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Article 2 of the ECHR, the Investigative Obligation and the Shooting of Jean Charles de Menezes

Ian Turner

BA, LL.M, PGCE
Senior Lecturer in Law
The Lancashire Law School
The University of Central Lancashire
Preston
PR1 2HE
idgeturner@uclan.ac.uk

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Summary

In July 2005 Jean Charles de Menezes was shot dead by an elite police firearms unit of the Metropolitan Police. At the time the police (wrongly) suspected that de Menezes was one of the failed London suicide bombers. Article 2 of the European Convention on Human Rights permits the intentional deprivation of life only where the use of lethal force is for a legitimate aim and “absolutely necessary” (as per Article 2(2)). Moreover, it imposes a positive obligation on the state to protect life (as per Article 2(1)). In a previous article in this journal the author assessed the de Menezes shooting in the light of these two issues and, on balance, found that the killing was not unlawful (Turner, 2008). However, notwithstanding this finding, he went onto question whether the positive duty required some relaxation of Article 2(2) in cases of suicide bombings, reflecting a more general obligation on state authorities to protect life.

This second article continues the theme of the first, in that the shooting is assessed on the grounds of its human rights’ compatibility, but from the perspective of another element of the positive obligation of Article 2(1): the procedural duty imposed on state authorities to investigate certain killings. The author finds here that the subsequent inquiries into the de Menezes shooting were lawful. Nevertheless, for the purposes of protecting life, and the continued accountability of state agents (especially those killings for which the police are directly responsible), this element of the positive obligation – the procedural duty – should not be relaxed in the fight against terrorism.

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Introduction

On 22nd July 2005 an unarmed Brazilian, Jean Charles de Menezes, was shot seven times in the head by plainclothes police officers at Stockwell underground station in London. The officers were members of ‘SO19’ (now ‘CO19’), a specialist firearms unit of the Metropolitan Police Service (MPS). Initial police statements after the killing stated that de Menezes was believed to have been a bomber, linked to the four suicide bombings in London on 7th July 2005 and the four failed suicide bombings on 21st July 2005. The day after the shooting, the then Metropolitan Police Commissioner (MPC), Sir Ian Blair, announced that the death of de Menezes had been a tragic mistake. He was not Hussain Osman, a North African man, who had allegedly failed to detonate a bomb on his person two days before.

Article 2(2)(a) of the European Convention on Human Rights (ECHR) says:

“Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary a) in defence of any person from unlawful violence...”

Article 2(2) therefore prohibits intentional killings by the state unless the force used is strictly proportionate to a legitimate aim like preventing unlawful violence. The degree of force exercised must remain “absolutely necessary” even in times of war or public emergency as per Article 15(2) of the ECHR (though Article 15(2) does exclude deaths resulting from lawful acts of war). Article 2 is not only interpreted as conferring a negative right upon an individual – that is, a right not to be arbitrarily killed by the state – it also possesses a positive sense. Article 2(1) imposes a positive or substantive obligation on the state to protect life through civil and criminal measures to deter the taking of life, for example, either by another person (eg. *Regina (Amin) v. Secretary of State for the Home Department* [2003] UKHL 51, [2004] 1 AC 653) or by suicide (eg. *Regina (Middleton) v. West Somerset Coroner* [2004] UKHL 10, [2004] 2 AC 182). This positive duty imposes a corresponding secondary obligation on the state: a procedural or investigative duty to examine how and why a

person died, and if necessary, to hold those responsible to account, sometimes through criminal charges (eg. *Finucane v. United Kingdom* (2003) 37 EHRR 29).

In a previous article in this study the author sought to consider the circumstances surrounding the de Menezes shooting with a view to questioning their compatibility with Article 2 of the ECHR (Turner 2008). However, for reasons of word length he was able to consider only two obligations imposed on the UK by Article 2: the positive duty to protect life as per Article 2(1) and the duty not to intentionally kill someone unless by the use of force that was absolutely necessary and for a legitimate objective as per Article 2(2). There, the author concluded that Jean Charles de Menezes had not been unlawfully killed. Mistakes as to the need for lethal force have been found by the European Court of Human Rights (ECtHR) not to have infringed Article 2: *McCann v. United Kingdom* (1995) 21 EHRR 97. The same could be said about the specialist firearms officers, “Charlie 2” and “Charlie 12”, who had shot and killed Jean Charles de Menezes. They honestly believed that he had intended detonating a suicide vest. However, the facts in *McCann* did breach Article 2 because the nature of the operation, prior to transferring responsibility for it over to Special Forces, had inadequately respected the right to life. The same could be said about the arguably poor management of the Stockwell operation by senior officers overseeing events at police headquarters at New Scotland Yard and the Special Branch surveillance officers following de Menezes from his home in Tulse Hill, south London, to the tube station. However, on balance, in distinguishing many of the facts of *McCann* from the de Menezes shooting, the author found that Article 2 had not been unjustifiably infringed. The author concluded that if the killing was later held to be an unlawful engagement of the right to life, maybe there should be a more serious consideration of the positive nature of Article 2 to protect the rights of the public to be free from acts of terrorist violence. That is, the substantive obligation imposed by Article 2(1) was weighted too heavily at present on the side of the individual whose life had been deprived rather than the community’s right not to be subjected to terrorism, especially suicide violence where the risks to life were that far greater.

The author in the previous article did not consider the procedural nature of Article 2; the investigate obligation imposed on the UK authorities following the shooting was to be reserved for later study. Now that the de Menezes inquest proceedings have ended the purpose of this second article is to complete a human rights evaluation of the shooting, focusing primarily on the compatibility of the UK’s investigations into the killing. Of course, the significance of the death of Jean Charles de Menezes cannot be overstated: an entirely innocent man was summarily executed in the full glare of London underground commuters. However, two weeks before, 52 people were killed and more than 700 people were injured in four coordinated suicide attacks on the London transport network. The intention was that these would be commemorated a fortnight later by a further four attacks but these were fortunately unsuccessful. The police were therefore experiencing unprecedented challenges in that summer of 2005. The legality of their response, such as the need to fatally shoot Jean Charles de Menezes, was assessed in some detail in the author’s earlier article. Nevertheless, important procedural issues were not examined: for example, the police retained control over the inquiry for at least five days after the shooting rather than passing over responsibility for it to the Independent Police Complaints Commission (IPCC), as per their duty to do so under the Police Reform Act 2002; the IPCC did not publish its report into the incident until almost two and half years later; and the inquest into

the death of de Menezes did not take place until almost three and half years later. The author will therefore assess here the human rights compliance of these investigative issues with a view to reexamining the particular view of the positive nature of Article 2 which he advanced previously.

The Investigative Obligation Under Article 2

Article 2 of the ECHR imposes a positive obligation on the state to protect life as per Article 2(1). This substantive duty entails a corresponding procedural obligation to investigate some deprivations of life. The then court of first instance at the ECtHR, the Commission, in *McCann* said (at para 193):

“Having regard therefore to the necessity of ensuring the effective protection of the rights guaranteed under the Convention, which takes on added importance in the context of the right to life, the Commission finds that the obligation imposed on the State that everyone’s right to life shall be ‘protected by law’ may include a procedural aspect. This includes the minimum requirement of a mechanism whereby the circumstances of a deprivation of life by the agents of a state may receive public and independent scrutiny. The nature and degree of scrutiny which satisfies this minimum threshold must, in the Commission’s view, depend on the circumstances of the particular case. There may be cases where the facts surrounding a deprivation of life are clear and undisputed and the subsequent inquisitorial examination may legitimately be reduced to a minimum formality. But equally, there may be other cases, where a victim dies in circumstances which are unclear, in which event the lack of any effective procedure to investigate the cause of the deprivation of life could by itself raise an issue under article 2 of the Convention.”

The principal rationale for adopting an investigative duty is to hold those responsible for a killing to account. Indeed, a lack of accountability would discourage the state, and its agents, from respecting the right to life and thus undermine the duty to protect life. Nevertheless, this is not the sole reason for undertaking inquiries after death: it can include giving bereaved relatives a sense of justice; and to learn lessons so that deaths can be prevented from occurring in the future (Straw and Thomas 2005: 630-631).

What are the minimum standards for an investigation to fulfil the requirements of Article 2 of the ECHR (noting of course the statement by the Commission in *McCann* that not every death will require a formal investigation)? In *Edwards v. United Kingdom* (2002) 35 EHRR 487 the applicants were the parents of Christopher Edwards who had been killed by Richard Linford whilst being held on remand in HMP Chelmsford. The ECtHR said that because Christopher Edwards had been a prisoner under the care and responsibility of the authorities when he died, the state was under an obligation to investigate. The court said what form an inquiry must take may vary in different circumstances (at para 69). However, whatever mode was employed, the authorities must act of their own motion once the matter had come to their attention. They could not leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures (at para 70).

Moreover, for an effective investigation into an alleged unlawful killing by state agents, which of course is relevant to the fatal shooting of Jean Charles de Menezes, the ECtHR said that it may be necessary for the persons carrying out the investigation to be independent from those implicated in the events. This meant not only a lack of hierarchical or institutional connection but also a practical independence (at para 70). The court further said that there must be a sufficient element of public scrutiny of the investigation to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard their legitimate interests (at para 73).

In relation to the police discharge of firearms, again particularly apt to the de Menezes shooting, the ECtHR in *Edwards* said that an investigation must also be capable of leading to a determination of whether the force was or was not justified and to the identification and punishment of those responsible (at para 70). The authorities must also have taken reasonable steps to secure the evidence concerning the incident, including eye witness testimony, forensic evidence and an objective analysis of clinical findings, including the cause of death (at para 71). The court further said that a requirement of promptness and reasonable expedition was implicit. Whilst there may be obstacles or difficulties which prevented progress in an investigation, a prompt response by the authorities in investigating a use of lethal force may be essential in maintaining public confidence in the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (at para 71). The following sections of this article, beginning with an analysis of the initial MPS investigation, will assess the many investigations post the de Menezes killing, applying the *Edwards* principles where relevant.

The Initial MPS Investigation

On the day of the shooting, 22nd July 2005, the MPC wrote to Sir John Gieve, the Permanent Secretary at the Home Office, to say that a chief officer of police should be able to suspend the Police Reform Act 2002 s.17, requiring him/her to supply all relevant information to the IPCC. This was because of a concern about revealing either the tactics that the police had and/or the sources of information on which the police were operating. The MPC had therefore given instructions to his officers that the matter should not be referred to the IPCC and that the IPCC should be denied access to the scene. The investigation was to be carried out by the MPS's own Directorate of Professional Standards. It was to be rigorous but sub-ordinate to the needs of the counter-terrorism operation (Blair 2005).

