists and of 1,000 other individuals accused of links with clandestine movements. Security cooperation between Algeria and the United States has intensified as a result (see Brittain V. "A warning for Turkey", *Guardian* 08.05.2007.

¹⁰ <http://www.icar.org.uk/?lid=243>

more illegal migrants hoping to profit from further amnesties. Over the latter issue, the Home Office has redoubled its efforts to remove failed asylum-seekers from the country.

Recently the first-ever estimate of illegal immigration in Britain was made, with the Home Office publishing figures of between 310,000 and 570,000 persons estimated to be illegally here. The best-guess estimate was 430,000 and had been arrived at by subtracting the known number of legal migrants in the country from the total foreign-born population as estimated from the last census in 2001, not a very accurate method because of census under-reporting amongst immigrants¹¹. Some 8.7 per cent of the total population are said to be immigrants – 5.3 million out of a total population estimated in July 2006 to be 60.6 million-strong¹² – who pay 10.2 per cent of all taxes! Thus illegal immigrants are at least around 10 per cent of the legal immigrant population and the government intends to control this by introducing a biometric identity card system for all foreign born residents in the future.

Nonetheless, there is a major problem of control that the government has yet to address, which adds to its problems with failed asylum-seekers. It is estimated, incidentally, that illegal immigrants perform a vital task in filling low-paid but essential jobs, worth £6 billion a year, which would, if their status was legalised, contribute £1 billion a year-worth of additional taxation. Even more striking is the fact that their deportation would cost the British state £4.7 billion¹³. Such statistics raise therefore, some difficult questions about the relevance of the government's current efforts, in the face of an extremely hostile public opinion, to increase the number of failed asylum-seekers it deports. It is, in short, removing a highly economically-efficient and essential resource! Nonetheless, the realities of electoral politics dictate that this is the approach that it is forced to adopt.

Yet here it also faces major problems on control for it is not usual to detain persons once they have failed to gain asylum. One reason for this is that they may decide to avail themselves of the complex system of appeal against the initial decisions of the Home Office and costs of prolonged detention are high, not to speak of the problems of accommodation¹⁴. These are administrative in nature and can therefore be tested in the courts. A complex juridical system has been developed to handle this in which an initial appeal is heard by a single judge when matters of fact can be disputed. A further appeal may be made, primarily on matters of law to a bench of three judges. Both these tribunals specialise only in asylum law. Thereafter, further appeals enter the normal appeals system or can invoke judicial review if there have been procedural failings. It is not normal to detain persons until an order for deportation has been made and, of course, given the complex procedure, individuals may decide to disappear long before this stage is reached – and given the fact that it is not obligatory to carry identity documents in Britain, this is relatively easy to do.

¹¹ www.bbc.co.uk/1/hi/uk_politics/4637273.stm

¹² www.statistics.gov.uk/cci/nugget.asp?id=293

¹³ www.news.independent.co.uk/uk/this_britain/article354784.ece

¹⁴ “ In December 2005, 1,950 people were being held in immigration detention or reception centres, of whom 1,450 were asylum seekers, 190 were held in prisons, 15 in short-term holding facilities and 1,745 in removal centres.

In September 2006, the Immigration Detention Estate comprised the following centres. Removal Centres: Campsfield (198); Colnbrook (303); Dungavel (194); Harmondsworth (501); Queens buildings (15); Tinsley House (146); Yarl's Wood (405). Short-term holding facilities: Dover Harbour (20); Harwich (12); Manchester Airport (16). Removal Prisons: Dover (316); Lindholme (112); Haslar (160 – to be increased to 300); Reception Centres: Oakington (265)

It costs on average £1,247 per week to keep a single refugee in Oakington detention centre, according to figures from the first half of 2002
Statistic 1: (Source: Home Office, 2006); Statistic 2: (Source: National Coalition of Anti-Deportation Campaigns, 2006); Statistic 4: (Source: Hansard, January 2003)”

[http://www.politics.co.uk/issuebrief/domestic-policy/immigration/immigration-detention-centres/immigration-detention-centres-\\$366686.htm](http://www.politics.co.uk/issuebrief/domestic-policy/immigration/immigration-detention-centres/immigration-detention-centres-$366686.htm)

Thus the issue of deporting illegal immigrants and failed asylum-seekers is substantially the same in Britain and the focus has been on asylum-seekers because of acute public concern about them. At the start of 2007, the Home Office trumpeted its latest successes, claiming that asylum applications in 2006 had dropped to their lowest level for the last two decades at 23,520, 9 per cent lower than in 2005, whilst removals from Britain had reached their highest level ever at 18,235, 16 per cent more than in 2005 and 127 per cent more than in 1997. In the fourth quarter of the year, asylum applications had dropped 4 per cent more than in the third quarter to 6,835, whilst removals rose by 7 per cent over the same time periods, to 4,085.¹⁵ Of course, there is still an excess of applications over removals and no statistics are available about the removal of illegal migrants in Britain!

The situation of Algerians illustrates the current situation very well. In 2006, 250 Algerians were removed from the country. This figure comprised both persons who had applied and failed to gain asylum in 2006 and others who had exhausted their appeal options from previous years. Only 85 Algerian nationals were held in detention in 2006 and only 55 of these were asylum-seekers¹⁶. These figures can only be indicative since they do not indicate the relationship between the date of the initial application for asylum and the date of deportation. It is thus not possible to determine how many of those who have failed to obtain asylum or any of the related categories – humanitarian protection or discretionary leave to remain (see Table 1) – have moved into the illegal migrant community although impressionistic evidence suggests that the figure would be large.

It may be the case that the Algerian community in Britain has been under particular attention from the authorities in recent years as far as deportation is concerned because of its alleged association with political violence linked to global terrorism. During the 1990s, Britain earned the sobriquet of “Londonistan” in official France and Algeria because of its allegedly lax attitudes towards extremists who obtained political asylum and who were largely left in peace, provided they did not threaten the domestic scene. It is certainly the case that the mosque in Finsbury Park became the centre of much agitation as a result of the activities of Abu Hamza al-Masri and Algerian extremist groups and their representatives abroad could be found there.

After the events of 2001 in Washington, therefore, when attitudes in Britain changed over the issue of domestic security, the Algerian community, which had been substantially left in a situation of benign neglect until then, came in for ever-greater scrutiny because of these links. The changes in British attitudes and policy, however, need to be seen against the background of the parallel changes in European Union policy, which were partially reflected in the British situation and was to have its effects on Algerians in Britain. One early consequence was arrests of Algerian asylum-seekers in connection with alleged terrorist offences and the consequent murder of a policeman in Manchester. Another was direct contact between the British and Algerian security authorities with quite specific implications for the safety of Algerians removed from Britain to Algeria.

The focus on counter-terrorism since 2001

Indeed, Britain had not been unique, even though it might have been the most extreme example of such neglect in Europe, despite constant spill-over violence into Europe from North Africa in the 1990s, particularly into France. Indeed, apart from France and, perhaps, Germany because of the presence there of Rabah Kebir, the official spokesman for the banned Islamist movement in Algeria, the Front Islamique du Salut (FIS), no European state took much interest or demonstrated any real concern over the situation in Algeria. Nonetheless, given the indifference to it generally demonstrated

¹⁵ www.ind.homeoffice.gov.uk/aboutus/newsarchive/recordhighonremovalsoffailed
www.ind.homeoffice.gov.uk/rds/immigration.html

¹⁶ www.ind.homeoffice.gov.uk/rds/pdfs07/asylumq406.pdf

by European states, alongside their relative disinterest in democracy and human rights promotion¹⁷, it may seem surprising that parts of this picture should have changed so radically in 2001, after the attacks on Washington and New York.

