

Statewatch bulletin

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EUROPE

EC to drop secrecy law

The European Commission is to drop its proposal to introduce a UK-style secrecy law in the EC (reported in May by *Statewatch*, see vol 2 nos 3 & 4). This emerged after the Edinburgh EC Summit in December when 21 proposals were listed as being amended, withdrawn or being considered for withdrawal under the 'subsidiarity' clause. The secrecy law was listed as one the Commission would consider withdrawing, *Statewatch* understands that it is now to be dropped.

The proposal called for the classification of documents whose disclosure would be 'detrimental to the essential interests of the Community and member state', security gradings and sanctions against disclosure. The Commission put forward the proposal in February 1992. In May the International Federation of Journalists in Brussels, the European Federation of Trade Unions and Article 19 expressed their opposition to the proposal.

In the European Parliament (EP) the rapporteur in its Legal Affairs Committee on the proposal, Alex Falconer MEP, opposed the measure. The Committee sent a letter to the Commission asking why it had been sent to the parliament under the 'consultation' rather than the 'co-operation' procedure (the latter allow the parliament two chances to comment, the former just one). Officials from the Commission defended the proposal at the meeting of the EP's Civil Liberties and Internal Affairs Committee in September. However, the Civil Liberties Committee rapporteur on the issue, Mr Jarzembowski MEP, called for substantial amendments or the withdrawal of the proposal.

Although it would have been consulted over the original proposal the UK government later came out against it because it was not sure whether this was 'the best means of implementing such procedures'. This suggested that they would favour an inter-governmental agreement between the 12 EC states rather than a formal directive from the Commission on which the EP has to be involved. The proposal has been withdrawn under the heading of 'subsidiarity' (meaning matters best left to member states rather than the Commission) which suggests it may surface again, though not during the Danish Presidency because they opposed the measure. If it does reappear it will probably be as an inter-governmental convention, prepared and agreed in secret by governments before asking national parliaments to ratify it.

Immigration, asylum and Schengen

The European Parliament has adopted four reports from the Civil Liberties and Internal Affairs Committee at its meetings in October (debates) and November (votes). These are the reports are: report on immigration policy (rapporteur: Mathilde van den Brink MEP) ref: A3-0280/92; report on the harmonisation within the European

Communities of asylum law and policies (rapporteur: Patrick Coney MEP) ref: A3-0337/92/Parts A & B; report on the abolition of controls at internal borders and free movement of persons (rapporteur: Konstantinos Tsimas MEP) ref: A3-0284/92; and report on the entry into force of the Schengen Agreements (rapporteur: Lode van Outrive MEP) ref: A3-0336/92.

In the debate on the immigration policy report (17 October) Mathilde van den Brink said that it was 'unacceptable that this matter should be reserved for intergovernmental cooperation', it should be brought within the remit of EC institutions. Her report also called for the right of family reunification and the right of freedom of movement for non-EC nationals. Similar views were expressed on the report on asylum policy, that it should be brought within the EC institution and not left to national governments. Jean-Marie le Chevallier MEP (ER, France) said that the refugees fleeing to Germany would 'soon be able to flood into France and elsewhere when the borders came down'. Claudia Roth MEP (Green, Germany) on the other hand said that 'Europe cannot hide behind its walls and must share its wealth' by tackling the problems that forced people to become refugees.

New customs computer

A new EC-wide computer system, Customs Information System (CIS) was launched in October. The UK headquarters is at Heathrow Airport. The system, which has been funded by the European Commission, will link EC customs officials through 300 terminals - with 25 in the UK. The purpose is to exchange 'intelligence' and 'information' on drugs and fraud. The CIS is based on the existing encrypted message system called SCENT (System Customs Enforcement Network). The preparatory work was undertaken by the Mutual Assistance Group 1992 (MAG 1992), another of the inter-governmental bodies meeting outside the formal structures of the EC (though, in this case, the European Commission has participated).

The new, fast, system will incorporate standard messages such as 'stop and search' and will hold information in five main categories: persons, businesses, method of transport, commodities and trends. In each category there is space for 'intelligence' to be added. Phase II of the system will bring the addition of a dedicated CIS database in October 1993 holding 'intelligence' as well as 'details of individual cases'.

The UK Customs and Excise office recognises that the storage of personal data means that Phase II will need a legal basis with data protection provisions. The European Commission's draft directive on data protection is unlikely to be agreed before the end of 1993 and further legislation would be needed to change UK law.

The effect on entry to the UK will be that instead of trying to watch every passenger or lorry suspects will be targeted if they fit the 'profile' of a likely smuggler according to intelligence reports. Special teams of customs officers have been formed into FASTS

(Flexible Anti-Smuggling Teams) to search and if necessary to follow suspect individuals and vehicles.