The ECtHR in *Edwards*, it will be recalled, held that an ECHR compliant inquiry should first be set up by the state of its own accord without the need for outside complaint or allegation. The fact that the MPC immediately announced that an investigation into the shooting was to be undertaken by the MPS's Directorate of Professional Standards clearly satisfies this element of the procedural obligation. However, the ECtHR in *Edwards* also said that the persons responsible for the investigation must be ideally independent – practically and hierarchically – of those implicated. The initial MPS inquiry was undertaken by officers from the same police force as the officers who had shot de Menezes. Whilst the officers from the Directorate of Professional Standards were not from the same branch as the firearms

officers, the fact remains that the Directorate was investigating police officers from the same force. The MPC's decision to deny the IPCC access to the investigation was later changed and an organised handover was completed about five days after the killing. Nevertheless, did this delay by the MPS in handing over responsibility to the IPCC satisfy the elements of independence and promptness required by Article 2? The human rights organisation Amnesty International does not believe so (Amnesty International 2005a).

In *Finucane v. United Kingdom* (2005) 37 EHRR 29 the ECtHR was considering a suspected violation of Article 2 because of an inadequate inquiry into the death of Patrick Finucane. Patrick Finucane had been a solicitor living in Northern Ireland who was shot dead in 1989 in front of his wife and children by two masked men. There was a suspicion of police collusion in the killing as the deceased had reportedly received death threats from the police via his clients in custody.

The Royal Ulster Constabulary (RUC) investigation into the murder did not result in any criminal prosecutions. The inquest into Finucane's death opened in September 1990 and closed on the same day. Two police inquiries, "Stevens One" and "Stevens Two", took place in 1989-1990 and 1993-1995 respectively (albeit these were investigating general collusion between the security forces and loyalist terrorists and were not specifically investigating the murder of Patrick Finucane, though these inquiries did involve individuals suspected of his killing). In 1999 a prosecution was eventually brought for Finucane's murder, but a verdict of not guilty was entered in 2001 after the prosecution had offered no evidence. A third police inquiry into the killing, "Stevens Three", started in 1999. It reported in 2003 that there had been collusion between members of the security forces and loyalist terrorists in Finucane's death and that the arrest of the suspects could have been done much earlier. Relevant to this section is the alleged lack of independence in the original RUC investigation; on this issue the ECtHR said (at para 76):

"In so far therefore as the investigation was conducted by RUC officers, they were part of the police force which was suspected by the applicant and other members of the community of issuing threats against Patrick Finucane. They were all under the responsibility of the RUC Chief Constable, who played a role in the process of instituting any disciplinary or criminal proceedings. In the circumstances, there was a lack of independence attaching to this aspect of the investigative procedures, which also raises serious doubts as to the thoroughness or effectiveness with which the possibility of collusion was pursued."

The MPS in the de Menezes shooting did pass responsibility for the investigation over to the IPCC after about five days; the original RUC investigation into the murder of Patrick Finucane was undertaken to its conclusion. Does the lack of police independence in *Finucane* therefore apply to the case of de Menezes? Perhaps not as the two cases can be distinguished on their facts. The more recent case of *Ramashai v. Netherlands* (2008) 46 EHRR 43 is arguably more illustrative of the Article 2 compatibility of the MPS's delay in handing over management of the investigation to the IPCC.

Soon after a fatal police shooting in the Netherlands, inquiries were begun by officers

from the same force, the Amsterdam police, as those who had carried out the original shooting. After about 16 hours the Amsterdam police force's investigations were only under the authority of a senior officer from the State Criminal Investigation Department, a nationwide service answerable to the country's highest prosecuting authority, the Procurator's General. Of the period before authority for the inquiry was largely relinquished by the Amsterdam police force, the ECtHR stated (at paras 406-408):

“[Essential] parts of the investigation were carried out by the same force to which [the firearms officers] belonged...namely, the forensic examination of the scene of the shooting, the door-to-door search for witnesses and the initial questioning of witnesses, including police officers who also belonged to the Amsterdam police force...The Court has had occasion to find a violation of Art.2 in its procedural aspect in that an investigation into a death in circumstances engaging the responsibility of a public authority was carried out by direct colleagues of the persons allegedly involved...The same considerations apply here. The Court thus finds that the requisite independence was lacking.”

Like the ECtHR in *Finucane*, the court in *Ramashai* found a violation of Article 2 because of a lack of police independence. However, the fact that the MPS in the de Menezes shooting retained control over the inquiries for several days before it passed responsibility for it over to the IPCC, unlike the 16 hours in *Ramashai*, clearly suggests a breach of Article 2. Indeed, the IPCC has said that the pressures under which the MPS were operating following the events of 7th July 2005 and 21st July 2005 were self-evident. Nevertheless, the fact that the IPCC, an independent body established by an Act of Parliament to investigate complaints and serious incidents involving the police and which had independently investigated every fatal police shooting since 1st April 2004, was excluded from the scene was a major concern for an independent investigation and should never happen again (IPCC 2007a: 85).

What about the human rights compliance of other elements of the MPS's inquiry? The ECtHR in *Edwards* also said that an Article 2 compliant investigation must: 1) be capable of leading to a determination of the identification and punishment of those responsible, including by criminal prosecution 2) take reasonable steps to secure the evidence concerning the incident, including eye witness testimony and forensic evidence 3) include a sufficient element of public scrutiny and 4) involve the next of kin to the extent necessary to safeguard their legitimate interests. Whilst it is unlikely that the MPS should have complied with all of these other requirements of Article 2 in the limited time it retained control over the investigation, it should have, for example, collected evidence as soon as possible after the shooting, which it then should have been passed on to the IPCC. However, important Closed Circuit Television (CCTV) footage of key areas of the operation was missing when the IPCC did eventually begin its investigation. The human rights organisation British Irish Rights Watch (BIRW) says that London Underground has 6,000 CCTV cameras and Stockwell station has a number of cameras covering the following areas: the ticket hall, the exit, half the access areas and all the floor area of the platforms. London Underground also has CCTV in train carriages. To this end, BIRW concludes (BIRW 2006): “It seems extraordinary and alarming that all the CCTV cameras were working, but that the tapes passed to the IPCC were blank.” On this issue, the IPCC states that given the

significance of CCTV evidence in criminal investigations and the widespread use of CCTV on public transport systems, the amount of potential evidence that was missing was a matter of concern, especially since there was so much evidence obtained from the CCTV images for both the 7th July 2005 attacks and the 21st July 2005 attempted attacks (IPCC 2007a: 39).

Furthermore, the IPCC report also notes the alteration of one of the police surveillance logs, 165330 (IPCC 2007a: 85). It says that an independent forensics expert concluded that the original entry in the surveillance log had read “a split second view of his face. I believe it was [the suspect, Hussein Osman]. I told...” The entry was changed to read “a split second view of his face and I believe it was not [the suspect, Hussein Osman]. I told...” (IPCC 2007a: 86). The report concludes (IPCC 2007a: 86):

“The significance of the word ‘not’ is that it changes the whole meaning of the sentence...An inference arises that because SO12 [Special Branch] had been involved in the surveillance of Mr de Menezes, the log was altered to distance the surveillance team from the identification...Had the IPCC been involved at the commencement of the investigation, the surveillance log would not have been released for amendments to be made.”

The initial MPS inquiry into the de Menezes killing arguably lacks compliance with Article 2 of the ECHR for several reasons, principally because it was initially managed by officers from the same force as those that had carried out the shooting. But the MPC did justify suspending his statutory duty to pass responsibility for the investigation over to the IPCC on national security grounds. Can this justification be supported, in fact, by Article 2? There is a positive obligation to protect life under Article 2(1). What about the rights to life of London commuters to be free from acts of suicide terrorism, since the MPS thought for some time after the shooting that Jean Charles de Menezes had been one of the failed bombers from the day before? Does this not, therefore, permit the police to retain responsibility for the inquiry, at least in the beginning, because of a need to keep its tactics for combating suicide bombers secret? Nevertheless, does this ‘relaxation’ of Article 2 go as far as condoning alleged police falsification of evidence, and in some cases not providing evidence at all, such as CCTV footage? The author clearly does not believe so. Whilst later inquiries, such as the IPCC investigation, which is discussed in the next section, did conform more to the principles of Article 2, the fact remains: the critical period after the shooting was an insufficient inquiry for the purposes of human rights compliance.

The IPCC Investigation

On 27th July 2005, five days after the de Menezes shooting, the IPCC finally began its investigation: “Stockwell One” (as opposed to “Stockwell Two” (IPCC 2007b) which examined the conduct of the MPC and Assistant Commissioner Andrew Hayman following the killing). Did the “Stockwell One” inquiry comply with the procedural obligation under Article 2? The IPCC was created in April 2004 by the Police Reform Act 2002 s.9 for the principal reason, according to s.10(2), of “handling complaints made about the conduct of persons serving with the police”. It replaced “the impotent and unpopular Police Complaints Authority (PCA), with its limited powers to supervise or review complaints against the police” (Craig 2009: 15). When the Police

Reform Bill 2002 creating the IPCC was introduced into the House of Lords on 24th January 2002, the then Minister sponsoring the Bill, Lord Rooker, issued a statement of compatibility as per the Human Rights 1998 s.19. That is, it was the government's belief that the provisions of the proposed legislation were human rights compatible (Rooker 2002) (but note the concerns expressed by the Parliamentary Joint Committee on Human Rights (JCHR 2002)).

According to the IPCC, it is a body independent of the police and its decisions are independent of government. IPCC Commissioners are in overall charge of the IPCC and by law cannot have worked for the police service. IPCC investigators have all the powers of a police constable in relation to IPCC investigations: they can require access to police premises, seize evidence and interview suspects under caution (IPCC 2007c). Arguably, therefore, the activities of the IPCC inspire confidence in the accountability processes of the police. Nevertheless, in general terms, concerns have been expressed about the IPCC. First, on the publication of the IPCC's annual report for 2008, the human rights organisation Inquest noted that despite the existence of the IPCC since 2004, there had been no overall change in the numbers of deaths following police contact, plus "the disturbing rise in police shootings indicates there is much more work to be done to prevent future deaths" (Inquest 2008a).