The expressions of outrage and solidarity would certainly have been expressed but past practice would not have suggested the institutional commitment that followed so rapidly, as did the institutions themselves. The reasons for this lie outside the scope of this article but are undoubtedly related to shared ideological and cultural assumptions, alongside common perceptions of trans-national security threats both within Europe and across the Atlantic, despite growing trans-Atlantic political differences over objectives and outcomes, particularly in the South Mediterranean¹⁸. There was also, perhaps, an uncomfortable sense that protests from North African states about European complacency over political violence that were ignored during the 1990s, might have had better grounds than European states had been prepared to recognise.

Strategic decisions

The reactions were twofold; declamatory statements and strategies were articulated by the European Council and related bodies, whilst the institutions and instruments necessary to develop an integrated response in support of the United States emerged from the Commission. Thus, ten days after the incidents in the United States, the Council adopted an action plan to fight against terrorism. Ten days after that, the Council instructed member-states to freeze the assets of organisations and individuals suspected of engagement in terrorist activities and, at the end of the year, it set up an advisory commission over chemical and biological warfare. In 2002, two framework decisions were adopted – to establish a European arrest warrant and to define what a terrorist offence was, a definition to be incorporated into national legislation along with minimum penalties to ensure that no one state could offer sanctuary to alleged terrorists.¹⁹

This was accompanied by a process of externalisation of the Maastricht second pillar – Justice and Home Affairs, soon to be renamed in an Orwellian inversion as Freedom, Security and Justice.²⁰ Externalisation²¹ is usually understood as the response of actors external to the Union to internal European decisions born out of the fear of exclusion from the decision-making process and thus designed to achieve inclusion within it. Indeed, it is argued that such a process can be consciously exploited by the Commission in developing external linkages of cooperation to achieve the end of internal policy decisions and that this process now extends to southern and eastern neighbours.²² Whilst there is no doubt that the post-September 11, 2001 policies introduced by the Union certainly reflected such ambitions, they were actually knocking at an open door, for South Mediterranean states had been clamouring for a European response of this kind since the early 1990s. It might, therefore, be more accurate to see this as a process of “externalisation-in-reverse”, one which, furthermore, marginalised other European objectives enshrined in the Barcelona Process such as democratic governance and respect for human rights.

¹⁷ Gillespie R. (2004), A political agenda for region-building: the EMP and democracy promotion in North Africa, Paper 040530, Institute of European Studies, University of California (Berkeley); 2

¹⁸ Joffé (2007), “European policy and the Mediterranean,” in Zoubir Y. and Amirah-Fernandez H. (2007)(eds), North Africa: politics, region and the limits of transformation, Routledge (London)

¹⁹ http://ec.europa.eu/justice_home/fsj/terrorism/fsj_terrorism_intro_en.htm

²⁰ See http://ec.europa.eu/justice_home/fsj/index_en.htm

²¹ The concept derives from neo-functional theory; see Schmitter P.C. (1969), “Three neofunctional hypotheses about international integration,” *International Organisations* (Winter 1969), **23**, 1; 161-166; and Schmitter P.C. (2003), “Neo-neo-functionalism”, in Wiener A. and Diez T. (eds)(2003), *European interaction theory*, OUP (Oxford).

²² Lavenex S. (2004), “EU external governance in ‘wider Europe’”, *Journal of European Public Policy*, **11**, 4

In May 2005, as part of this process of externalisation the Commission proposed a five-year programme covering the whole gamut of activities now subsumed under the justice and home affairs agenda – citizenship rights, migration, terrorism, border security, asylum, integration, information-sharing, action against organised crime, justice and a review of policy and financial instruments to “meet the objectives of Freedom, Security and Justice in the most efficient way”.²³ It reflected priorities agreed by the European Council in November 2004. As far as the South Mediterranean was concerned, the Hague Programme reflected the strategy outlined in the Valencia Action Plan of April 23, 2002, in which foreign ministers of the Euro-Mediterranean Partnership had agreed to cooperate amongst themselves and with the United Nations over terrorism. The relevance of European policy to its Mediterranean partners was subsequently highlighted in the European Union Counter-Terrorism Strategy, published on November 30, 2005 and in the Commission communication of May 16, 2006, which stated quite unequivocally:

The main principles of a strategy covering the external aspects of policy on justice, freedom and security are already in place. Thus the EU has established a partnership on security with the United States, cooperation with the western Balkans, a strategic partnership with Russia and cooperation with Ukraine to secure stability and support the reform process and is contributing to the progress of good governance and the rule of law in the Mediterranean countries. The Commission lists a number of political priorities derived from the Hague Programme and its Action Plan, which provide the general basis for relations with non-EU countries. These include human rights, institution building and good governance and enhancing non-EU countries' capacity to manage migration and combat terrorism and organised crime.²⁴

Once again, South Mediterranean states had very little problem in responding to such policy decisions as they reflected the agendas they had long held. In addition, the fact that in practice both the European Union and the United States down-graded their concerns over other aspects of security and governance policy confirmed their belief that this would no longer be a priority, if indeed it ever had been. It is, of course, extremely difficult to document such policy changes as they are not explicit. It is, however, instructive to observe the change in emphasis in the declamatory policy of the United States, from Condoleeza Rice's speech at the American University in Cairo on June 20, 2005, when she declared, “For 60 years, the United States pursued stability at the expense of democracy in the Middle East — and we achieved neither. Now, we are taking a different course. We are supporting the democratic aspirations of all people,”²⁵ to the rejection of democratic decision in Palestine in January 2006 – a move followed by the European Union! Whatever the justification for the latter decision, it did not reflect well within the Southern Mediterranean on European and American commitment to a democratic agenda and was interpreted in North Africa as a statement about the priority of security issues instead.²⁶

Implementation

The enthusiasm of North African governments to embrace the new counter-terrorism agenda defined by the European Union in response, not only to the events of September 11, 2001 but, subsequently, to the Madrid training bombings on March 11, 2004 and the London bombings on July 7 and July 21, 2005, has led to two separate processes in terms of actual reaction. One reflects the role played by the

²³ European Commission, “The Hague Programme – Ten priorities for the next five years” COM (2005) 184 final. (information dossier on http://ec.europa.eu/justice_home.htm and

<http://europa.eu/scadplus/leg/en/lvb/116002.htm>)

²⁴ Commission Communication COM (2005) 491 final, “A strategy on the external dimension of the area of freedom, security and justice”. <http://europa.eu/scadplus/leg/en/lvb/116014.htm>

²⁵ usinfo.state.gov/mena/Archive/2005/Jun/20-589679.html

²⁶ Morley J. “World Opinion Roundup”, Washington Post Online (March 17, 2006)

http://blog.washingtonpost.com/worldopinionroundup/2006/03/palestinian_democracy_rhetoric.html

new European institutions that were constructed in the wake of the change-of-policy, together with the development of an ambiguity in European policy. The other reflects a return to the tried-and-tested mechanisms of the past, in which bilateral relationships reassert themselves over the multilateral instruments constructed by the Union itself.²⁷