HM Customs & Excise press release, 29.10.92; *83rd report of HM Customs & Excise for year ended 31.3.92.*; *Commons Hansard*, written answer 26.2.92; *Times*, 29.12.92.

Europe: new material

Injunction preventing two Irish agencies from providing women with information concerning abortion facilities abroad violates Art. 10 ECHR/Open Door and Dublin Well Woman v. Ireland, *Human Rights Law Journal* 13:9-10, 1992 pp378-395.

Euro-recession: the unions respond. *Labour Research* December 1992, 13-14.

The Council of Europe's place in the new European architecture. Lalumiere, Catherine *NATO Review* October 1992, pp8-12.

Rocky Path to Europol, Bill Heberton & Terry Thomas. *Druglink*, December 1992. Examines how drug trafficking has been used to justify information sharing through the Trevi Group and Europol.

Conclusions of the Lisbon EC Summit on free movement of persons, immigration and Trevi, *Bulletin of the European Community*, no 6, 1992, pp12-13 & 110-112.

Parliamentary debates

Human Rights: EEC Report, *Lords*, 26.11.92, cols 1087-1118
European Communities (Amendment) Bill, *Commons*, 4.11.92, cols 283-385

LAW

European court decisions

Freedom of expression

Open Door Counselling and Dublin Well Woman Centre Ltd v Ireland 29.10.92: the European Court of Human Rights held that the injunction granted by the Irish Supreme Court in 1988 against the applicants was a violation of their right to freedom of expression protected by Art 10 of the European Convention on Human Rights. The injunction restrained the applicants from assisting pregnant women to travel abroad to obtain abortions, making travel arrangements or informing the women of the identity and location of clinics in Britain. The court held that it was over-broad and inappropriate; the applicants were counselling, not advocating abortion, the information was available elsewhere, and women who did not get the information in time could risk their health by seeking late abortions. *Thorgeron v Iceland* June 1992: The applicant was charged with defaming civil servants and sentenced after writing articles about police brutality. This was a violation of Art 10 of the European Human Rights Convention (the right to freedom of expression), according to the judgment of the European Court on Human Rights. *Demicoli v Malta* 27.8.91: The editor of a political-satirical weekly was found guilty of breach of privilege for a report containing 'offensive references' to politicians. The Court (ECHR) held that his trial violated Art 6 and was not fair.

Oberschlick v Austria 23.5.91: the European Court of Human Rights held that the conviction of a journalist for defamation

violated his right to freedom of expression (Art 10) and the right to a fair trial (Art 6). The journalist published an account of an information which had been laid against a politician, Grabher-Meyer, alleging incitement to racial hatred and activities contrary to the National Socialism Prohibition Act. The journalist was convicted and fined and the journal was seized on the ground that his article 'insinuated that the politician held Nazi attitudes'. *Ezelin v France* 26.4.91: a Guadeloupe lawyer was disciplined by the Bar Council after taking part in a demonstration against the sentencing of independence activists. The disciplinary proceedings were a violation of the right of freedom of assembly (Art 11).

Michael Kühner v FRG 12.5.88: The conviction of a neo-nazi journalist for advocating the return of National Socialism and race discrimination was an interference with freedom of expression necessary in a democratic society in the interests of national security and public safety and for the protection of the rights of others. The complaint was manifestly unfounded.

Detention

In 1990 and 1991, the Court held that detention under the Northern Ireland (Emergency Provisions) Act 1978 was unlawful, violating Art 5, since detention was not justified on grounds of 'reasonable suspicion' (*Fox, Campbell, Hartley v UK*). The British government reported back that since then s11 (the offending section of the Act) has been replaced by s6 of the Northern Ireland (Emergency Provisions) Act 1987, in which the power of entry and search is subject to the power of arrest under the Prevention of Terrorism Act. The latter is subject to reasonable grounds for suspicion. The UK government claims it is under no obligation to legislate for an enforceable right to compensation for unlawful arrest (Art 5 para 5).

On 25 October 1990 the court held that the parole arrangements for discretionary lifers violated Art 5 (*Thynne, Wilson & Gunnell v UK*). The British government reported back that the Criminal Justice Act 1991, which came into force in October 1992, give the Parole Board power to direct, rather than merely recommend, the release of a discretionary lifer to the Home Secretary, and give the prisoner a right to have his case referred to the Board at regular intervals.

O'Neill v UK; Kelly v UK 29.9.92: the European Commission on Human Rights declared inadmissible complaints of detentions pursuant to prevention of terrorism legislation for the search of a house and a car respectively. The applicants had not exhausted domestic remedies.