Furthermore, lawyers who work with the IPCC have criticised the organisation for appointing only independent investigators in the most serious cases (Langdon-Down 2006: 22). Of concern, therefore, is the continued independence of most complaints against the police in the UK. With regard to the IPCC's investigation into the de Menezes shooting in particular, questions do remain about the remit of the inquiry: it was allegedly to investigate only the police. That is, it failed to investigate the army intelligence officers involved (though whether the IPCC had the legal power under the Police Reform Act 2002 to investigate the conduct of personnel attached to the police from the armed forces is a separate issue). One of the original surveillance officers, "Frank", was seconded to the MPS from Special Forces. "Frank" was the surveillance officer who had been unable to establish a positive identification of Jean Charles de Menezes when he left his flat, as he, "Frank", was relieving himself at the time. BIRW has expressed serious concern about the involvement of Special Forces soldiers in the operation (BIRW 2006: 141):

"The Ministry of Defence has confirmed that the army provided technical assistance in the Stockwell operation... We are worried by the blurring of boundaries between the military and police, and consider that the use of the military in such situations should be subject to close political supervision... The use of the military in civilian situations, combined with the use of lethal force, has a direct impact upon accountability for such actions."

Finally, questions may be asked about the then permitted practice of the Association of Chief Police Officers (ACPO), seemingly condoned by the IPCC, in allowing police firearms officers to confer after a shooting, and before writing up their accounts of events. This issue came to particular attention following the later fatal police shooting of a 32 year old barrister, Mark Saunders. Saunders was shot and killed after a five-hour armed stand-off in Chelsea, south-west London, in May 2008. The deceased had fired several times from a flat window at people below including police. When fired upon, armed officers had returned fire, hitting Saunders on at least five

occasions (BBC News 2008a). The deceased's family sought a judicial review of the decision, allowing officers to confer after the shooting: *Regina (Saunders) v. IPCC* [2008] EWHC 2372 (Admin), [2009] 1 ALL ER 379. The family argued that the police's practice had raised the suspicion of collusion, thus tainting the IPCC's investigation.

Addressing the above concerns, it is important to note, first, that the de Menezes shooting was one such incident where the IPCC did set up an independent investigation. An independent investigation is one where the IPCC uses its own staff, as opposed to that of another police force, to carry out the inquiry (IPCC 2007a: 11). Secondly, whilst the terms of the IPCC's de Menezes investigation may have excluded the scrutiny of army personnel such as "Frank", its remit was still very wide: the "Stockwell One" report lists at least 14 terms of reference for the inquiry into the shooting (IPCC 2007a: 13-14). Thirdly, in relation to the then permitted practice of allowing police officers to confer before writing up their accounts of the shooting, the Administrative Court in the later case of *Saunders* did rule that this was not a breach of Article 2.¹

On a separate issue, supporting further the human rights' compatibility of the IPCC investigation, the Commission interviewed at least 15 MPS police officers under caution. For example, the two officers who had shot de Menezes, "Charlie 2" and "Charlie 12", were both interviewed on suspicion of having committed the offences of murder, gross negligence manslaughter and misconduct in public office. The two officers were also interviewed in respect of the offence of attempting to pervert the course of justice. They claimed that they had uttered the words "armed police" before de Menezes was shot, but this was denied by members of the public at the inquest. Other officers from 'SO19', "Charlie 5", "Terry" and "Delta 9", were also interviewed on suspicion of having committed the offence of attempting to pervert the course of justice, in respect of allegedly hearing the words "armed police" being shouted. A member of the Special Branch Surveillance Team, "James", was interviewed on suspicion of having committed the offence of gross negligence manslaughter for allegedly failing to inform the operations room at police headquarters that there had been doubts linking to de Menezes to the suspect. Four other officers were interviewed on the basis of their command and control roles: for example, the Designated Senior Officer (DSO) as per the police operation in play, Commander Cressida Dick, was interviewed in respect of offences of gross negligence manslaughter and misconduct in a public office, as was her tactical advisor "Trojan 80" (IPCC 2007a: 88-89).

In relation to the IPCC's wide questioning of many MPS officers with varying degrees of seniority, it is also useful to note the ruling of the ECtHR in *Makaratzis v. Greece* (2005) 41 EHRR 49. Here the court found a denial of the positive duty to protect life under Article 2(1) after a chaotic police shooting at a garage, following a lengthy car chase. The court also found a breach of Article 2 because of an ineffective investigation conducted by the Greek authorities. It said (at para 76):

"The Court observes that there were striking omissions in the conduct of the investigation. In particular, the Court attaches significant weight to the fact that the domestic authorities failed to identify all the policemen who took part in the chase. In this respect it may be recalled that some policemen left the

spot without identifying themselves and without handing over their weapons; thus, some of the firearms which were used were never reported...It also seems that the domestic authorities did not ask for the list of the policemen who were on duty in the area when the incident took place and that no other attempt was made to find out who these policemen were.”

In seemingly identifying and questioning all the principal officers involved in the de Menezes shooting, under caution in the presence of their lawyers (unlike the Greek authorities in *Makaratzis*), this element of the IPCC investigation further supports the human rights compliance of its inquiry.

Some six months after the “Stockwell One” investigation had begun, the IPCC reported to the Crown Prosecution Service (CPS). In July 2006 the CPS announced that no individual police officer would be prosecuted over the incident (CPS 2006). Instead, the CPS stated that the MPS (in fact the Office of the MPC as the employer of the individual officers rather than Sir Ian Blair in his personal capacity) was to be prosecuted for failures under the Health and Safety at Work Act 1974 s.3(1), contrary to s.33(1)(a) of the act. This decision, supported by the IPCC, was the subject of a judicial review challenge in late 2006, which was unsuccessful: *Regina (da Silva) v. the DPP and the IPCC* [2006] EWHC 3204 (Admin).

However, following the ruling in *da Silva*, human rights groups like Amnesty International publicly questioned the court’s ruling, believing there were ample reasons for ordering the prosecuting authorities to re-consider their decision. This was in part, they argued, because of the misleading and/or false statements made in the aftermath of the shooting. Therefore, issues of knowledge and credibility should have been left to a court and jury to assess. Amnesty International concluded by saying that the failure to charge individual police officers undermined public confidence in the rule of law and the conduct of law enforcement officials (Amnesty International 2006a). In reply, yes, *da Silva* was a judicial review challenge, therefore attracting a higher standard of intervention than, say, an appeal, since the former determines only whether an administrative decision was lawful or unlawful. However, the judge in *da Silva*, Richards LJ, did say, commenting on the merits of the CPS’s decision ([2006] EWHC 3204 (Admin) at para 86): “...in our judgment [it]...was manifestly the correct one in all the circumstances of the case.” This ruling therefore strengthens the independence of this end of the IPCC investigative process since a judge was able to assess the evidence the Commission presented to the CPS.

It is to be noted, however, that the IPCC refused to publish its report into the shooting until after the conclusion of the criminal trial of the MPS in October and November 2007, more than two years after the shooting. The fact that the “Stockwell One” report was eventually published satisfies the *Edwards* criterion of a sufficient element of public scrutiny. Nevertheless, Liberty, the human rights organisation, has argued that the IPCC should have published its report immediately after the CPS had decided that no individuals would be prosecuted. It says (Liberty 2007): “Through its hesitation, the IPCC has unnecessarily delayed justice for 28 months. The...report may help prevent future tragedies, but has done little to achieve trust and confidence in policing or the IPCC itself.”

Moreover, has this IPCC's delay compromised its Article 2 obligations towards the de Menezes family, recalling the *Edwards* criterion that the next-of-kin of the victim must be involved to the extent necessary to safeguard their legitimate interests (see, for example, Khan 2006)? In response, the IPCC has stated that detailed verbal briefings on the progress and conclusions of the investigation were given to members of the family and their legal representatives on a regular basis. Indeed, lawyers for the de Menezes family were specifically briefed on the contents of the "Stockwell One" report on 6th March and 22nd March 2006 (IPCC 2007a: 6). Potentially supporting further the actions (or inactions) of the IPCC, the ECtHR in *Ramashai* did say ((2008) 46 EHRR 43, at para 73):

"The requisite access of the public or the victim's relatives may be provided for in...stages of the available procedures...[But] the investigating authorities cannot be required to indulge every wish of a surviving relative as regards investigative measures."

In conclusion, the author believes that the IPCC inquiry, whilst not perfect in every sense, went some way to redressing most of the defects of the limited MPS investigation. Not only was it an independent inquiry, it questioned the principal police officers involved under caution and had formal contacts with the de Menezes family. The Article 2 compliance of the next element of the de Menezes procedural process, the criminal trial of the MPS, is the purpose of the next section of this article.

The Criminal Trial of the MPS

The criminal trial of the Office of the MPC began on 1st October 2007 at the Old Bailey in London. The police were found guilty a month later and fined £175 000, with £385 000 costs. In passing sentence, the trial judge, Henriques J, stressed that that the jury's verdict did not amount to a finding that the de Menezes shooting had been unlawful. That would be determined at a future coroner's inquest (Proceedings of the MPC Crown Court Trial 2007).

The following facts about the killing arose from those revealed at the criminal trial of the police which were not apparent to the author after analysing the IPCC's "Stockwell One" report. It will be questioned whether the facts provide further knowledge about the shooting, for the purposes of satisfying an independent and accountable inquiry as per Article 2. By 4.40am on the day Jean Charles de Menezes was shot, the MPS had information linking two of the failed London suicide bombers with the same address, 21 Scotia Road, Tulse Hill, south London, as the deceased. A senior officer at the MPS, Commander McDowell (now a Deputy Assistant Commissioner and Head of the Metropolitan Police's Counter-Terrorism Command), therefore set up a strategy to arrest the suspects at that property in south London. On this issue, the trial judge, Henriques J, said (Proceedings of the MPC Crown Court Trial 2007)

"Had [the strategy] been pursued and adhered to [it] would have prevented any suspect from boarding the public transport system, and would, in my judgment, have avoided this terrible tragedy. That strategy was plainly not understood by those whose task it was to enforce it."

For example, the judge noted that at 5.05am an instruction had been given to deploy firearms teams as soon as possible to the south London address but it was not until 9.40am that one had arrived in the locality. The judge therefore observed (Proceedings of the MPC Crown Court Trial 2007): “[Armed police] should have been deployed as a matter of urgency. No explanation has been forthcoming other than a breakdown in communications.” He said that when a different firearms team had come on duty at 7.00am and were deployed, it took some two hours, 40 minutes for them to deploy. The average time should have been one and a half to one and three quarter hours. The judge therefore stated (Proceedings of the MPC Crown Court Trial 2007): “Had they deployed during that time, they would unquestionably have been in position when Mr de Menezes came out of [the house].”