The issue of policy ambiguity relates to the question of formal European support for democratic governance and the difficulty that the Union – and more specifically the Commission – has had in developing a meaningful and appropriate policy towards the phenomenon of political Islam. The problems are not only ones of external policy, although that is the aspect that is most relevant here. They also relate to the way in which both the Union and member-states deal with political Islam within the geographic confines of the Union itself. It is only relatively recently that the Union began to address the issue of how it would relate internal manifestations of political consciousness within Muslim minority communities and how it would distinguish between its policies towards minority community inclusion and towards sanctioning political extremism. In theory, of course, the two issues are formally considered to be separate; in practice they are not, largely because Justice and Home Affairs policy is becoming securitised, despite the provisions of the Hague Programme, both at a Community and a national level.²⁸

In external terms, the problem is that the Union has not yet come to terms with moderate Islamist movements as viable negotiating partners over issues of political reform and civil society. It continues to assume that, in some way, they are related to the violence of the 1990s in the South Mediterranean, particularly in Algeria and Egypt. In this respect, French attitudes towards North Africa continue to dominate the Commission's attitudes and there appears to be little willingness to differentiate between political extremism and moderate political Islam outside the realm of cultural interactions.²⁹ As Wolff points out³⁰,

The EU has not yet adopted a clear position towards the access of movements like the Muslim Brotherhood in Egypt or the Hamas in Palestine to parliaments and local councils. In the case of Egypt it is indeed revealing that the EU did not protest to the postponing of local elections by President Mubarak who was afraid of a landslide of the Muslim Brotherhood.

It is a challenge that the Union will not be able to delay much longer as there are legislative elections in Algeria and Morocco due in 2007 and, certainly in the case of Morocco, a moderate Islamist party, the Parti de la Justice et de Développement (PJD), is likely to become the majority party in any new government. This eventuality must be set against the issue of political extremism and violence that erupted in Casablanca and Algiers in April 2007. It poses a major problem for the future of European democratisation policy in view of the dominant role of security in the relations between the Union and individual countries in the Southern Mediterranean.³¹ Ironically enough, both the European Parliament and certain European countries, amongst them Britain, Germany and Spain, have been far more willing to engage with Islamists in the North African region. The result is that:

The treatment of problems of democratisation, as addressed again on the 10th anniversary of the Euro-Med Partnership in November 2005, is manifestly not working. Consequently, the absence of

²⁷ These issues and that of EU externalisation are very ably described in Wolff S. (2006), "The externalisation and Justice and Home Affairs to the Southern Neighbours: the EU's dilemmas in the fight against terrorism." EuroMeSCo annual conference, Istanbul (October 4-5, 2006)

²⁸ See Silvestre S. (2005), The political mobilisation of Muslims in Europe and the EU response, unpublished PhD thesis (Cantab); Joffé G. (2007), "Europe and Islam: partnership or peripheral dependence?", in Wright W. (ed)(2007), The geopolitics of European Union enlargement, Routledge (London)

²⁹ Boubekeur A. and Amghar S. (2006), Islamist parties in the Maghreb and their links with the EU: mutual influences and the dynamics of democratisation, EuroMeSCo Report 55 (October 2006), EuroMeSCo (Lisbon); 20

³⁰ Wolff **op.cit.**

³¹ Bicchi F. and Martin M. (2006), "Talking tough or talking together? European security discourses towards the Mediterranean", **Mediterranean Politics**, 11, 2; 189-207

new instruments of dialogue with the new political players from the Arab world (among them the Islamists) has led to a consensus to focus on counter-terrorism and its definition (the only consensus obtained between north and south at the 10th Euro-Med summit). Does this consensus in favour of security at the expense of democratisation take the EU another step away from a real debate on the place of Islamists in its programme?³²

The short answer is, probably this will be the case and will represent a major policy failure for the Union, as the ambivalence towards Turkey's demand for Union membership, resisted by several member-states and poorly handled by the Commission, already indicates. The other aspect of this, the construction of institutions designed to handle the process of externalised securitisation of the external relationship between the European Union and North African states, is far more advanced. There are, in fact, multiple and complex linkages now that facilitate police and security service cooperation through the European Union on behalf of member-states. In addition to the basic bilateral contacts between individual states in the Union and in the South Mediterranean, which is considered below, there is also indirect contact with the United States, Algeria, Morocco, Jordan, Israel, the Palestinian Authority and Ukraine via the European Union and Europol. These amplify the links established within Europe in the wake of the Red Brigades episode in the 1970s when the TREVI Group of interior ministers was established and eventually extended to include Morocco as an observer.

After the events of September 11, 2001, as discussed above, the European Council established a common definition of terrorism and lists of terrorist organizations and individuals were also determined. Finally, on June 13, 2003, a European arrest warrant was defined, improving uniform extradition procedures across the continent. At the same time, new institutions were established in addition to Europol. Thus the Tampere Summit in 1999 established the Police Chiefs Task Force and mandated it to deal with third countries over matters involving terrorism, and two new working groups were established inside the Council; one, the Terrorism Working Group, which replaces the old TREVI Group, and the other, COTER, which maintains regular contacts abroad. In 2005 a Situation Centre was created within the Council secretariat to allow intelligence experts to share and evaluate data collected by member-states. It also advises the Council on strategic threats. In October of the same year FRONTEX, a new Union border control agency, started to operate. Based in Warsaw, it supports and coordinates national border administrations and has, as part of its mission, the responsibility of liaising with third states. It thus forms an integral part of the new security architecture that the Union has constructed.³³

These activities, of course, fall under the Justice and Home Affairs pillar of the European Union. However, they can also involve the other pillars – Single Market and Common Foreign and Security Policy – as well as national policies, so Gijs de Vries was appointed as coordinator for Europe-wide terrorism issues within Xavier Solana's directorate for Common Foreign and Security Policy. His appointment was also accompanied by a growing externalization of the Justice and Home Affairs pillar – the typical approach by the Union towards integrating third parties into its activities. In 2006, however, he resigned his post, apparently in part because of the complexities it involved, and no replacement for him has yet been found.

To an extent, such cooperation had been foreseen in Chapter VIII of the bilateral Association Agreements that the Union had signed with its Mediterranean partners as part of the Euro-Mediterranean Partnership after 1995. It had been buttressed by the outcome of the Common Mediterranean Strategy approved by the Santa Maria de Feira council meeting in 2000 which sought to strengthen cooperation through the Justice and Home Affairs pillar with regard to organized crime and money laundering. The Valencia Action Programme of 2002 extended this to cover drugs,

³² Boubekeur & Amghar, *op. cit.*; 21 The summit to which they refer was the tenth anniversary summit of the Euro-Mediterranean Partnership in Barcelona in November 2005 – a major failure of the British presidency which, typically, the Blair government blamed on everybody else!

³³ <http://www.frontex.europa.eu>

migration and terrorism and also provided funding for this purpose under the MEDA JHA I and II financial programmes which were part of the funding provided to third parties under the Euro-Mediterranean Partnership. Up to 2007, some €55 million had been provided, most of it for bilateral purposes but with €21 million going to regional programmes.³⁴

There have also been a growing number of bilateral cooperation programmes between South Mediterranean partner countries and individual European states, as well as a series of informal regional projects, such as the Association of European Police Forces and Gendarmeries (FIEP). Indeed, in funding terms, the Union's MEDA funding for justice and home affairs purposes only represents 13 per cent of the total European states spend on Mediterranean security cooperation each year. Britain has been instrumental in setting up the ULISES Programme which seeks to provide maritime security in the Western Mediterranean from Gibraltar to Sicily and in the Group of Jerez, which is designed to combat transnational risk and integrate the region into a common security zone.