Family life

Lamguindaz v UK 17.2.92: the European Commission on Human Rights held admissible a complaint that the deportation of a Moroccan citizen from the UK was a violation of his right to family life protected by Art 8. He had lived in the UK since he was 7 and his parents and siblings were there; he could not read or write Arabic. He had a long criminal record culminating in convictions for wounding in 1986 and supplying cannabis in 1989. He was deported in 1990.

Cardiff Three vindicated

The Cardiff Three - Steven Miller, Tony Paris and Yusuf Abdullahi - became the latest victims of miscarriages of justice to be released by the Court of Appeal, on 10 December 1992, after the court listened with mounting horror to a taped interview in which officers bullied and intimidated Steven Miller, who went on to confess and implicate the other two. In a judgment delivered on 16 December, Lord Chief Justice Peter Taylor said that solicitors present at police

interviews 'should responsibly and courageously discharge their function to intervene when improper questions are put', adding that the solicitor acting for Miller 'appeared to have been gravely at fault for sitting passively through that travesty of an interview'. He referred the interview tapes in the case to the Royal Commission on Criminal Justice (RCCJ), the DPP and HM Inspector of Constabulary, to 'establish guidelines and ensure that the police follow proper interview techniques'. The South Wales police, however, announced after the successful appeal that there would be no disciplinary action against the officers conducting the interviews (*Independent, Guardian* 11, 17, 22.12.92).

The case attracted national publicity through the work of the Cardiff Three Defence Campaign, relatives and friends of the three, who, through public meetings throughout Britain and exposures on TV programmes, made an irrefutable case for the men's innocence. The confessions, obtained from Miller after nineteen interviews over five days, contradicted forensic and alibi evidence which pointed away from the men.

The convictions of the men in 1990, and the evidence on which they had been obtained, should give a jolt to the Royal Commission on Criminal Justice (RCCJ). They were obtained without any breaches of the Police and Criminal Evidence Act (PACE), and with all the 'safeguards' in place: tape-recorded interviews, in the presence of a solicitor. Those at the top of the criminal justice system, including Lord Chief Justice Taylor himself, did not believe that such a miscarriage of justice was possible in such conditions, with such safeguards; so confident was he that he indicated to the Royal Commission that the right to silence could now be 'modified', to prevent giving criminal suspects an unfair advantage over those investigating them. It is noticeable that, while professing himself shocked by the conduct of the police in Miller's case, Taylor said nothing during or since the men's appeal to indicate that he has reconsidered that view.

On their release, the three drew attention to the many other innocent men in British prisons, most of whom have no-one to campaign for their release. Over Christmas, 28 prisoners at Long Lartin went on hunger strike to protest their innocence; they included Winston Silcott (whose defence of self-defence was never raised during his murder trial), Satpal Ram (doing life for murder after, he says, defending himself against a racist attack), Sara Thornton (doing life for killing her violent husband), and one of the Carl Bridgewater Three. Three of the men continued their hunger strike after Christmas (*Observer* 20.12.92; *Independent on Sunday* 27.12.92).

Racism in court

It has been estimated that, if police racism accounts for 80% of the over-representation of black people in British prisons (where Afro-Caribbeans and Asians make up 16% of the population, as against just over 5% of the population of the country), racism in the courts accounts for the other 20%. A CRE report published in December confirms that sentencing is racially biased, with Afro-Caribbeans in the West Midlands study 17% more likely to go to jail than whites, while Asians were 18% less likely to do so. Society of Black Lawyers' chair Peter Herbert, who in November urged multi-racial juries, monitoring court decisions and tough sanctions against racist practice under the new s25 of the Criminal Justice Act, called for urgent talks with the Lord Chancellor and the Lord Chief Justice, and for the suspension of racist judges. In a milder rebuke, Mr Justice Brooke called for more 'race awareness' training of judges, to prevent black defendants from being disadvantaged in court. Currently their 'training' is limited to a talk on 'demographics, language, oaths [the religious variety], personal names, cultural

differences, communication problems, body languages and avoiding generalisations which might give offence'. Race awareness training has had no notable success in the USA, where it originated. In November, *Nacro* reported that only 1% of police, less than 1% of prison officers, 2% of magistrates and solicitors, and 3% of probation officers, were black (Afro-Caribbean, Arab, Asian or of mixed race). There are no black magistrates' court clerks and only three black judges (*Guardian*, 10 & 11.12.92, 12, 16.11.92).

Law: In brief

* **Women in the judiciary:** A survey commissioned by the Bar Council and the Lord Chancellor's Department found widespread discrimination against women in the legal profession. Of the Lords of Appeal there are 10 men and no women; Lords Justices of Appeal: 26 men, 1 woman; High Court judges: 80 men, 3 women; Circuit judges: 451 men, 22 women; Recorders: 753 men, 42 women; Assistant recorders: 414 men, 46 women; District judges: 238 men, 16 women; Metropolitan stipendiary (full-time) magistrates: 43 men, 7 women; Provincial stipendiary magistrates: 25 men, 2 women. Of the 760 Queen's Counsel, from whom the top law appointed are made only 41 are women (5.4%) and only seven are black. *Times*, 25.11.92; *Independent*, 25.11.92; *House of Commons*, written answer, 16.11.92.