In relation to the lack of a positive identification of de Menezes as the principal suspect, Hussein Osman, the judge said that the status of de Menezes throughout the police surveillance had always been that of a possible. Nevertheless, the officers in control of the operation at police headquarters believed that a positive identification had been made when every indication was that it had not been. On this matter the judge concluded (Proceedings of the MPC Crown Court Trial 2007): “There was here a serious failure of accurate communication, which has simply not been explained.”

Influencing the judge’s choice of sentence, but in the police’s favour, was, first, the fact that this was “a unique and difficult operation. A failed suicide bomber had never previously been at large in London” (Proceedings of the MPC Crown Court Trial 2007). Secondly, he was dealing with a publicly funded employer and that

“any fine necessarily must be paid out of funds provided by the public, and that the effect of a substantial fine is almost certain to reduce the number of police officers available to serve the public” (Proceedings of the MPC Crown Court Trial 2007).

However, conversely, the judge did say that this was not a case in which one person alone had been placed in danger. The conviction involved a finding that the commuters with which de Menezes had come into contact “faced the potential danger of travelling with a suicide bomber...and...the further risks inherent in an armed intervention” (Proceedings of the MPC Crown Court Trial 2007). Thirdly, the judge said he must consider how far the MPS had fallen short of the appropriate standard, concluding that they had done so “to a significant and meaningful extent” (Proceedings of the MPC Crown Court Trial 2007).

In the first instance, the trial of the MPS for breaching health and safety legislation arguably did provide more information about the de Menezes shooting than the IPCC’s “Stockwell One” report. In particular the author was not aware of the degree of police failure in implementing the strategy to arrest the failed suicide bombers until the criminal trial. Nevertheless, did the investigative nature of the trial comply with the procedural obligations of Article 2? Prior to the commencement of the criminal proceedings, Amnesty International had argued that whilst important evidence may emerge, the trial would be, by definition, narrow since it was focused only on criminal liability. Hence, it was unlikely that all relevant evidence in the case – the circumstances leading up to the shooting, including the terms of the rules of engagement, the planning of the operation, how the police officers involved had been

briefed and what orders they had been given, whether a senior officer had been contacted before any action was taken and whether a sufficient warning had been given – would be considered in the course of a criminal trial, particularly given that the trial was for an offence under health and safety legislation (Amnesty International 2006b).

In defence of the criminal proceedings, there was a full trial of the defendant, the Office of the MPC. This was unlike the facts in the domestic case of (*Amin*) v. *Secretary of State for the Home Department* [2003] UKHL 51, [2004] 1 AC 653 which concerned the murder of Zahid Mubarek by his prison cellmate, Robert Stewart. Stewart had admitted the killing so the issue at trial was whether he was either guilty of murder or manslaughter on the grounds of diminished responsibility. He was convicted of murder. In noting the criminal proceedings' lack of Article 2 compatibility, Lord Bingham said (at para 9):

“Although the court heard evidence of the circumstances immediately surrounding the killing, including the actions of prison officers...there was no exploration at the trial of cell allocation procedures or other events before the murder.”

So, a criminal trial, as in *Amin*, will not suffice for the purposes of human rights compliance unless there is an examination of the contributory factors preceding a person's death. The trial of the Office of the MPC in the de Menezes case, although clearly not as wide ranging as perhaps Amnesty International would have wanted, still arguably resolved relevant issues pertaining to the fatal shooting, such as the measure of the police's culpability for the killing, unlike the prison service in *Amin*. In criticising the investigative nature of the criminal proceedings, Amnesty International demanded a prompt inquest into the killing. One was eventually held and its compliance with Article 2 is assessed in the next section.

The de Menezes Inquest

In late 2008, almost a year after the conclusion of the criminal trial of the MPC, an inquest into the de Menezes shooting took place. An inquest is a legal procedure presided over by a coroner in the public interest. It serves several purposes: to find out the medical cause of death; to draw attention to the existence of circumstances which, if nothing is done, might lead to further deaths in the same manner; to advance medical knowledge; and to preserve the legal interests of the deceased person's family or other interested parties (Inquest 2004). On 25th July 2005 an inquest into the killing had opened at Southwark Coroner's Court. It was adjourned on 7th September 2006 on the application of the CPS until the completion of the police's criminal trial. It was resumed on 22nd September 2008 at the Oval Cricket Ground because of the scale of the proceedings and the level of public interest. It concluded almost three months later on 12th December 2008 with the verdict of the jury. It heard from over 70 witnesses including more than 60 police officers.

The Coroner's Act 1988 s.8(1) governs the duties of coroners to hold inquests in England and Wales. It states that an inquest must be held as soon as practicable after a person's death where there is a reasonable cause to suspect that a deceased person

“(a) has died a violent death or an unnatural death; (b) has died a sudden death of which the cause is unknown; or (c) has died in prison or in such a place or in such circumstances as to require an inquest under an any other Act.”

If there is a reason to suspect that a death either occurred in prison or in police custody, or resulted from an injury caused by a police officer in the purported execution of his/her duty, the inquest must be held by a jury (s.8(3)). Furthermore, according to Rule 17 of the Coroner’s Rules 1984, all inquests must be held in public. To this end, in the case of the fatal shooting of Jean Charles de Menezes, there was a legal duty to not only hold an inquest, it being a “violent death”, but to host it in public with a jury. The latter arising because the killing, for the purposes of coronial proceedings, was in “police custody”.

Do inquests in England and Wales generally discharge the state’s procedural obligations under Article 2, especially in relation to fatal shootings by the police? (The author is confining his assessment of inquests to those conducted in England and Wales. On several occasions the ECtHR has questioned, for example, the nature of the coronial proceedings in Northern Ireland (see Requa and Anthony 2008): the inquest in *Jordan v. United Kingdom* (2003) 37 EHRR 52 was unlawful as there was no obligation to compel the police officer who had shot and killed the applicant’s son to give evidence.) In *Bubbins v. United Kingdom* (2005) 41 EHRR 24 the police mistakenly killed someone during a siege because of an honest belief that he had been a burglar, brandishing a firearm. Here the ECtHR noted this in relation to the inquest arrangements in England and Wales (at para 153):

“The Court observes at the outset that it has already had occasion to conclude that the inquest procedure in England and Wales is capable of fulfilling the Art 2 requirements of an effective investigation into an alleged killing by State agents...[Inquests] are public hearings conducted by coroners, who are independent judicial officers, normally sitting with a jury, to determine the facts surrounding a suspicious death. Judicial review lies from procedural decisions by coroners and in respect of any mistaken directions given to the jury. There are thus strong safeguards as to the lawfulness and propriety of the proceedings...Although a coroner is required to confine his investigation to the matters directly causative of the death and not to extend his inquiry into the broader circumstances, this does not prevent examination of matters such as the planning and conduct of, for example, a police operation which results in the loss of life.”

Generally speaking, therefore, coronial proceedings in England and Wales fulfill the state’s procedural obligations. In this respect, if there had not been an inquest into the death of de Menezes (in addition to it being illegal under the Coroner’s Act 1988), there is every likelihood that Article 2 would have been breached (subject of course to the earlier investigations by the MPS and the IPCC and the criminal trial of the MPC discharging this investigative duty). For example, in *Edwards* the ECtHR noted that an inquest had not been held into the killing of Christopher Edwards, thus contributing to a breach of Article 2. This was also an issue affecting the ruling of the House of Lords in the domestic case of *Amin*. Lord Bingham said that it was very unfortunate that there had not been an inquest, since a properly conducted inquest could discharge the state’s procedural obligation ([2003] UKHL 51, [2004] 1 AC 653,

at para 33). In assessing the human rights compatibility of the de Menezes inquest, the following sub-sections will do so by reference to four issues: the level of anonymity granted to the police officers; a consideration of the evidence presented; the verdict of the jury; and the delay in holding the inquest.

The anonymity of 42 police officers

The degree of anonymity granted to police officers giving evidence at the de Menezes inquest is of particular interest. 42 police officers had applied for anonymity when giving evidence (though during the actual coronial proceedings there were only 35). Their applications were granted at an earlier secret hearing at Southwark Coroner's Court in April 2008 (BBC News 2008c). On the eve of the full inquest at the Oval Cricket Ground, the human rights organisation Inquest expressed concern at the level of anonymity given to the police. It said that it would hinder public scrutiny of officials and could affect the quality of the evidence provided (Inquest 2008b).

Whether an inquest satisfies the investigative duty, where anonymity has been granted to police firearms officers, was another issue that arose in *Bubbins*. Here the ECtHR said ((2005) 41 EHRR 24, at para 158):

“As to the Coroner's decision to grant anonymity to Officers A, B, C and D [the police directly involved in the fatal shooting], the Court observes that this decision was reached only after careful consideration of the competing interests at stake. The Coroner heard representations from the family's lawyers. He addressed in the light of the family's interests the possible threat of reprisals against Officer B and his family if his identity were to be disclosed. Moreover, the Coroner gave full reasons for his decision, reasons which were endorsed by the High Court in the proceedings on the judicial review application brought by London Sunday Newspapers Ltd.”

In further ruling that the anonymity of the firearms officers in *Bubbins* was lawful, the ECtHR noted that Officers B, C and D, who had actually given evidence at the inquest, were cross-examined by the family's legal representative in the sight of him, the coroner and the jury ((2005) 41 EHRR 24, at para 158). Of course, the number of police officers granted anonymity in *Bubbins* in no way compares with that given to the officers in the de Menezes shooting. However, significantly, the principles outlined in *Bubbins* were followed at the de Menezes inquest: the coroner gave full reasons for his decision to grant anonymity to the principal police officers involved in the killing; the officers attended the subsequent inquest; and they were cross-examined by the family's barrister, Michael Mansfield QC, in the sight of him, the coroner, Sir Michael Wright, and the jury.

The inquest evidence

In this section the author discusses potentially new evidence about the shooting arising from the inquest, beginning with the surveillance operation. It is now known that some officers following de Menezes did not have a photo of the suspect Hussein Osman; some of those that did accepted that it had been a poor quality picture

(Proceedings of the Stockwell Inquest 2008a: 57). (In fact, in response to counsel for the de Menezes family, Michael Mansfield QC, one of the officers, “Derek”, said (Proceedings of the Stockwell Inquest 2008b: 55): “It’s – it’s not the best image I have seen going out on an operation, sir, and likewise it’s not the worst.”) Furthermore, in reference to the IPCC investigation, it was stated above that one of the police surveillance logs had been altered and the perpetrator was unable to be identified through forensic tests. However, at the inquest one of the surveillance officers, “Laurence”, admitted that he had been responsible for the log’s alteration (Proceedings of the Stockwell Inquest 2008c: 98-99): “It was me that altered [it], there is no doubt. It is my handwriting... I have made a mistake unfortunately but there is definitely no cover-up.”