Finally, the European Union's new Neighbourhood Policy, which will integrate the Euro-Mediterranean Partnership in 2007, has special arrangements for collaborating over justice and home affairs issues. Indeed, for the South Mediterranean countries mentioned above, this security cooperation is to be strengthened as part of the European Neighbourhood Policy that now governs European relations with these states, as was revealed by Gijs de Vries, the Union's Counter-Terrorism Co-ordinator, in a speech he gave on January 19, 2006 to the Centre for European Reform in London³⁵. The new requirements will be built into each of the three-to-five year bilateral Action Plans that each of the Mediterranean countries have or will sign with the European Union and funding under the new policy for security issues has already been agreed with Morocco, Jordan and Algeria.

The bilateral dimension

In many respects, these new institutions created by the Union now bypass its centralized control mechanisms and engage in an autonomous fashion with their counterparts in the South Mediterranean and elsewhere. A process has thereby developed in which autonomous European institutions concerned with security have engaged, outside normal centralized institutional control, in ongoing relations with third party security agencies, thus entrenching the process of securitization of external policy through the externalization of what has been called "intensive trans-governmentalism".³⁶ This process is abetted by the fact that it is powerfully supplemented by the long-standing and new bilateral security relationships that member-states have developed, particularly since 2001, with North African states amongst others. Indeed, in many respects, these relationships which by-pass the central institutions of the European Union, even when they make use of the agencies that the Union has created in the pursuit of its goal of securitizing external policy, have now become more important than the policies of the Union itself.

The way in which these relationships have developed in the case of two member-states – France and Britain – with Algeria is instructive. Indeed, collaboration between security services in Europe and Algeria is now a constant feature of the exchange of information that takes place over security issues. Of course, cooperation between the French security services and the security services of all North African states has been an intrinsic feature of Franco-Maghribi relations ever since they obtained independence from France. Thus, in 1965, the Morocco political activist, Mehdi ben Barka, was arrested in France at the request of the then Moroccan minister of the Interior, General Mohammed Oufkir and subsequently disappeared, apparently being murdered by French intelligence agents. The French government, under General de Gaulle, was completely unaware of the incident and, once the

³⁴ This is discussed in detail in Wolff, *op.cit.*

³⁵ http://www.cer.org.uk/articles/format_print.htm?article=speech_gijs_de_vries_19jan06

³⁶ Lavenex S. and Wallace W. (2005). "Justice and Home Affairs", in Wallace H., Wallace W. and Pollak M. (2005)(eds) *Policy-Making in the EU*. OUP (Oxford).

General did become aware of what had happened, he threatened to break off diplomatic relations with Morocco³⁷. In the end, a breach was avoided but the Moroccan deputy minister of the interior, Mohammed Dlimi was arrested and tried when he next visited France. There was also a suggestion of American secret service complicity in the affair.

As far as Algeria is concerned, the past decade has been full of such links. For instance, the Algerian military security service warned its French counterpart in 1995 of the impending murder of Imam Sahraoui in Paris by the GIA³⁸. Some years earlier, the two services collaborated, under instruction from the then French interior minister, Charles Pasqua, in the introduction of French gendarmes into Algeria ostensibly to protect French nationals there against attack by the GIA, after what was believed to be a staged abduction of three French embassy members in Algiers in 1993³⁹. There are also complex links between individuals in the two countries' services, particularly between the Direction des Renseignements de Sécurité (DRS) in Algeria and the Direction Générale de la Sécurité Extérieure (DGSE) in France that go back over many years⁴⁰ and information is regularly exchanged between them, both at a personal, organisational and a governmental level. There are also direct links between Algerian institutions and the French authorities and at least twelve names of French officials and security service members have been mentioned as being attached to the Algerian army command and to the intelligence services in Algeria⁴¹.

The relationship between the Algerian security services and the United States, although not directly relevant here, does highlight how the events of September 11 have been key to the transformation of Algeria's relations with Western states. There was no formal cooperation before 1995 as the Clinton administration was not certain that the Algerian government would survive the civil war. Thereafter, contacts began slowly to improve and, by the advent of the new century, the Pentagon had decided to intensify its contacts with its Algerian counterparts. The Algerian army and presidency had also decided that improved relations with the United States were a priority, both to escape dependence on France and because the Algerian army wished to modernize its forces and wished to follow the American model.

Matters were dramatically expedited by the events of September 11, 2001, not least by Algeria's prompt furnishing of its details on extremist organizations to Washington. As a result, President Bouteflika acquired excellent access to the Bush administration and the Algerian army has begun to receive American material aid and soon expects to receive weaponry also. There is increasing cooperation in the Sahara and the Sahel and Algeria seems set to play a role similar to that of Pakistan in Afghanistan in American strategic thinking. There have also been direct contacts between Algeria's security services and their American counterparts. The FBI, the CIA and the NSA all sent officials to a meeting in Algiers with representatives of the Algerian army and the DRS in early February 2002. The officials then set up a framework for ongoing intelligence cooperation⁴².

³⁷ Jacques Derogy, Frédéric Ploquin, *Ils ont tué Ben Barka*, Fayard, 1999 ; Robert Arnaud, *France-Inter, L'affaire Ben Barka*, dimanche 25 octobre 2000 ; Gilles Perrault, *Notre ami le Roi*, Gallimard, 1990. see also: www.confidentiel.firstream/article.php3?id_article=264

³⁸ Mohamed Samraoui (2003), *Chronique des années de sang*, Editions Ladécouverte (Paris)

³⁹ Campell G., "The French connection", *New Zealand Listener*, February 14-20, 2004, **192**, 3327

⁴⁰ The French intelligence services comprise (1) Direction Générale de la Sécurité Extérieure (DGSE), which reports to the presidency and the premier but is administered by the ministry of defence; (2) the Direction de la Surveillance du Territoire (DST), which deals with counter-terrorism and activities of foreign nationals in France and is administered by the ministry of the interior; (3) the Renseignements Généraux (RG), which handles general domestic intelligence issues and is administered by the ministry of the interior; and (4) the Direction de la Protection du Secret Défense (DPDS), which handles military intelligence and is administered by the ministry of defence.

See: dcaf.ch/news/Intelligence%20Oversight_051002/ws_papers/Faupin.pdf

⁴¹ www.anp.org/merc/mercengl.html

⁴² *El Watan* (09.02.2002)

The British situation was much less well-defined until September 11, 2001, for British interest in political violence in North Africa had been limited and the British government habitually ignored Algerian protests over the dissidents to which it had given political asylum. The British authorities, both police and security services – to the fury of their French and North African counterparts – considered that it was far better to monitor such movements in Britain than to arrest or harass them. The French experienced similar frustrations to those experienced by Algeria and extradition cases in Britain initiated by France became matters of diplomatic discord as a result of the exigencies of the British courts. Thus Rachid Ramda, who was sought by the French police in connection with the RER bombings in Paris in 1995, was only finally extradited in 2005, almost a decade after he had originally been detained in Britain.