* **Maguire Seven:** The Maguire Seven were finally recognised as innocent in Sir John May's second report on their case. May proposed the setting up of a new independent justice body which would take the place of the Home Office in referring cases of alleged injustice to the Court of Appeal. Home Secretary Kenneth Clarke assented to the proposal (*Guardian, Independent* 4.12.92).

* **Miscarriages of justice:** A Liberty/NAPO list of 163 cases of miscarriage of justice, launched in November, revealed that 23% of the victims of injustice are black. One-third of the black prisoners in the dossier complained of police misconduct (*Guardian* 11.11.92). And a survey of crown courts conducted for the RCCJ revealed that police malpractice was serious enough to warrant disciplinary action in the equivalent of 100 cases a year, while in 400 a year evidence was excluded because of breaches by police of PACE or the Codes of Practice, or because of other serious police misbehaviour (*Guardian* 9.12.92). Another survey, by the Economic and Social Research Council, *Unravelling Criminal Justice*, concluded that police ignore or marginalise evidence of innocence, and that their working practices routinely break the rules. The researchers also found that community 'consultative committees' had been effectively co-opted to the police standpoint, and that the role of the Crown Prosecution Service (CPS) in preventing miscarriages of justice was undermined by the 'dominant position' of the police (*Guardian* 23.11.92).

Law: new material

The Union deregulation bandwagon *Labour Research* November 1992 pp6-8

The Injudiciary? Billen, Andrew *Observer magazine* 13.12.92. pp32-39 Piece on the eccentricity of judges.

Violence against women: what protection is there? Spare Rib, September 1992, pp32-35.

Crime, punishment, and stake in conformity: legal and

informal control of domestic violence, Lawrence W Sherman & Douglas A Smith. *American Sociological Review*, Vol 57 October 1992, pp680-690.

Castlemorton and beyond. Baxter, John *Policing* Autumn 1992 pp222-231. Looks at the 'problems caused by gatherings of New Age travellers'.

Control of a prisoner's correspondence with their solicitor and with the European Commission of Human Rights found incompatible with Art. 8 ECHR/Campbell v. UK. *Human Rights Law Journal*, col 13, nos 9-10, pp371-378.

Marital rape. Jerrard, Rob, *The Police Journal*, October 1992 pp340-343

Parliamentary debates

BCCI (Bingham Report), *Commons*,
Privatisation of gypsy sites, *Commons*, 4.11.92, cols 281-282
BCCI (Bingham Report), *Commons*, 22.10.92, cols 576-591 & 6.11.92, cols 523-594
Domestic violence, *Lords*, 26.10.92, cols 984-1010
Criminal Justice Bill, *Lords*, 3.11.92, cols 1347-1388
Civil Rights (Disabled persons) Bill, *Lords*, 4.11.92, cols 1516-1534
Criminal Justice Bill, *Lords*, 19.11.92, cols 721-777
Prisoners and Criminal Proceedings (Scotland) Bill, *Commons*, 19.10.92, cols 237-292

NORTHERN IRELAND

Casement Park trials

The ninth and final trial in the Casement Park series of trials has ended (see *Statewatch* vol 2 no 4). The trials arose from the killing of two British soldiers at the funeral of Kevin Brady in West Belfast in 1988, after Brady was killed by a Loyalist gunman at the funeral of the Gibraltar 3 three days earlier.

The trials have been heavily criticised for the reliance on video 'heli-tele' evidence of identification, and for its 'common purpose' rulings which have equated presence with guilt. In the final trial, seven men were charged with assault, grievous bodily harm and false imprisonment, and one, William Silcott, faced charges of aiding and abetting the murders, which carried a double life sentence. That charge, along with all the charges against five of the defendants, were dismissed by the Judge at the end of the prosecution case. A further defendant was acquitted, and Silcott was sentenced to two years imprisonment suspended for three years.

In the wake of this result, campaigners have questioned the propriety of the whole proceedings, when arrests were in many cases not made until two years after the incident and the trial another two years later. The result of this trial adds to the serious disquiet about convictions obtained in previous ones, using the doctrine of common purpose. There are five people serving double life sentences for the affair, including two, Timmes and Kelly, who are not even alleged to have been in the vicinity of the soldiers at the time of their shooting, let alone fired the fatal shots.

Border Demonstrations

On New Year's day 1993, the Irish National Congress organized

twelve demonstrations at various points along the border drawn by Britain to partition Ireland in 1920. This was the day the EC policy of open borders between member states was due to come into effect. Contrary to the Single European Act, however, the border is becoming more and more of a physical barrier.