Secondly, in relation to the management of the operation at police headquarters, a detective superintendent known only as “Brian” described scenes in the control room as “quite chaotic” (Proceedings of the Stockwell Inquest 2008d: 18). He said that no one had been identified as being in charge (Proceedings of the Stockwell Inquest 2008d: 58); he was “bypassed” on many details (Proceedings of the Stockwell Inquest 2008d: 58); and there were difficulties in communication because of the noise (Proceedings of the Stockwell Inquest 2008d: 46). Detective Chief Inspector Angela Scott, who was also based in the operations room, said that eventually information came through that de Menezes was not believed to be one of the suspects. She continued (Proceedings of the Stockwell Inquest 2008e: 91):

“So it was at this point the decision was made, as we had had the individual under control, that there was an opportunity to intelligence gather and actually deploy [the surveillance team] to speak to this individual.”

If so, the author questions why there was a ‘state red’ deployment of firearms officers from ‘SO19’, which is an order to take armed control of the operation (IPCC 2007a: 60)? Indeed, Commander John McDowall, who set the original strategy for arresting the failed suicide bombers, agreed with counsel at the inquest that the police should not shoot a suspect on the basis of a less than positive identification (Proceedings of the Stockwell Inquest 2008f: 70). Moreover, a senior tactical adviser, “Trojan 84”, also present in the operations room, said that a codeword had not been decided to enable the control room commander to authorise fatal shots. In this case, therefore, he had expected the phrase “critical shot authorised” to be used if required, but this had not happened (Proceedings of the Stockwell Inquest 2008g: 32).

The verdict of the jury

The inquest evidence referred to above certainly points to the greater culpability of the police for the killing than, perhaps, the earlier MPS and IPCC investigations and the criminal trial (if so, it strengthens the procedural duty compliance of the UK authorities). It is important to note, however, that the nature of coronial proceedings is different from that of an ordinary trial, civil or criminal, where, in the case of the latter, issues of blame are far more important. The inquest jury, where there is one, must hear the evidence and give its verdict: the Coroner’s 1988 s.11(3)(a). In delivering its verdict, the jury must, as per s.11(5), set out in writing who the deceased was; and how, when and where s/he had come by their death.

On the issue of giving its verdict, the de Menezes jury would have had several verdicts to consider. If it believed that the death had been caused by an unlawful act or gross negligence on the part of the police, then it could have returned a verdict of “unlawful killing”. If so, the standard required for such a verdict would have been the criminal standard of proof: “beyond reasonable doubt”. That is, “a finding...that the [police] firearms [were] not discharged in the belief that one of the officers was under imminent threat of being [killed]” (as per Waller LJ in the Court of Appeal in *Regina (Bennett) v. HM Coroner for Inner South London* [2007] EWCA Civ 617, at para 13, when advising inquest juries in terms of a fatality caused by a police discharge of firearms). Other possible inquest verdicts in the de Menezes case could have been returned on the (lower) civil standard of proof, that is, “a balance of probabilities”. First, “lawful killing”: “a finding...that [the police officers] believed, albeit mistakenly, that [they were] under imminent threat of being [killed]” (as per Waller LJ in *Bennett*, at para 13). Secondly, an “open” verdict where there was insufficient evidence to return another verdict: “a rejection of the proposition that [the police officers]...believed that [they were] under imminent threat of being [killed] but an inability to conclude...that such was not the case” (as per Waller LJ in *Bennett*, at para 13).

Upon the presentation of the evidence, the coroner in the de Menezes inquest informed the jury that it could only return either a verdict of “lawful killing” or an “open verdict”, thus removing an “unlawful killing” verdict from its considerations. In relation to the two police officers who had shot de Menezes, “Charlie 2” and “Charlie 12”, the coroner said that the jury could not properly conclude to the criminal standard of proof that the firearms officers did not honestly believe that de Menezes had represented a mortal threat to them and those around them (Proceedings of the Stockwell Inquest 2008h: para 25). Indeed, the coroner said it was difficult to see why the officers had acted as they did if they did not truly believe that de Menezes had represented a threat (Proceedings of the Stockwell Inquest 2008h: para 26). This consideration by the coroner satisfies the *Edwards* criterion that an Article 2 complaint inquiry must be capable of leading to a determination of whether lethal force was or was not justified. Moreover, it is noteworthy that the person making such a decision, the coroner, is justifying this course of action in public and is independent of those responsible for the killing.

In relation to the culpability of senior officers at police headquarters for “unlawful killing”, the coroner noted that the law required a homicide offence to be proved against a particular officer, on the basis of that officer’s own acts or omissions. One could not aggregate the failings of different people and leave the verdict on that footing (Proceedings of the Stockwell Inquest 2008h: para 30). Nevertheless, whilst recognising a duty of care could have been owed by the senior police to de Menezes for the purposes of gross negligence manslaughter (Proceedings of the Stockwell Inquest 2008h: para 35), the coroner concluded that no senior officer had been in breach of that duty (Proceedings of the Stockwell Inquest 2008h: para 56). In fact, he found that if the death of de Menezes could have been attributed to any negligent act by the police, none had approached the level of gross negligence (Proceedings of the Stockwell Inquest 2008h: para 65).

Notwithstanding justifications for his decision, was the coroner's removal of the "unlawful killing" verdict from the jury a possible breach of Article 2? On this point, the ECtHR in *Bubbins* ((2005) 41 EHRR 24, at para 163):

"Although the Coroner directed the jury to return a verdict of lawful death, it does not consider that this deprived the proceedings of their effectiveness. If an independent judicial officer such as a Coroner decides after an exhaustive public procedure that the evidence heard on all relevant issues clearly points to only one conclusion, and does so in the knowledge that his decision may be subject to judicial review, it cannot be maintained that this decision impairs the effectiveness of the procedure."

In the author's previous article on this subject, in considering whether there had been a breach of the positive obligation to protect life under Article 2(1), he questioned whether the actions of the police had justified homicide charges. He found that they did not, thus concluding that Jean Charles de Menezes had not been unlawfully killed. Although this was in relation to Article 2, rather than a verdict in an inquisition, the principle is surely the same; to this end, the decision of the coroner was arguably ECHR compatible. Indeed, one of the lawyers representing the de Menezes family, Harriet Wistrich, has recently acknowledged that even if the jury had been permitted to return a verdict of "unlawful killing", it would not have been difficult for the police to overrule the coroner's decision:

"Whilst inquests have produced "unlawful killing" verdicts, the police have become adept at challenging such verdicts in the higher courts even in cases where there is evidence to suggest the officers had lied about the circumstances of the shooting." (Wistrich 2009: 13)

Wistrich was possibly referring to the fatal shooting of Harry Stanley, as lying by the police was what counsel for the Stanley family, Tim Own QC, had contended at the judicial review of its inquest verdict: *Regina (Sharman) v. HM Coroner for Inner North London* [2005] EWHC 857 (Admin), at para 31.

In *Sharman* Harry Stanley left a public house in Hackney, London, about 8pm on 22nd September 1999. A member of the public then dialled 999 claiming that an Irishman had left the pub with "what actually looks a sawn off shotgun...tightly wrapped in a blue plastic bag". In fact, Stanley was not Irish – he was a Scot – and not armed (contained in the plastic bag he was carrying was a coffee table leg that had recently had repaired). An inquest jury found that he had been "unlawfully killed" by the police. However, the Administrative Court quashed the jury's decision for two reasons: the coroner should have removed the verdict from the jury before it had begun its deliberations (at para 41); and because of the coroner's "inadequate" summing up (at para 50). The court's ruling was approved by the Court of Appeal: [2005] EWCA Civ 967.

In discussing further the nature of coronial proceedings in England and Wales, it was stated earlier that an inquest should not apportion blame (otherwise concerns would be raised about the fair trial rights of those criticised (Eaton and Mercer 2004: 525)). Rule 42 of the Coroner's Rules 1984 provides: "No verdict shall be framed in such a way as to appear to determine any question of— (a) criminal liability on the part of a

named person, or (b) civil liability.” Arguably, therefore, the scope of an inquest in assessing culpability is narrow, which means that this element of the coronial process may not discharge the state’s procedural obligations under Article 2. The human rights compliance of this issue was considered at length by the House of Lords in *Regina (Middleton) v. West Somerset Coroner* [2004] UKHL 10, [2004] 2 AC 182. There, Lord Bingham said (at para 31):

“In some...cases...verdicts in the traditional form will enable the jury to express their conclusion on the central issue canvassed at the inquest...But it is plain that in other cases a strict...approach will not meet...the Convention requirement...Verdicts of unlawful killing in *Edwards* and *Amin*, although plainly justified, would not have enabled the jury to express any conclusion on what would undoubtedly have been the major issue at any inquest, the procedures which led in each case to the deceased and his killer sharing a cell.”

To this end, Lord Bingham concluded that to meet the procedural requirement of Article 2 some inquests ought ordinarily to culminate in an expression, however brief, of the jury’s conclusion on the disputed factual issues at the heart of the case (at para 20). To rectify this, the judge said that while not attributing criminal or civil liability (at para 37), inquest juries should, in finding “how” the deceased came by his/her death (a requirement of the Coroner’s Act 1988 s.11 – see above), determine not simply “by what means” but also “in what circumstances” s/he had done so (at para 35).