Within the British system, however, far closer cooperation between its various components over issues of terrorism – outside the question of Northern Ireland – developed once the security system was reorganized after the end of the Cold War with a reorientation of domestic security services. In the words of Eliza Manningham-Buller, the head of MI5, in a speech in 2003:

Police and the security and intelligence services are working together to combat this problem [terrorism]. I can assure you that cooperation has never been better. The UK arrangements bring together the best from the intelligence world on the one side and law enforcement community on the other. Tackling complex and organized threats is a difficult and dangerous business. There is, without doubt, unequalled transparency and cooperation between us compared with other systems overseas.

In the wake of the events of September 11, 2001, this cooperation also extended overseas. As Ms Manningham-Buller went on to remark:

International cooperation to combat the terrorist threat has never been closer or more productive. Exchanges of intelligence have long been routine and we and other agencies, SIS and GCHP, work closely with foreign intelligence and security services to combat the threat. International cooperation too has never been better.⁴³

Even allowing for the hyperbole that a speech in public over secret matters inevitably contains, the message here could not be clearer. There is coordinated communication and exchange of information within the British intelligence and security services, from the police to MI5 and the Secret Intelligence Service (SIS), and there is good cooperation internationally as well. Interestingly enough, in the wake of the Madrid bombings in 2004, when the post of a special terrorism coordinator operating through the Common Foreign and Security Policy directorate under Xavier Solana was instituted and information exchange between European security and intelligence services was improved as detailed above, the British services made full use of the new facilities⁴⁴. Now information is exchanged directly or indirectly between the British intelligence and security services and their counterparts in Algeria⁴⁵. Indeed, the British embassy in Algeria website makes this crystal clear, since its activities include “government-to-government cooperation on such issues as international terrorism....”

The close cooperation between the security services of the two countries that this implies has been confirmed by evidence given in a statement by Eliza Manningham-Buller, in an appeal heard in the

⁴³ Speech by Eliza Manningham-Buller, director-general of MI5 at the RUSI conference in New Delhi on June 19, 2003. See www.ukinindia.com/press/speeches/speech_50.asp

⁴⁴ See also Munchau W., “Europe needs to rethink its security”, *Financial Times* (15.03.2004)

⁴⁵ The Algerian security and intelligence services consist of the following elements: (1) the Direction de Renseignements de Sécurité (DRS)(formerly the Sécurité Militaire) which has been run by General Mohamed Tawfiq Mediène since 1990 but formally reports to the minister of the interior; (2) the Direction de Co-ordination de Sécurité Territoriale (DCST) which is run by General Smaine Lamari and also reports to the ministry of the interior; and (3) the Direction Generale de Sureté National (DGSN) which is headed by Ali Tounsi and reports to the ministry of the interior. It coordinates the police services and cooperates with the gendarmerie which is managed by the ministry of defence.

www.specialoperations.com/Foreign/Algeria/Default.htm

House of Lords between “A. and others” and “A. and others (FC) and another” as appellants and the Secretary of State for the Home Department as respondent. This was a case connected to the notorious ricin case in Britain where, eventually four linked cases collapsed because of tainted evidence – the evidence had been obtained from Algeria in dubious circumstances which could not be monitored and, eventually, the courts rejected it. In paragraph 8 (b) of her statement, she described how evidence was obtained from a certain Mohammed Meguerba through the agency of the “Algerian liaison”, as the Algerian authorities did not allow British police officers to examine him directly. This evidence was subsequently used in the trial of Kamel Bourgass, who was charged with the murder of a policeman in Manchester in connection with the ricin affair.

Mohammed Meguerba’s evidence was later commented on at length in a Special Immigration Appeals Commission (SIAC) case involving “Y” (Appeal No: SC/36/2005). The judgement in that case concluded (paragraph 67), “Accordingly, we have come to view that we cannot place reliance upon anything which Meguerba has said, incriminating or exculpatory...” At paragraph 53, there is an even more specific statement that seems to bear directly on the quality of this evidence, “...we have concluded that although what Meguerba said to the Algerians has been shown to be correct in a number of very important respects, it cannot be relied upon where he identifies who or was not involved in wrongdoing, including membership of extremist groups”.

Although this has not been made explicit in the judgement, the real concern here was that the evidence may have been obtained by means that rendered it inherently unreliable because of the use of torture. The Algerian authorities never allowed Mr Meguerba to be interviewed by British police, so the evidence could never be tested. As untested evidence, probably obtained by torture, it would have contravened the basic principles upon which the Union is based, nor could it be admitted under British law. It is noteworthy that the British courts appear to be more aware of the implications of bilateral policy than either the British government or the security services. The trial, however, also demonstrated the way in which bilateral national relations appear to have circumvented the complex structures created by the Union as part of its policies designed to promote some at least the Copenhagen criteria in its external relations with neighbouring states.⁴⁶

It is at this point that the issue of the intersection between deportations of Algerian nationals and security concerns becomes apparent. It is not only a question of persons specifically accused of terrorist offences who have been tried and sentenced. It is also a question of persons suspected of involvement with terrorism who have been detained indefinitely as a result but who never face criminal proceedings, usually because either the evidence is too flimsy or too confidential to be divulged to a court. They also face the danger of deportation if the government can satisfy the British courts that they will not face illegal treatment in consequence. Recent terrorist cases in Britain have highlighted both the closeness of these relationships and the perils implicit in them as British ministers visit Algiers to make the security relationship ever closer. Thus, United Press International reported, on February 15, 2006, that one purpose of the visit to Algiers by the then foreign secretary, Jack Straw, to Algiers was “to step up security and judicial cooperation” and that such cooperation had become significant “in 2004 when Scotland Yard arrested four Algerians belonging to a terrorist group at a London metro station as a result of intelligence information provided by Algiers.”

46 The European Neighbourhood Policy is based on the first two of the three “Copenhagen criteria” which define its objectives in return for which association with the Union become possible. They were laid down at the Copenhagen summit in June 1993 as the basis upon which Enlargement could proceed as they determined the conditions Accession state would have to fulfil to actually join the Union. They require (1) stable institutions guaranteeing democracy, the rule of law, human rights and respect for minorities; (2) a functioning market economy; and (3) incorporation of the Community acquis: adherence to the various political, economic and monetary aims of the European Union. The latter condition, of course, does not apply except insofar as it is inherent to the first two conditions.

http://europa.eu.int/scadplus/glossary/accession_criteria_copenhagen_en.htm

Outcomes

This, of course, has direct relevance to the issue which this article seeks to address, not just the nature of the relationship between the European Union, its member-states and South Mediterranean states over counter-terrorism strategy and democratisation but also and particularly about the British-Algerian relationship over deportations of Algerians from Britain. The discussion above demonstrates that these trans-Mediterranean relationships are increasingly dominated by security concerns and that the consequent political relationship between member-states and the Southern Mediterranean is subordinated to such objectives. The pattern of government-to-government and security service-to-security service contacts depicted above for the British case, could easily be replicated by an examination of the German-Algerian relationship in the wake of the 2003 kidnapping of German and Dutch tourists in the Sahara, or by an examination of the Moroccan-Spanish relationship in the wake of the Madrid train bombings of March 2004, not to speak of the much longer relationship between France, Algeria, Morocco and Tunisia!