The demonstrations drew attention to three factors. Firstly, in recent years the British government has been spending millions of pounds fortifying the border by means of military bases, checkpoints and surveillance towers. This policy has caused considerable expense and day-to-day inconvenience to people in the border region as well as to long-distance cross-border traffic. The new Killeen checkpoint/military base, for instance, is sited next to a large primary school, forcing its closure in September 1992. There is some debate within military circles as to the value of such fixed installations as counter-terrorist measures.

Secondly, as the Crossmaglen demonstration highlighted, there is growing concern about dangerous levels of radiation being emitted from surveillance equipment along the border. The radiation is believed to be causing increased levels of cancer, brain haemorrhages and other less dramatic illnesses. The EC's petitions committee, after receipt of a 10,000 signatures petition, has agreed to an inquiry into the claims.

Thirdly, since the early 1970s, the British army has either blocked off or blown up most of the minor roads which cross the border. This policy has gathered pace in Fermanagh and Tyrone, but has not been so possible in Armagh.

Over the last five years, local community associations have re-opened some of these roads, some of them with bridges, only to have their work destroyed by the army. The 1991 Emergency Provisions Act contains specific powers to confiscate equipment used in such road openings. Around 500 demonstrators re-built the river crossing at Lackey Bridge near Clones (on the Fermanagh/Monaghan border) and then mounted a four day vigil.

South African Agents

In February 1992, a lawyer named Bheki Mlangeni was killed by a parcel bomb intended for Dirk Coetzee, the former South African police officer who defected to the ANC, revealing what he knew about the operation of death squads in South Africa. At Mlangeni's inquest, secret South African Defence Force documents were produced, showing that two South African agents had met with RUC personnel over various matters. South African intelligence Captain Pamela du Randt had visited Northern Ireland and met with a member of the RUC.

They had discussed a plan to establish a link between the IRA and ANC in an attempt to discredit the latter. The second agent, Leon Flores, helped du Randt to establish surveillance of Coetzee, with a view to assassinating him in London. Members of the RUC allegedly carried out this surveillance. It may be however that the men involved were members of loyalist paramilitary groups. Flores and du Randt were arrested at Heathrow on 15 April and later deported following a tip off that they were plotting with loyalists to kill Coetzee. The RUC dismissed the allegations of their involvement with South African agents as 'an excellent plot for a novel. There is no evidence to substantiate these far-fetched claims.'

Transfer of Prisoners

The Report of the Interdepartmental Working Group's Review of the Provisions for the Transfer of Prisoners Between UK Jurisdictions was made public at the end of November. Announcing the government's response, Earl Ferrers told the House of Lords that the report's recommendations would be accepted in full.

The long-standing issue behind the report concerns the position of the small number of Irish prisoners being held in Britain for politically-related offences. For twenty years these prisoners have been protesting against the refusal of the Home Office to transfer them back to Northern Ireland (see *Statewatch* vol 1 nos 2 & 4). The government has now agreed to transfer prisoners but only on a temporary basis. The prisoners and campaign groups had sought transfer as of right. The main change in policy is that 'crimes undeserving of public sympathy' have been deleted from the criteria for refusing transfer. However, a permanent transfer can be refused on the grounds that it will result in a substantial reduction in sentence. The idea that transferred prisoners might benefit from shorter sentences because of different remission rates (up to 1989, prisoners in Northern Ireland got 50% remission) and different lifer review considerations, has meant Home Office resistance to transfer. However, under the new system, the 'temporarily' transferred prisoners will remain under British the sentencing regime. Those given life sentences in Britain will serve around seven years longer than those sentenced in Northern Ireland, partly due to Leon Britain's 1983 decision that 'terrorist murderers' (amongst others) should serve a minimum of 20 years.

Armstrong, Walsh and Holmes, whose situation is detailed in *Statewatch* vol 1 no 4, were transferred to Northern Ireland in November 1992. Meanwhile, British Army agent Brian Nelson has been transferred to a prison in Britain, amidst accusations that, as in the case of Private Thain, this is a prelude to early release.

Parliamentary debates

Northern Ireland (Emergency Provisions) Act 1991 (Amendment order) 1992, *Lords*, 9.11.92, cols 35-39

Northern Ireland Political Talks, *Lords*, 11.11.92, cols 219-227

Political Talks (Northern Ireland), *Commons*, 11.11.92, cols 877-893

PRISONS

Businessman to run prisons

The government have appointed Mr Derek Lewis, a business man to run the prison service, which itself is to be privatised becoming the Prison Service Agency. Mr Lewis who took over on 1 January, is to continue to be the Chairman of UK Gold, a satellite television service.