The de Menezes inquest was one such inquest where the *Middleton* principles arguably did apply since issues leading up to the fatal shooting, such as operational failings, were crucial to informing the jury’s verdict. The inquest seemingly satisfied an ‘Article 2’ *Middleton* inquiry because the coroner asked the jury to answer a number of questions pertaining to the killing. The following includes the jury’s replies to the coroner’s questions (BBC News 2008d):

1. “Did firearms officer “Charlie 12” shout armed police?” Answer: no
2. “Did Mr de Menezes stand up from his seat before he was grabbed in a bear hug by officer “Ivor” [a police surveillance officer]?” Answer: Yes
3. Did Mr de Menezes move towards “Charlie 12” before he was grabbed in a bear hug by Ivor?” Answer: No

The coroner also asked the jury to consider which of these other factors, if any, contributed to his death:

4. “The pressure on police after the suicide attacks in July 2005.” Answer: Cannot Decide
5. “A failure to obtain and provide better photographic images of failed bomber Hussain Osman to surveillance officers.” Answer: Yes

6. "The general difficulty in providing identification of the man under surveillance in the time available." Answer: No
7. "The fact that the views of the surveillance officers regarding identification were not accurately communicated to the command team and firearms officers." Answer: Yes
8. "A failure by police to ensure that Mr de Menezes was stopped before he reached public transport." Answer: Yes
9. "The innocent behaviour of Mr de Menezes increasing suspicion." Answer: No
10. "The fact that the position of the cars containing the firearms officers was not accurately known by the command team as firearms teams were approaching Stockwell Tube." Answer: Yes
11. "Shortcomings in the communications system between various police teams on the ground." Answer: Yes
12. "Failure to conclude at the time that surveillance officers could have been used to carry out the stop on Mr de Menezes at Stockwell." Answer: Yes

By a majority of 8-2, the jury returned an "open verdict", meaning its members were not sure how and why Jean Charles de Menezes had died. Coupled with their replies to the coroner's questions, the members' rejection of the "lawful killing" verdict argued by the police clearly shows that they were highly critical of all aspects of the operation. Indeed, following the jury's criticisms, the coroner called for police practices to be reviewed, saying "systematic failures" had occurred. He made a series of recommendations about the command structure of the MPS, communications systems, identification procedures and rules of engagement (BBC News 2009a). (Following the inquest verdict, the de Menezes family called on the CPS to re-examine the case, to see whether a criminal prosecution could be brought. They also wanted the IPCC to review their inquiry into the shooting, in the hope that disciplinary action could be brought against individual police officers (BBC News 2009b). The CPS has since announced that there will be no prosecutions arising from the inquest verdict (CPS 2009).)

There is little doubt that the nature, form and outcomes of the inquest into the fatal shooting of Jean Charles de Menezes serve the purpose of greater openness, transparency and accountability of the police operation and the actions of individual officers – core objectives for Article 2 compatibility. However, notwithstanding the possible lawfulness of the coronial proceedings, whether the inquest was too late after the killing is another issue, which is discussed in the next sub-section.

The delay in holding the inquest

In *Finucane* the ECtHR said that the third police inquiry into the murder of the Belfast solicitor Patrick Finucane, "Stevens Three", had been an effective independent investigation. However, as its report was published in 2003 – 14 years after the

shooting – it had not been sufficiently prompt to satisfy Article 2. Of course, the time between the death of de Menezes in July 2005 and the inquest in late 2008 was not 14 years: it was only three and a half. Nevertheless, Amnesty International still expressed concern about the delay in holding an inquest into the killing. It argued that the postponement of the inquest until after the completion of the criminal trial of the MPC would result in an unnecessarily prolonged delay. It would compound the distress, pain and suffering already experienced by the de Menezes family and would undermine public confidence in the rule of law and the conduct of law enforcement officials (Amnesty International 2006c).

It was said above that on 25th July 2005 an inquest into the shooting was opened at Southwark Coroner's court. It was adjourned on 7th September 2006 on the application of the CPS until after the conclusion of the criminal trial of the police. This decision to adjourn the inquest by the then coroner, the Coroner for Inner South London, was the basis of a judicial review application by the de Menezes family: *Regina (Pereira) v. Inner South London Coroner* [2007] EWHC 1723 (Admin). In rejecting the argument that Article 2 had required the inquest to be heard as soon as possible, and certainly before the criminal trial, Mitting J said (at para 12):

“The inquest, when it is held, will be informed by the product of the investigation and trial...to a far greater extent than would be possible if a freestanding inquiry directed by the coroner only were to occur. The United Kingdom's obligation to conduct a proper inquiry into the death would be better fulfilled by trial followed by inquest rather than the other way around. At the inquest, if not at trial, those who commanded it and carried out the operation to detain and ultimately to shoot Mr de Menezes will be called. Article 2 does not require that that process occurs before the trial.”

Indeed, whilst acknowledging that the then coroner had been acting within the law, Mitting J went further than that (at para 11): “In my view, the coroner's decision was plainly right.”

The author concludes that the inquest into the de Menezes shooting satisfies the ECHR. The many earlier investigations such as those undertaken by the MPS, the IPCC and the criminal trial of the MPC merely reinforce the belief that the UK's responsibilities under Article 2 have been honoured. Of course, the author did question the compatibility of the initial MPS inquiry as suspicions were raised, for example, by the appearance of evidence tampering. However, these have been addressed, to some degree, by an admission of culpability at the inquest so, whilst clearly regrettable, they do not contradict the author's general conclusion. In this respect, any additional investigations into the killing may be academic in terms of their human rights compliance. Nevertheless, they would still provide further information about the police operation, which is, of course, to be welcomed. Indeed, the de Menezes family had said, prior to the inquest taking place, that they wanted an independent public inquiry. This was because of the level of anonymity granted to police officers (BBC News 2008f). In fact, there are still calls for further scrutiny of the shooting, even after the inquest, by human rights organisations such as Inquest (Inquest 2009). Other procedural measures are therefore assessed in the next section.

Other Investigative Measures

Further investigations into the death of Jean Charles de Menezes could involve a non-statutory inquiry or a public inquiry under the Inquiries Act 2005. As regards the former, one was commissioned by three State agencies – the Prison Service, Essex County Council and North Essex Health Authority – in July 1995 following the murder of Christopher Edwards by his cell mate (as in *Edwards* (2002) 35 EHRR 487). Its terms of reference were to investigate the death of Christopher Edwards in Chelmsford Prison, including the extent to which the reception, detention, management and care of Christopher and his killer had corresponded to statutory obligations, Prison Service Standing Orders, Health Care Standards and local operational policies (at para 27).

The Edwards Inquiry opened in May 1996 and received evidence on 56 days over a period of 10 months. It sat in private. About 150 witnesses attended to give evidence whilst a considerable number of others submitted written evidence (at para 29). However, it had no powers of compulsion of witnesses or production of documents. Because of this, two prison officers refused to give evidence. The Inquiry Report was published in June 1998 and found “a systemic collapse of the protective mechanisms that ought to have operated to protect this vulnerable prisoner” (at para 32). It identified a series of shortcomings, including poor record-keeping, inadequate communication and limited inter-agency co-operation, and a number of missed opportunities to prevent the death of Christopher Edwards (at para 32). In relation to the Article 2 compatibility of the Inquiry, the ECtHR in *Edwards* found on the one hand that it had not been lacking in independence (at para 81) and had been sufficiently prompt, reflecting the complexity of an inquiry of this nature (at para 86). However, the nature of the proceedings, such as the lack of power to compel witnesses (at para 79) and a lack of public scrutiny (at para 83), had inadequately respected Article 2.

Regarding the shooting of Jean Charles de Menezes, further non-statutory inquiries, to be human rights compliant (though strictly speaking these would be unnecessary in practice since the author has already concluded that the investigations to date are Article 2 compatible), would therefore need to be independent, timely, compel the attendance of witnesses and be held largely in public. In the case of the latter issue, the House of Lords in *Regina (L) v. Secretary of State for Justice* [2008] UKHL 68, [2009] AC 588 has recently made a distinction between an internal investigation of facts (not unlike that in *Edwards* since that, too, was in private albeit it was more than an internal investigation and its remit was wider than mere fact-finding) and a fuller, enhanced investigation such as “a D-type” inquiry (so called because of *Regina (D) v. Secretary of State for the Home Department* [2006] EWCA Civ 143, [2006] 3 All ER 946) whose proceedings are mostly open to external participation. Some non-statutory investigations, according to the House of Lords in *L*, will therefore only be Article 2 compliant if there is a sufficient degree of public scrutiny to them. In the case of the de Menezes shooting a lawful inquiry in public (though strictly speaking not “a D-type” inquiry since this applies largely to a suicide or near suicide in custody) could be a non-statutory one like the Hutton Inquiry into the death of the government scientist Dr David Kelly (Hutton 2004). However, another inquiry in public could be a statutory one under the auspices of the Inquiries Act 2005 (such as the one established to investigate the UK’s second largest outbreak of *E.coli* in South Wales in September 2005 (Pennington 2009)).

The Inquiries Act 2005 s.1(1) says that any government Minister may hold an inquiry “where it appears to him that (a) particular events have caused, or are capable of causing, public concern, or (b) there is public concern that particular events may have occurred”. An inquiry can be conducted by a single chair or a chair sitting with other panel members (s.3(1)). If the latter, the panel members are all appointed by the Minister (s.4(1)). The chair has the power to compel the attendance of witnesses and the production of documents and other evidence (s.21). If a judge is appointed to an inquiry panel, the Minister must first consult the Lord Chief Justice (s.10(1)). The inquiry does not have the power to rule on and/or determine any person’s civil or criminal liability (s.2(1)).

The Minister decides the terms of reference of an inquiry and may amend them at any time if s/he considers that the public interest so requires (s.5). Sections 13 and 14 permit the Minister either to suspend or terminate an inquiry (though s/he must give reasons for his/her decision and notify Parliament). Any judicial review of a decision made by a Minister in relation to an inquiry or by the inquiry itself must be lodged within 14 days (s.35(1)). If a Minister thinks an inquiry has acted outside its terms of reference, s/he can refuse to pay for that aspect of the inquiry (s.39). In view of this Ministerial control over an inquiry, do public inquiries generally under the Inquiries Act 2005 satisfy Article 2? Human rights organisations such as the Parliamentary Joint Committee on Human Rights (JCHR) (JCHR 2005), Amnesty International (Amnesty International 2005b) and BIRW do not believe so. For example, the latter states (BIRW 2005):

“The Inquiries Act has brought about a fundamental shift in the manner in which the actions of government and public bodies can be subjected to scrutiny in the United Kingdom. The powers of independent chairs to control inquiries has been usurped and those powers have been placed in the hands of government Ministers... There no guarantee that... inquiry reports will go to the Minister. The Minister’s role is particularly troubling where the actions of that Minister or those of his or her department, or those of the government, are in question. In effect, the state will be investigating itself... We doubt that the Inquiries Act can deliver an effective investigation in compliance with Article 2. The Minister’s powers to interfere in every important aspect of an inquiry robs it of any independence. Even if a Minister were to refrain from exercising those powers that are discretionary, s/he still has absolute power over whether there should be an inquiry at all and over its terms of reference.”

Arguably, therefore, even if the de Menezes family were successful in persuading the government to hold a public inquiry under the Inquiries Act 2005, questions would remain about the Article 2 compatibility of this element of the investigative process. Any such inquiry would be established and largely controlled by the executive, thus undermining any semblance of independence.