Memoranda of understanding

In one respect, however, the securitization implications of the new British relationship with Algeria are unique. This is in respect of the British government's desire to deport persons accused of involvement in terrorist activities, whether or not they have been tried and found guilty by the courts in Britain. This is a consequence of the fact that Britain is a common-law jurisdiction and indefinite detention or internment is a parliamentary prerogative as the House of Commons is, theoretically, sovereign. The problem revolves around British obligations under the 1951 United Nations Convention on Refugees which requires host countries to practice non-refoulement (non-return) if there is a real danger of ill-treatment upon return. In the case of South Mediterranean states, many such persons face criminal charges in their countries-of-origin or may face such charges if they are returned. The fact that a person does face such charges is not a ground for asylum, of course, but non-refoulement applies, as far as members of the European Union is concerned, if it can be demonstrated that the outcome of such a return could be significant physical ill-treatment amounting to torture or that the person concerned could face a death sentence.

This places the British government, in particular, in a difficult legal situation as far as persons who have not been condemned of an offence but whom it wishes to deport. All South Mediterranean states except Israel to maintain a death penalty and many of them are believed to practice interrogation techniques amounting to torture. In principle, therefore such persons cannot be deported from Britain. Attempts in the past to do this have been over-riden by the British courts, most notably in one case involving an Egyptian member of the Muslim Brotherhood where the prime minister's office, against the advice of both the Foreign and Commonwealth Office and the Home Office, attempted to deport him.⁴⁷ The government's response to this has been to institute "memoranda of understanding", diplomatic documents in which governments-of-origin confirm to the host government, in this case Britain, that they will neither execute or maltreat the deported person. The British government also attempts to find an independent body in the country to which deportation is directed to monitor the treatment of deported persons in the countries concerned⁴⁸.

⁴⁷ Hani El Sayed Sabaei Youssef and the Home Office before the Honourable Mr Justice Field: 2004 EWHC 1884 (QB)

⁴⁸ It is worth noting that the practice of deporting persons to Algeria against diplomatic assurances that they would not be harmed has been specifically condemned by the New York-based human rights organizations, Human Rights Watch. In a report issued on April 15, 2005 and entitled "Still at risk: diplomatic assurances no safeguard against torture", a specific comment on Algeria was made in relation to suspected British government proposals to deport persons originally indefinitely detained in Belmarsh prison against diplomatic assurances of safe treatment.

The British government nevertheless continues to try to achieve this outcome. In late February 2005, it was reported that Baroness Symons had travelled to Algeria, Morocco, and Tunisia to negotiate agreements for the return of terrorist suspects from Britain to those countries. The British government acknowledges that the men formerly held in indefinite detention would be at risk of torture if they were to be returned to their countries of origin. In addition to their individual risk, the men come from countries where torture is a serious endemic problem. In some countries—Egypt, for example—torture is systematic. In other countries—Algeria, Morocco, and Jordan—persons suspected of terrorist activity or labelled as such are specifically targeted for abusive treatment, including torture. All of the countries are accused of routinely violating their international human rights obligations.

Nonetheless, the British government continued to try to negotiate such an agreement, as press briefings after visits by Kim Howell, another junior Foreign Office minister, and by Jack Straw, the foreign secretary, in mid-February 2006 demonstrated, but it has now had to settle for something rather less than its original intentions. The Algerian government was publicly hostile to the British proposals, with the interior minister, Yazid Noureddine Zerhouni, objecting to both a proposed extradition convention, on the grounds that Algeria did not extradite its nationals, and the proposed memorandum of understanding – although the text of the memorandum has not yet been published – on the grounds that the British government had proposed its own legally-trained monitors (he actually claimed that they would be judges) to oversee the treatment of returned deportees in Algeria and that this would be a breach of Algerian sovereignty!⁴⁹

It remains to be seen whether appropriate terms for such a memorandum of understanding can really be established. The situation at present appears to be that both the Foreign Office official who has been handling the detailed negotiations in Algeria and Jordan – memoranda of understanding are to be concluded with four countries – Lebanon, Jordan, Libya and Algeria – and a former ambassador who has been appointed the representative for deportations of persons under the memorandum arrangements, have been given assurances in Algeria that persons facing deportation can apply for absolution from any offence committed against Algeria either abroad or in Algeria itself under the amnesty provided for under the charter for national reconciliation and peace and that they will not stand under double jeopardy for any offence committed against a third party whilst abroad, provided that they have stood trial for that offence elsewhere. No absolute undertaking has been given that they might not face the death penalty if charged with offences lying outside the charter provisions, although it has been emphasised that the death penalty has been in abeyance since 1993 and that measures are slowly being taken, according to the Algerian president in his exchange of letters with the British prime minister, to eliminate the death penalty from the Algerian penal code.

Interestingly enough, no independent monitor of such deportations by the British government to Algeria has been appointed. It appears that the only one approached was the Conseil National Consultatif pour la Promotion et la Protection des Droits de l'Homme, which is headed by a lawyer, Farouk Ksentini. This is an official body, appointed by the presidency, although its independence is supposed to be guaranteed. For reasons that are not clear, it was not formally requested to take on this role, with the result that there apparently will be no such monitoring body. There are in Algeria, two independent human rights organisations – the Ligue Algérienne pour la Défense des Droits de l'Homme and the Ligue Algérienne des Droits de l'Homme. The full independence of the latter could be questioned because it was founded by Mahmoud Nahnah, the founder of the political party originally known as HAMAS and now known as the Mouvement pour une Société de Paix, which is close to the Muslim Brotherhood but which has always been a strong supporter of government. Such reservations do not apply to the former movement which was founded by a highly respected lawyer, now in his eighties, Yahia Abdenour. Neither appears to have been approached to act as independent guarantors, probably because the British authorities know that the Algerian government would not tolerate their involvement.

⁴⁹ El Watan 22.03.2006

Instead it appears that each deportation will be guaranteed by an exchange of letters, with the proviso that the British government can raise specific areas of concern in any specific case. The British prime minister, during an official visit by the Algerian president to London last year, attempted to persuade the Algerian leader to sign a memorandum of understanding over the deportation issue but had to be content with the more anodyne exchange of letters in which the Algerian leader made it clear that he would not compromise Algerian sovereignty by acquiescing in an undertaking to allow monitoring of its security forces by an independent commission appointed by a foreign government to ensure that they did not ill-treat their prisoners.

In the formal exchange of letters that now governs deportations, dated July 11, 2006, although the British prime minister's letter expressly states that Britain could raise matters of concern, the response of the Algerian president was merely to note the British request. In other words it was neither confirmed nor denied and Algeria has therefore given no meaningful undertaking in this regard. At one level, of course, this is in conformity with Algeria's determination to admit of no international undertaking in this area that it considers threatens its national sovereignty and, as Mr Blair admitted in the press conference at the end of the Algerian president's visit to Downing Street in July, he had been unsuccessful in persuading the Algerian president to sign such an undertaking, despite his best efforts.

It has to be said that, to date, the efficacy of such an exchange of letters has never been tested; the only two deportations of Algerians under suspicion of involvement in political violence since then were voluntary in nature. As a result, they have not yet been invoked and it is highly likely that the British courts would intervene if they were. In a parallel case, involving an Egyptian, the judge argued forcefully that the attempt to obtain a memorandum of understanding with Egypt without the appropriate undertakings was not acceptable⁵⁰. What is really distressing, however, is the implication behind such initiatives for it suggests that the British government is prepared to ignore its obligations as a member of the European Union provided it can obtain a diplomatic cover for its actions which it is quite incapable of ensuring will be honoured.