He will be the Director-General and Chief Executive of the new Agency. Mr Lewis previously worked for the Ford Motor Company, 1968-1982, and then Granada Television, 1984-1991. Home Secretary Kenneth Clarke commented: 'I am sure Derek Lewis will give dynamic leadership to the new Prison Service Agency and to the reform of the prison service'.
Home Office, press release 21.12.92.

Prisons - in brief

* **Babies in prison:** On the 8 October there were 26 babies in three mother and baby prison units. The 10 babies in Holloway were under 9 months old; seven in Styal were aged between two and eighteen months and the 11 babies at Askham Grange were aged from one to 18 months. There are 38 places available in the units. As of 11 November there were 38 pregnant women on remand or sentenced in England and Wales. *Hansard* 22.10.92, 13.11.92.

* **Prison escapes:** Between 20 June 1988 and 31 August 1992

1,461 prisoners escaped from prison or prison custody. 110 had not been recaptured or accounted for by the end of August; nine of these were women. *Hansard* 21.10.92.

* **Vulnerable prisoners:** Eighteen prisons have Vulnerable Prisoner Units which held 2,226 prisoners on the 17 November. Three of the units held over two hundred vulnerable prisoners; they are Wandsworth (213), Whatton (204) and Whitemoor (239). 1,539 prisoners were being held on Rule 43 (or Rule 46 in the case of young offenders) for their own protection, including 21 prisoners at female establishments. *Hansard* 19.11.92.

* **Awaiting trial: Interim report:** a survey of juveniles remanded to custody while awaiting trial in criminal proceedings April 1992 - March 1993. Survey by the Association of Chief Officers of Probation (ACOP) and the National Association for the Care and Resettlement of Offenders (NACRO), December 1992, pp24. Available from: NACRO Youth Crime Section, First Floor, Princess House, 105-107 Princess Street, Manchester M1 6DD.

* **Operation Container: extending the penal estate:** this detailed study looks the policy of keeping prisoners in police cells by Peter Whall. Copies are available from: The Centre for Studies in Crime and Social Justice, Edge Hill College, Ormskirk, Lancashire.

Prisons: new material

Control of a prisoner's correspondence with his solicitor and with the European Commission of Human Rights found incompatible with Art. 8 ECHR/Campbell v. UK *Human Rights Law Journal* 13:9-10 1992, pp371-78

The case against prisons for profit. *Penal Affairs Consortium* November 1992

Rights and prisons in Germany: Blueprint for Britain? Renate M Prowse, Hartmut-Michael Weber & Charles R M Wilson. *International Journal of the Sociology of Law*, June 1992, pp111-143.

Health Care or Punishment? Prisoners with HIV/AIDS, Philip A Thomas & Ruth S Costigan. *Howard Journal*, Vol 31 no 4, pp321-336.

Caring professionals or street-level bureaucrats? The case of probation officers' work with Prisoners, Brian Williams. *Howard Journal*, vol 31, no 4, 1992, pp263-275.

Parliamentary debates

Ashworth Hospital, *Lords*, 18.11.92, cols 687-710

SECURITY & INTELLIGENCE

Swiss phone tapping

After a year long investigation a special parliamentary investigation group (PIG) of the Swiss parliament has concluded that phone tapping is not properly covered by the law. The phones of private companies, the Houses of parliament and state offices can be tapped but with no guarantee protecting the individuals concerned.

In 1991 the Federal Police Department carried out 32 phone taps and the cantons (states) of Switzerland 574 taps. The Swiss security

service (Staatsschutz) carried out a further 40 plus taps. Most are said to be against organised crime and drug investigations. The PIG report says that 'third parties' caught in the taps are not protected and that not all the people placed under surveillance are informed afterwards and given a chance to read and correct their files - as required by law.

Several of the phones tapped were in the Swiss parliament buildings including those used by journalists and public phones used by MPs. MPs reported that they have been repeatedly connected to the US embassy and to officials in the Justice Department when making outside calls.

Kommittee Schluss mit dem Schuffelstaat; MODUS vol 1 no 3, 1992.

Holland: Security service report

The Dutch Binnenlandse Veiligheidsdienst (BVD), the internal security agency, published its first annual report which covered its activities in 1991. The report makes many references to international meetings with its counterparts such as the annual conference of West European security services and the meeting of a number of heads of European security services (it is presumed this refers to what used to be called the 'Kilowatt' meeting). The BVD's contribution to the yearly NATO survey - a threat analysis in the fields of espionage, terrorism and subversion - is also mentioned. They estimate that the followers of extreme right groups number several hundred with several dozen actually involved in political activities.

During 1991 the BVD made 55,142 administrative investigations and 10,865 more intensive security investigations for the government and sensitive corporate agencies. 862 full security investigations were carried out on behalf of international and other security services.