Conclusion

On 22nd July 2005 Jean Charles de Menezes was shot seven times in the head by two members of “SO19” (now “CO19”), a specialist firearms unit of the MPS. Initially, de Menezes was believed to have been a bomber, linked to the four suicide bombings in

London on 7th July 2005 and the four failed suicide bombings on 21st July 2005. It was later revealed that he was unconnected to the terror threats that had gripped the capital in that summer: he was an innocent and unarmed man from Brazil, working as an electrician.

In a previous article in this journal the author assessed the circumstances surrounding the shooting, questioning their compatibility with Article 2 of the ECHR (Turner 2008). He concluded that de Menezes had not been unlawfully killed. However, for reasons of word length he was unable to consider every element of Article 2: the procedural duty imposed on the authorities post the shooting was to be reserved for a later evaluation. Here the author concludes that the lengthy investigations into the killing – the initial MPS inquiry, the later investigation by the IPCC, the criminal trial of the MPC, at least two judicial reviews and the inquest – taken together more than satisfy the procedural obligation imposed on the UK. It was always the case, perhaps, because of the intense public interest generated at the time – four suicide bombings, four failed suicide bombings, a fatal shooting on a packed London underground train with no apparent police warning – that the subsequent investigations into the killing would have been human rights compatible. Of course, the exclusion of some of these elements of the inquiry as a whole (eg. the inquest which went some way to addressing the potentially tainted nature of the original MPS investigation) would surely have contributed to a different finding.

It was concluded in the author's earlier article that if the shooting was later held to be an unlawful denial of the right to life as per Article 2(2), maybe there should be a more serious consideration of the positive nature of Article 2(1) to protect the rights of the public in general to be free from acts of terrorist violence. That is, the substantive obligation is weighted too heavily at present on the side of the individual whose life has been deprived rather than the community's right not to be subjected to terrorism, especially suicide violence where the risks to life are that far greater. If this is to be the case for anti-terrorist policing post "9/11", then the author does not believe that a standard more favourable to the state should be accorded to the other element of the positive obligation: the investigative duty. If the standard of the procedural obligation were to respect the interests of the state more so than at present, the author believes that the positive duty to protect life would, in fact, be undermined. Whilst he recognises that a standard in fatal shootings of suspected suicide bombers of less than "absolute necessity" under Article 2(2) may be justified (albeit this would still be phrased "absolute necessity" but would reflect a wider obligation to protect life), the existing standard in relation to the investigative obligation must be maintained. If a police officer is prepared to sacrifice life for the greater good of protecting the wider community from acts of suicide terrorism, s/he must be accountable for this at inquiries fully compliant with Article 2. Otherwise the substantive obligation to preserve life, which was the basis for legitimising a lesser need for lethal force in the author's previous article, lacks sufficient safeguards for the person whose life has been deprived; and arguably puts the general public at greater risk because of the relaxation of the stringent requirements of accountability expected from police firearms officers.

Postscript

An unacceptable balance in favour of the state would seemingly have occurred if the

government's proposal for the introduction of "secret" inquests had remained in the current Coroners and Justice Bill 2009. Clause 11(1) had permitted the Secretary of State to certify an inquest where s/he was satisfied that it would have concerned or involved "protected matters", that is, either issues of national security, relations with another country, the prevention or detection of crime and the safety of a witness or other person. A "certified" inquest would have been without a jury if the Minister had believed it was necessary to avoid "protected matters" being made public or unlawfully disclosed (cl.11(1)(d)). Such an investigation would have been conducted by a High Court judge nominated by the Lord Chief Justice (cl.11(2)(a)). The nominated judge, like the relevant Minister, must have been satisfied that the "certified" inquest without a jury was necessary for the purposes of avoiding "protected matters" being made public or unlawfully disclosed (cl.11(6)). In this respect, the Minister would have been obliged to inform the judge what the "protected matters" were (cl.11(5)).

The government's justification for the creation of inquests in secret had been partly to allow the publication of police intercept evidence, which is currently excluded from most court proceedings under the Regulation of Investigatory Powers Act 2000 s.17. For example, the inquest into the death of Azelle Rodney has been postponed indefinitely by its coroner until such evidence can be presented. Rodney was in a car under police surveillance when it was stopped by firearms officers in London on 30th April 2005. He was sitting in the back seat and was shot six times (BBC News 2008g).

If the de Menezes inquest had been a "certified" one, it is unlikely to have satisfied Article 2. This is the implied view of human rights organisations such as Inquest (Shaw 2008: 34), BIRW (BIRW 2009), Human Rights Watch (HRW) (Human Rights Watch 2009), the House of Commons Select Committee on Justice (House of Commons Select Committee on Justice 2009) and the JCHR (JCHR 2009a). For example, BIRW states (BIRW 2009):

"BIRW has very serious concerns about the proposal that the Secretary of State may certify an inquest, thus replacing the Coroner with a High Court judge and removing a jury, on the basis of somewhat vague terms such as "national security". This phrase, and its lack of adequate definition, could be applied to a host of scenarios, leaving little room for independent scrutiny... The appointment of a High Court judge to carry out the investigation, in place of a Coroner, undervalues the specialist knowledge of this office. The removal of the jury from a certified inquest further undermines any principle of independence. A randomly selected jury had more ability to inquire into a death than an individual sitting alone."

Concern was also expressed by the same Parliamentary committees, the House of Commons Select Committee on Justice (House of Commons Select Committee on Justice 2008) and the JCHR (JCHR 2008), and the House of Lords Select Committee on the Constitution (House of Lords Select Committee on the Constitution 2008), when similar proposals for "secret" inquests formed part of the Counter Terrorism Bill 2008 (now the Counter Terrorism Act 2008). These reforms were later removed by the government at the Committee Stage of the Bill in the House of Lords. Of the then Counter Terrorism Bill 2008, the Justice Select Committee had said that the

proposals did not sufficiently guarantee the independence of investigation, public scrutiny and the involvement of victims' families. It believed that a minister could be making the decision to exclude the jury in cases involving either a service for which s/he had direct responsibility or in cases involving other state authorities for which s/he shared collective responsibility (House of Commons Select Committee on Justice 2008).

It must be noted, however, that the proposals for "certified" inquests in the Coroners and Justice Bill 2009 were different from those suggested in the original Counter Terrorism Bill 2008. That is, the coroner was to be a High Court judge nominated by the Lord Chief Justice rather than a government appointee, which was the case in 2008, so there was a greater degree of independence from the executive. Indeed, the proposals in the Coroners and Justice Bill 2009 were themselves amended during their passage through Parliament. Originally, cl.11(1) had proposed the Ministerial appointment of a High Court judge to act as a coroner where no other measures would have been adequate to prevent the protected matters being made public. Before the Third Reading of the Bill in the House of Commons, the Secretary of State for Justice, Jack Straw, had proposed greater judicial safeguards in the process. The "special" coroners were still to be High Court judges nominated by the Lord Chief Justice, and "certified" inquests were still to be held in private without a jury, but they did not take place only on the certification of the Minister: the judge acting as the coroner must also have given his/her approval (as per the then cl.11(6)). As a consequence of this, one of the critics of the original proposals contained in the Counter Terrorism Bill 2008, the House of Lords Select Committee on the Constitution, was largely satisfied that its initial concerns had been addressed by the revisions contained in the Coroners and Justice Bill 2009 (House of Lords Select Committee on the Constitution 2009).

In spite of the concessions given by Jack Straw during the Parliamentary passage of the Bill, organisations such as Inquest, BIRW and HRW were still concerned about the Article 2 compliance of these "certified" inquests. To this end, the Secretary of State announced in May 2009 that the proposals would no longer form part of the Bill (Ministry of Justice 2009). Nevertheless, in so doing, Jack Straw did say that the government believed that these changes "had struck a fair and proportionate balance between the interests of bereaved families, the need to protect sensitive material and judicial oversight of the whole process" (Ministry of Justice 2009). Moreover, he also said "it is clear the provisions still do not command the necessary cross-party support" (Ministry of Justice 2009). There is a strong indication, therefore, that this "secret" coronial regime may be resurrected at some later date. This would be significant for human rights law: an inquest into a fatal police shooting in the future, like that undertaken into the killing of Jean Charles de Menezes, is unlikely to satisfy the ECHR.

Bibliography

Amnesty International (2005a) "United Kingdom: The Killing of Jean Charles de Menezes" 23rd September
http://www.amnesty.org.uk/news_details.asp?NewsID=16399 Accessed 12th December 2007

Amnesty International (2005b) “The Inquiries Bill – the Wrong Answer” 22nd March
<http://www.amnesty.org/en/library/asset/EUR45/008/2005/en/dom-EUR450082005en.html> Accessed 23rd May 2005

Amnesty International (2006a) “UK: The Killing of Jean Charles De Menezes – High Court Misses an Opportunity” 14th December
http://www.amnesty.org.uk/news_details.asp?NewsID=17201 Accessed 11th January 2008

Amnesty International (2006b) “UK: The Killing of Jean Charles de Menezes – Let Justice Take its Course” 12th April
http://www.amnesty.org.uk/news_details.asp?NewsID=17186 Accessed 5th December 2007

Amnesty International (2006c) “UK: Amnesty International Concerned at Possible Delays to De Menezes Inquest” 7th September
http://www.amnesty.org.uk/news_details.asp?NewsID=17201 Accessed 8th December 2007

BBC News (2008a) “Probe Held Into Armed Siege Death” 6th May
<http://news.bbc.co.uk/1/hi/england/london/7387002.stm> Accessed 6th May 2008

BBC News (2008b) “Armed Police ‘Should Not Confer’” 24th October
<http://news.bbc.co.uk/1/hi/uk/7689500.stm> Accessed 24th October 2008

BBC News (2008c) “Menezes Police Ask for Anonymity” 25th April
<http://news.bbc.co.uk/1/hi/uk/7367129.stm> Accessed 25th April 2008

BBC News (2008d) “Menezes Jury’s Verdict Explained” 12th December 2008
<http://news.bbc.co.uk/1/hi/uk/7761652.stm> Accessed 27th January 2009

BBC News (2008e) “Open Verdict at Menezes Inquest” 12th December
<http://news.bbc.co.uk/1/hi/uk/7764882.stm> Accessed 27th January 2009

BBC News (2008f) “Q&A: The Menezes Inquest” 22nd September
<http://news.bbc.co.uk/1/hi/uk/7628103.stm> Accessed 23rd September 2008