The sole driver for this is, of course, a national security agenda, now "externalized" to include third countries linked to the European Union through the European Neighbourhood Policy and the Euro-Mediterranean Partnership. It involves an implicit abandonment of the pressure for democratization and human rights observance amongst partner-states – an explicit requirement of both the Euro-Mediterranean Partnership and the Neighbourhood Policy and is, in essence, a statement about the prioritization of security within a relationship that was supposed to lead to a "zone of peace, stability and prosperity" in the Mediterranean basin.⁵¹ No objection to such procedures appears to have been raised by any European institution, even the European parliament!

Consequences of deportation

In fact, it has long been the case that threats to personal safety face persons arrested for involvement in terrorist activities inside Algeria, persons returned from abroad whom the Algerian authorities suspected of involvement or association with terrorist activities in Europe, and former members of the FIS who may also be suspected of such activities. For persons who do not generate such suspicions – because, for example, they are clearly economic migrants or have been involved in non-political criminal activities and have therefore been deported – there is probably little danger upon return, apart from interrogation by the border authorities. However, if such a person has been involved in investigations into terrorist activities in Europe and this is known to the Algerian authorities, then there are severe risks that he or she will face such treatment upon return, even if they have not been

⁵⁰ Hani El Sayed Sabaei Youssef and the Home Office before the Honourable Mr Justice Field: 2004 EWHC 1884 (QB)

⁵¹ Barcelona Declaration 1995 http://ec.europa.eu/com/external_relations/euromed/bd.htm

charged in Europe. In short, the Algerian authorities, whatever assurances may have been given, will detain and mistreat persons they consider to be involved in violence, as the examples below demonstrate.

1. Thus Nouamane Meziche, a French national of Algerian origin who lived in Germany, was arrested at Algiers airport on January 5, 2006 and, apart from a telephone message to his relatives two days later, seemed to have completely disappeared⁵², having been held long beyond the twelve days remand in custody allowed by Article 51 of the Penal Code. There were particular concerns in his case because his father and brother were arrested in 1995 and have also disappeared, after another brother was suspected by the authorities of involvement in the activities of an armed group and was killed in 1996. He eventually appeared in court in mid-February 2006 accused of involvement in the 2001 bombings in the United States but was then released a month later, ostensibly under the terms of Algeria's amnesty with no further explanation. In custody he had been ill-treated⁵³. In the case of Mohamed Harizi, an Algerian national who had fought in 1992 in Bosnia and Herzegovina, as well as having travelled to Pakistan, arrest followed his voluntary return to Algeria in August 2002. He has now disappeared⁵⁴. This raises, therefore, the problem of whether or not the undertakings that the British government is seeking from the Algerian government that persons deported from Britain will not face ill-treatment or double jeopardy upon deportation can be trusted.
2. Nor are these isolated cases, as Amnesty International has reported. Two persons – M'hamed Benyamina and Mourad Ikhlef – were arrested on April 2 and April 3, 2006 respectively by the DRS and are still held. Both had been arrested in March but released under the terms of the charter for national reconciliation and peace for alleged terrorist offences. Mr Benyamina had originally been arrested in March at Oran airport as he was about to return to France where he lived, ostensibly at the request of the French authorities. Mr Ikhlef had been deported from Canada in 2003, allegedly because he was connected with Ahmad Ressam and, on arrival in Algiers, was arrested and tried for membership of a terrorist organisation before being released under the charter⁵⁵. It is clear that arbitrary arrest continues to characterise the judicial system despite the provisions of the charter for national reconciliation and peace – an amnesty that went into operation on February 28, 2006 and lasted for six months.
3. Nor is such behaviour of recent date, as the experiences of at least five persons who returned to Algeria to take advantage of the Law of Civil Concord in 1999 demonstrate. They included Malik Medjnoun and Samir Hamdi-Pacha, who, seven months later, were identified in Tizi Ouzou and Blida military prisons respectively. In another case, a former presidential aide, Ali Mebroukine, returning from a visit to France was arrested at the airport and turned up seven months later in Blida military prison. No charges were preferred against any of these detainees. Chenoui Abdelhakim and Samira Guelbi simply disappeared after their return and have not been subsequently traced⁵⁶.
4. It is worth noting that in a parallel case, in 2002, the French government who wished to deport Brahim Chalabi, who had served a sentence for terrorist offences, was prevented from doing so by the European Court of Human Rights, after his brother, Mohamed Chalabi had been deported and retried in Algiers despite an Algerian government undertaking that this would not occur. Mohamed Chalabi was returned in November 2001 and, despite formal guarantees given to the French authorities, was immediately arrested under 1993 emergency legislation and charged with offences that carry the death penalty. Naif Hamami had been returned a month

⁵² El Watan 13.02.2006

⁵³ Amnesty International: Unrestrained power: torture by Algeria's military security MDE 23/004/2006 (July 10, 2006)

⁵⁴ *ibid*

⁵⁵ Amnesty International: Fear of torture or ill-treatment: Algeria, MDE 28/006/2006 (April 3, 2006)

⁵⁶ Amnesty International: Truth and justice obscured by the shadow of impunity, November 2000

before and simply disappeared, having been apparently arrested upon arrival at Algiers airport. He has never been heard of since, despite repeated French enquiries.

5. Mohammed Chalabi's experiences highlight the dangers of return to Algeria. He was a long-term resident in France and was married to a French national with whom he had had four children. According to IFHRL-FIDH, he had apparently been involved in the smuggling and *trabando* networks that had developed between Algeria and France during the 1990s and had become a FIS supporter during a brief visit to Algiers in 1991 – his family comes from Ain Tayar in Algiers. He was arrested during a police sweep in an Islamic school in France in November 1994 and was subsequently tried for involvement in terrorist offences as the head of a terrorist support network in the Fleurie-Mérogis prison gym trial which started on September 1, 1998. He was one of 138 accused, of whom 52 were eventually acquitted of the vague charge “association de malfaiteurs en relation avec une entreprise terroriste” – a charge characterised by Jean-Louis Bruguière as being a “rake” designed to catch as many as possible, even if many of those accused eventually escaped conviction.

The trial itself was very severely criticised by international bodies for its scant regard for legal niceties. Mohammed Chalabi was designated a member of the GIA (Groupes islamiques armées – Jam‘at Islamiyya Musalaha) and the leader of the network in France that was alleged to have been organising an attempt to assassinate General Khalid Nezzar, the former defence minister, and the former premier, Belaid Abdesslam, an accusation that went back to an Algerian allegation laid against him in 1993, for which he was sentenced to death *in absentia*. The accusation was based on an allegation that he had transferred money to a certain Boukhatem. Mr Chalabi never denied that he had done this but pointed out that Mr Boukhatem was related to him by marriage and that the money was intended to pay for the construction of a house in Algiers, his home town. Nonetheless, he received an eight-year sentence in 1998 and was permanently banned from living in France after his release on October 31, 2001. He was released on November 9, 2001 and was immediately expelled to Algeria, having been continuously in prison since November 1994 and despite an attempt to appeal to the European Court of Human Rights⁵⁷.