The report, for 1991, says that 20% of the BVD's time was spent on the protection against unauthorised disclosures of state secrets, 15% to preventing and combatting political violence, 12% safeguarding government integrity, 10% protecting democratic rights and liberties and 10% on security and vetting.

Security & intelligence: in brief

* **Home Office search records:** The Home Office conducted a 'comprehensive' search of its immigration and naturalisation files for evidence that Bill Clinton, US Presidential candidate had attempted to avoid the Vietnam draft. A Home Office official said it was carried out in response to press inquiries - such inquiries are normally covered by the ruling that individual cases cannot be discussed. Clinton's campaign office was said to be dismissive of the Home Office's explanation as it was known that two Conservative Party election strategists were advising the Bush campaign. *Observer*, 6.12.92; *Independent*, 5.12.92.

* **GCHQ staff federation not a trade union:** The Employment Appeal Tribunal ruled on 10 December 1992 that the GCHQ staff federation is not an independent trade union under Section 5 of the 1992 Trade Union and Labour Relations (Consolidation) Act. Section 5 states that a trade union must not be under the domination or control of an employer and is not liable to interference by them. The GCHQ staff federation was set up in 1985 after membership of recognised trade unions was banned in 1984. *Times*, 16.12.92.

* **D-Notice Secretary:** Rear Admiral D M Pulvertaft has taken over from Rear Admiral Bill Higgins as the Secretary to the D-Notice Committee. His deputy is Commander F N Ponsonby. *Amendment circulated*, 16.11.92.

* **Fettesgate: new guidelines:** the Scottish Office have issued a set of guidelines to be followed by police in Scotland using telephone 'metering' to log numbers and the duration of calls. This follows the revelation that the Lothian and Borders police force had monitored calls from 78 people and organisations by this method and that the authorisation needed varied between different Scottish police forces. The guidelines say that it should only be used when investigating 'very serious crime' and that authorisation had to be made by an Assistant Chief Constable. The Scottish Secretary of State said however that no change was needed in the law, thus excluding 'metering' from the provisions of the Interception of Communication Act 1985. In December charges against a *Scotland on Sunday* reporter, Ron McKay, of handling stolen goods was dropped - the paper had published details of the files and 'metering' removed in a break-in to the force's HQ. *Police Review*, 4.12.92; *Guardian*, 23.12.92 (see *Statewatch* vol 2 nos 5 & 6).

* **MI5 accountability:** the Home Affairs Select Committee has proposed that the Security Service, MI5, should be made accountable to it for its finance and policies but not its operations. However, it is thought that the government will set up a special committee made up of Privy Councillors attached to the Cabinet Office not to parliament. *Accountability of the Security Service*, Home Affairs Committee, HC 265, HMSO, £10.00, pp21.

Parliamentary debates

Matrix-Churchill, *Lords*, 10.11.92, cols 320-324

Matrix-Churchill, *Commons*, 10.11.92, cols 743-758

RACISM & FASCISM

Europe: Racist murders

As racist violence spreads across Europe, November witnessed an unprecedented wave of deaths. In Germany the violence continued unabated as at least six people died.

Two Turkish women, Bahide Arslan and Ayse Yilmaz, and a 10 year-old girl, Yeliz Arslan, died in a petrol bomb attack on two houses in Molln, near Lubeck on the former East-West German border. Nine other people were also injured, including an 82 year old woman and a 9 month old child.

Following the attack an anonymous phone caller claimed responsibility for the attack, finishing his message with the words "Heil Hitler". Two members of a local neo-nazi group, Lars Christianson and Michael Peters, were later arrested and admitted carrying out the firebombing. They are being questioned about several other attacks on asylums across the country.

In Cologne, a few days after the killings, a security guard shot dead a 24 year-old Turk who had been refused entry to a discotheque. The killer is now on the run from the police.

The day before the Molln murders, political activist, Silvio Meyer, was stabbed to death and a friend was wounded, by skinheads, in the Berlin underground. In west Germany two skinheads were arrested for the murder of a man they took to be Jewish earlier in the month; he was beaten and his body set ablaze before being dumped over the Dutch border.

As a result of the attacks the German government has banned two of the more street-active fascist groups, the *Nationalistische Front* (NF) and the *Deutsche Alternative* (DA), at the beginning of December. The DA, which was formed in May 1989 and is led by Frank Huebner, was involved in fire-bomb attacks on asylum

seekers earlier in the year.

It is believed that almost 20 people have been killed by neo-nazis in Germany this year. According to the German parliamentary commissioner for the armed forces, Alfred Biehle, at least three of the killings involved off-duty members of the German army. They were said to have occurred during fascist raids in the cities of Flensburg, Hanover and Magdeburg; soldiers were also said to have been involved in firebomb attacks on hostels for asylum seekers.