BBC News (2008g) “The Inquest That May Never Be” 24th November
<http://news.bbc.co.uk/1/hi/magazine/7745773.stm> Accessed 2nd December 2008

BBC News (2009a) “Menezes Coroner Calls for Review” 4th March
<http://news.bbc.co.uk/1/hi/uk/7923698.stm> Accessed 4th March 2009

BBC News (2009b) “Family Anger Over Menezes Review” 13th February
<http://news.bbc.co.uk/1/hi/uk/7888385.stm> Accessed 13th February 2009

Blair, I (2005) “Letter to Sir John Gieve” 25th July
<http://www.homeoffice.gov.uk/documents/foi-2405-stockwell-1.pdf?view=Binary>
Accessed 24th March 2008

British Irish Rights Watch (2005) “Summary and Critique of the Inquiries Act” June
<http://www.birw.org/Summary%20and%20Critique.html> Accessed 11th January 2009

British Irish Rights Watch (2006) “Submissions to the Parliamentary Joint Committee on Human Rights” as part of *The UN Convention Against Torture (UNCAT)*. 19th Report of Session 2005-06, Volume II Oral and Written Evidence, 18th May
<http://www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/185/185-ii.pdf>
Accessed 17th December 2007

British Irish Rights Watch (2009) “Briefing on the Coroners and Justice Bill”
<http://www.birw.org/Briefing%20on%20coroners%20and%20justice%20bill.html>
Accessed 11th February

Craig, K (2009) “Deaths at the Hands of the State – Will Police Officers Ever be Held to Account?” *Socialist Lawyer*, January

Crown Prosecution Service (2006) “CPS Statement: Charging Decision on the Fatal Shooting of Jean Charles de Menezes” 17th July
http://www.cps.gov.uk/news/pressreleases/archive/2006/146_06.html Accessed 26th November 2007

Crown Prosecution Service (2009) “CPS Statement – Shooting of Jean Charles de Menezes” 13th February
http://www.cps.gov.uk/news/pressreleases/103_09.html
Accessed 18th March 2009

Eaton, R and Mercer, H (2004) “Victims of Circumstance?” 154 *New Law Journal* 524

House of Commons Select Committee on Justice (2008) *The Counter-Terrorism Bill*. 2nd Report of Session 2007-08
<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmjust/405/40502.htm>
Accessed 13th June 2008

House of Commons Select Committee on Justice (2009) *Coroners and Justice Bill*. 2nd Report of Session 2008-09
<http://www.publications.parliament.uk/pa/cm200809/cmselect/cmjust/185/18502.htm>
Accessed 11th February 2009

House of Lords Select Committee on the Constitution (2008) *Counter-Terrorism Bill: The Role of Ministers, Parliament and the Judiciary*. 10th Report of Session 2007-08
<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldconst/167/16702.htm>
Accessed 7th September 2008

House of Lords Select Committee on the Constitution (2009) *Coroners and Justice Bill*. 10th Report of Session 2008-09
<http://www.publications.parliament.uk/pa/ld200809/ldselect/ldconst/96/9602.htm>
Accessed 16th May 2009

Human Rights Watch (2009) "UK: Secret Inquests Threaten Accountability" 15th May <http://www.hrw.org/en/news/2009/05/15/uk-secret-inquests-threaten-accountability> Accessed 16th May 2009

Hutton, Lord (2004) *Report of the Inquiry into the Circumstances Surrounding the Death of Dr David Kelly CMG*, 28th January <http://www.the-hutton-inquiry.org.uk/content/report/index.htm> Accessed 23rd March 2009

Independent Police Complaints Commission (2007a) '*Stockwell One*': *An Investigation Into the Shooting of Jean Charles de Menezes at Stockwell Underground Station on 22nd July 2005*, 8th November http://www.ipcc.gov.uk/stockwell_one.pdf Accessed 11th December 2007

Independent Police Complaints Commission (2007b) '*Stockwell Two*': *An Investigation Into the Complaints about the Metropolitan Police Service's Handling of Public Statements Following the Shooting of Jean Charles de Menezes on 22nd July 2005* www.ipcc.gov.uk/ipcc_stockwell_2.pdf - 2007-08-02 Accessed 11th December 2007

Independent Police Complaints Commission (2007c) "The Stockwell Investigation: Frequently Asked Questions" 16th November http://www.ipcc.gov.uk/faqs_for_stockwell_one.pdf. Accessed 11th December 2007

Inquest (2004) *An Information Pack for Families, Friends and Advisors*, August <http://inquest.gn.apc.org/pdf/info-section1.pdf> Accessed 17th November 2007

Inquest (2008a) "Inquest Response to the Publication of the IPCC Annual Report" Press Release, 21st July http://inquest.gn.apc.org/pdf/2008/INQUEST_press_release_ipcc_annual_report.pdf Accessed 24th July 2008

Inquest (2008b) "Inquest Statement For the Opening of the Inquest into the Death of Jean Charles de Menezes" 19th September http://inquest.gn.apc.org/pdf/2008/INQUEST_press_release_menezes_inquest_opening.pdf Accessed 27th November 2008

Inquest (2009) *E-Newsletter*, Issue 7, January

Joint Committee on Human Rights (2002) *The Police Reform Bill*. 15th Report of Session, Session 2001-02 <http://www.publications.parliament.uk/pa/jt200102/jtselect/jtrights/98/9802.htm> Accessed 17th February 2009

Joint Committee on Human Rights (2005) *Scrutiny: First Progress Report*. 4th Report of Session 2004-05 <http://www.publications.parliament.uk/pa/jt200405/jtselect/jtrights/26/2602.htm> Accessed 23rd March 2009

Joint Committee on Human Rights (2008) *Counter-Terrorism Policy and Human Rights (10th Report): The Counter-Terrorism Bill*. 20th Report of Session 2007-08

<http://www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/108/10802.htm>
Accessed 13th June 2008

Joint Committee on Human Rights (2009a) *Legislative Scrutiny: Coroners and Justice Bill*. 8th Report of Session 2008-09
<http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/57/5702.htm>
Accessed 23rd March 2009

Joint Committee on Human Rights (2009b) *Legislative Scrutiny: Coroners and Justice Bill (Certified Inquests)*. 16th Report of Session 2008-09
<http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/94/9402.htm>
Accessed 13th May 2009

Khan, Y (2006) "Justice for Jean?" *Socialist Lawyer*, December

Langdon-Down, G (2006) "Focus Police: Out of Order" *Law Society Gazette* 9th March

Liberty (2007) "Liberty Accuses IPCC of "Delaying Justice" with Belated Stockwell Shooting Report" 8th November <http://www.liberty-human-rights.org.uk/news-and-events/1-press-releases/2007/ipcc-stockwell-shooting-report.shtml> Accessed 12th December 2007

Ministry of Justice (2009) *Statement on Amendments to the Coroners and Justice Bill*. 15th May <http://www.justice.gov.uk/news/announcement150509a.htm> Accessed 10th July 2009

Pennington, H (2009) *The Public Inquiry Into the September 2005 Outbreak of E. Coli O157 in South Wales*, March <http://wales.gov.uk/ecoliinquiry/?lang=en> Accessed 23rd March 2009

Proceedings of the MPC Crown Court Trial (2007) October and November
<http://www.mpa.gov.uk/downloads/committees/mpa/071122-egm01-appendix1.pdf>
Accessed 5th March 2009

Proceedings of the Stockwell Inquest (2008a)
http://www.stockwellinquest.org.uk/hearing_transcripts/sep_25.pdf Accessed 27th January 2009

Proceedings of the Stockwell Inquest (2008b)
http://www.stockwellinquest.org.uk/hearing_transcripts/oct_20.pdf Accessed 27th January 2009

Proceedings of the Stockwell Inquest (2008c)
http://www.stockwellinquest.org.uk/hearing_transcripts/oct_23.pdf Accessed 27th January 2009

Proceedings of the Stockwell Inquest (2008d)
http://www.stockwellinquest.org.uk/hearing_transcripts/oct_09.pdf Accessed 27th January 2009

Proceedings of the Stockwell Inquest (2008e)
http://www.stockwellinquest.org.uk/hearing_transcripts/sep_30.pdf Accessed 27th
January 2009

Proceedings of the Stockwell Inquest (2008f)
http://www.stockwellinquest.org.uk/hearing_transcripts/sep_26.pdf Accessed 27th
January 2009

Proceedings of the Stockwell Inquest (2008g)
http://www.stockwellinquest.org.uk/hearing_transcripts/oct_16.pdf Accessed 27th
January 2009

Proceedings of the Stockwell Inquest (2008h)
http://www.stockwellinquest.org.uk/directions_decs/index.htm Accessed 27th January
2009

Requa, M and Anthony, G (2008) “Coroners, Controversial Deaths, and Northern
Ireland’s Past Conflict” *Public Law* 443

Rooker, Lord (2002) “Statement of Compatibility of the Police Reform Bill 2002”
24th January
<http://www.publications.parliament.uk/pa/ld200102/ldbills/048/2002048.htm>
Accessed 17th February 2009

Shaw, H (2008) “Investigating Deaths in Custody: Where’s the Progress?” *Socialist
Lawyer*, April

Straw, A and Thomas, L (2005) “Human Rights and the Inquest” 155 *New Law
Journal* 630

Turner, I (2008) “Suicide Terrorism, Article 2 of the ECHR and the Shooting of Jean
Charles de Menezes” 4 *Web Journal of Current Legal Issues*

Wistrich, H (2009) “Jean Charles de Menezes” *Socialist Lawyer*, January

¹ Nevertheless, the judge, Underhill J, was still very critical of the practice (at paras 19-20):
“[Where] action by police officers had caused death or serious injury to members of the
public...a close scrutiny of the detailed sequence of events is likely to be of crucial
importance to the carrying out of a thorough investigation...[The] attendant risk of
contamination and possibly collusion, is particularly high; and that risk is exacerbated if they
collaborate in the production of their first accounts. Even if ultimately the inquiry is not
seriously prejudiced, the possibility of collusion is bound to have an impact on the confidence
of interested parties and the wider public in the effectiveness of the [IPCC’s] investigation;
and the maintenance of public confidence in the complaints system is itself...an important
part of its responsibilities....[The IPCC] made very similar observations...in its report on the
shooting, again by officers of the Metropolitan Police, of Jean-Charles de Menezes at

Stockwell tube station.” To this end, the Association of Chief Police Officers (ACPO) has now said that firearms officers should not confer with each other before writing up their accounts of shootings. But it stopped short of banning the practice, saying officers should note any discussions that do take place (BBC News 2008b).