After his arrest upon return to Algiers, Mohammed Chalabi was first interrogated upon arrival between November 9 and November 17 by the Algerian police and the DSR. During this period, his lawyers were not allowed to see him and he was then arraigned on the original 1993 charges, for which he had been sentenced to death by a special court *in absentia*. The special courts have since been disbanded and the legislation under which he was sentenced has been incorporated into the Algerian penal code. In fact, the arraignment breached Algerian judicial procedures but was apparently necessary because the 1993 judicial procedures had also been deficient. Mr Chalabi's lawyer, Mahmoud Khellili, was unable to consult the details of the accusation as they were missing from the dossier but noted that they involved implication in a plot to assassinate General Khalid Nezzar and the former industries minister and premier, Belaid Abdesslam. He went on to point out that Mr Chalabi should have been released and then only re-arrested on new charges, not least because his co-defendants had been found not guilty on December 19, 2000 by the Appeals Court in Algiers, when they were retried for the 1993 offences.

The hearing set for November 28, 2003 at his brief court appearance in Algiers in November 18, 2001 was postponed until May 20, 2002, when Mohammed Chalabi was acquitted on all the charges against him dating from 1993. The State Prosecutor had demanded the death sentence, according to the *Quotidien d'Oran* on May 21, 2002. Despite his acquittal, Mr Chalabi was not released because he now faced new terrorism charges, although the details of these have not been made public. Apart from a brief court appearance on remand on January

⁵⁷ The Netherlands, Department of Asylum and Migration Affairs, *Algeria Situation: July 2001*, The Hague, 2001; 34

3, 2003, there has been no news of his fate. At that appearance he did confirm that, so far, he had not been ill-treated in prison – a comment, no doubt, on the high profile he enjoyed because of Algeria's original breach of the undertakings it gave the French government about his treatment if he were returned. It is difficult to see what offences he could have committed that justified the new charges in view of the history of his experiences in France⁵⁸.

Shortly after his last court appearance, on January 3, 2003, according to the authoritative Pakistani daily newspaper, Dawn, the French government decided to delay the deportation of his brother, Brahim Chalabi, who had been convicted with him in the Fleurie-Mérogis trial in 1999⁵⁹. He had just completed a four year term in Chateauroux prison on terrorism-related charges as a member of the network led allegedly by his brother. The French interior minister, Nicholas Sarkozy, had planned to deport him on the completion of his sentence. His decision was, however, overturned by the justice minister, Dominique Perben, who had decided that no deportation could take place until the European Court of Human Rights had ruled on an application made by Brahim Chalabi's lawyers on his behalf, despite claims that the network of which he had been a member had been financed by the *al-Qa'ida* organisation – no doubt the basis of the new terrorist allegations against his brother, Mohammed Chalabi. The Court itself had petitioned the French government on January 3, 2003 not to deport him until this had occurred. There appears to have been no development in either case since.

Conclusion

The story of these cases demonstrates the extreme reluctance of the Algerian government, both for reasons of national sovereignty and, perhaps, because the constitutional authorities cannot guarantee the behaviour of the security forces, to provide any kind of security guarantees to returning Algerians who have been denied asylum and who may be implicated in allegations of terrorism. The process of deportation, therefore, contains some acute risks if the person concerned has been involved or has been suspected of having been involved in political activities either opposed to the Algerian state or involving political Islam. If he or she has not been so engaged, then in theory there should be no adverse consequences from return.

Any person being deported will usually be known to the Algerian authorities in any case because few of them have valid passports. They will thus require travel documents obtained for them from the Algerian embassy in London, which means that the embassy will have notified their issue to Algiers, thus alerting the border police to the anticipated returns and ensuring arrest upon arrival if they are the subject of any suspicion. If the person concerned has been the subject of an exchange of letters over his or her security upon return, the authorities will also have been forewarned and arrest will ineluctably follow.

In effect, therefore, the removal of illegal immigrants from Britain to Algeria is an uncontroversial process, provided the person involved has not been placed under suspicion of involvement with political violence. This will apply, even if they have served prison sentences in Britain for criminal offences, provided that these have no overtones of a political nature. The distinction can be difficult because many criminal activities are today deemed to have a political motive – credit card scams and fraud are often considered to be mechanisms for raising funding to support terrorism in Algeria. Nonetheless, the real danger involves persons against whom there are such suspicions, either because they have faced trial on such offences or because they have been detained on suspicion of such involvement.

⁵⁸ El Watan, 3 November 2002

⁵⁹ Dawn; 07.01.2003

This is, nonetheless, an important issue for very few Algerians are actually deported each year from Britain – only 250 last year, for example, and many of them may well have been involved, however marginally, in activities that could be construed to be political. Thus, although the number deported is very small, the level of threat they may face is comparatively high. It is worsened by the close collaboration between the security services of the two countries which may, advertently or inadvertently, reveal information about them that could be incriminating but of which they will not be aware. And, finally, the changes in security and legal routines in Britain in the wake of the events of September 11, 2001 in the United States and July 7, 2005 in London have immense and negative significance for persons in such a position even if they can still seek the protection of the British courts – today a much less indulgent master than in the past!

APPENDIX

TABLE 1: Algerian asylum applications to the UK 1990-2005

Date	Total applications	Algerian applications	%age total	Total Refugees ¹	Refugees ²	ELR/HP/DL ³	Total refusals ⁴
1990	26,205	25	-	5	-	5	-
1991	44,840	45	-	-	-	-	5
1992	24,605	150	1	5	-	5	10
1993	22,370	275	1	20	10	10	115
1994	32,830	995	3	30	20	10	410
1995	43,965	1,865	4	25	15	10	720
1996	29,640	715	2	45	30	15	1,835
1997	32,500	715	2	110	105	5	655
1998	46,015	1,260	3	325	310	15	180
1999	71,160	1,385	2	505	475	30	160
2000	80,315	1,635	2	110	65	45	1,330
2001	71,025	1,140	2	140	65	75	2,590
2002	84,130	1,060	1	55	20	35	1,075
2003	49,405	550	1	35	5	30	700
2004	33,960	490	1	35	10	25	590
2005 ⁵	25,710	255	1	30	5	25	270
Total	718,675	12,560	2	1,475	1,135	340	10,645

Source: Information Council on Asylum and Refugees

Notes: ¹ Decisions are initial; only and do not reflect changes upon appeal. Figures are for asylum grant, exceptional leave to remain (ELR), humanitarian protection (HP) and discretionary leave to remain (DL)

² Refugee status granted

³ ELR reflects other circumstances outside the 1951 United Nations Refugee Convention which entitle the recipient to remain. After four years he/she can apply for permanent settlement. On April 1, 2003, ELR was replaced by HP and DL. HP reflects the danger of violence if returned and is granted for three years, after which application for settlement is possible; DL is used for claims under the European Convention on Human Rights (Articles 3 and 8) and lasts for six years, after which settlement is possible.

There are three grounds for refusal:

- (1) No need for protection – 69 per cent of all applications in 2005 – 210 Algerians;
- (2) Refusal because the applicant can be removed to a third country – 5 per cent (15) of all Algerian applicants refused in 2005;
- (3) Refusal on grounds of non-compliance with the regulations – 7 per cent of all refusals in 2005, including 15 per cent (45) of all Algerian applicants refused.
- (4) The remaining 19 per cent of applications (60) were probably withdrawn although no evidence of this is provided in the sources

The latest figures for 2006 reveal that 160 Algerians applied for political asylum and 15 applications were allowed (8 per cent). Of the remainder, 135 applications were refused and 10 were withdrawn. (www.ind.homeoffice.gov.uk/rds/pdfs07/asylumq406.pdf)