In Madrid, Spain, two racist murders took place within 48 hours during November. In the first, a 33-year old black woman from the Dominican Republic, Lucrecia Perez, was shot dead following a gun attack on a building that was squatted by immigrants in the Aravacia area. The attack, which involved four hooded men, also left a 55-year old man wounded. It took place following a campaign of intimidation against the immigrants which, they claimed, was co-ordinated by the local civil guard.

The second killing, which took place in the Majadahona suburb on the following day, was of a 25 year-old Moroccan, Hassan al-Yahahaqui. He died in hospital after being attacked and beaten by a gang of neo-nazi skinheads.

A week after the two murders 5,000 fascists marched through central Madrid waving swastika flags and giving Nazi salutes, on the anniversary of Franco's death. At the rally afterwards National Front leader, Blas Pinar, addressed the crowd telling them "there is no outbreak of racism in Spain. A Moroccan man was treated in hospital after being attacked during the rally.

European 19.11.92. 3.12.92; *Independent* 16-17.11.92, 24.11.92, 1.12.92, 11.12.92; see *Campaign Against Racism and Fascism [CARF]*, January-February 1993 issue with special investigation of racist and fascist murders across Europe.

Racist attacks in Southwark

The newly opened Southwark College, in Bermondsey, south London, has suffered a spate of vicious racist attacks since it opened three months ago. It has had to install high security measures, including surveillance cameras, perimeter fencing and private security guards, following the incidents.

Numerous incidents were reported by black students at a recent meeting at the college. Several had been attacked by a gang of white youths armed with baseball bats and knives.

In the most serious incident, at the beginning of November, a teenager was threatened as he left the college. A dog was set on him and he was shot in the head with an air rifle as he fled back to the college. The assistant caretaker, who came to his assistance, was shot in the face. Both men were treated at Guy's Hospital.

The gang is believed to have carried out two more attacks in the same evening. Two people were arrested for the first shooting and were bailed to return to Southwark police station.

Bermondsey, which is a British National Party stronghold, is an area notorious for incidents of racist violence. It has been the focus of a BNP 'Rights for Whites' campaign and the fascist grouping regularly sell their newspapers in the area. At the beginning of December a BNP hit squad attacked a Socialist Workers' Party paper sale in the area.

Guardian 9.11.92; *Voice* 17.11.92; *South London Press* 24.11.92.

Racism & fascism: In brief

* **Northern League gains:** Increasing disillusionment with the corruption of the traditional parties has once again benefited the far-right in Italy's local elections, held in December. The Northern League won 14.5% of the votes, an increase of 4% over their general election result last April, when they became Italy's fourth

largest political party. In Varese, the home of the League's leader, Umberto Bossi, it won 37% of the vote and in Monza 32 per cent, becoming the biggest party in both towns. The fascist Movimento Sociale Italiano (MSI) increased its vote to 7%. *Independent* 15.12.92.

* **Irving jailed in Canada:** Neo-nazi historian, David Irving, who denies that the Nazi Holocaust took place, was arrested while on a speaking tour in Canada at a meeting organised by the Canadian Free Speech League. He had previously been banned from entering Canada. He was refused entry to the United States, but released on bail pending an immigration appeal. He is expected to be deported back to Britain.

Guardian 14.11.92

* **European Race Audit:** The Institute of Race Relations has produced Bulletin no 1 from its European Race Audit project. It covers racism, fascism, refugees and policing in Austria, Denmark, France, Germany, Hungary, Italy, Netherlands, Norway, Rumania, Russia/CIS, Spain and the UK. Copies can be obtained from: Liz Fekete, Institute of Race Relations, 2-6 Leeke Street, London WC1X 9HS.

Racism & Fascism: new material

Hitler's youths McCrum, Robert *Weekend Guardian* 5.12.92. pp6-10

Notes from the underground: British fascism 1972-92 (Part 2) O'Hara, Larry *Lobster* 24 1992, pp15-21

Rostock: debate in the European Parliament 17.9.92, debates No 3-42/pages 244-249 and resolution passed on 2.11.92, No C 284/pages 99-100.

POLICING

Police inquiry

A report to the DPP named 25 officers from the station as involved in drug dealing, fabrication of evidence, planting of drugs, perjury and conspiracy to pervert the course of justice. The report followed 'Operation Jackpot', described as the 'most wide-ranging corruption inquiry in the Met for 20 years'. So far, three officers have been suspended and eight transferred (see *Stewatch* vol 2 no 2).

DC Roy Lewandowski, one of the officers allegedly involved in the drugs recycling and planting scandal at Stoke Newington Police Station, was sentenced to 18 months imprisonment on five charges of theft and one of misfeasance in public office. Lewandowski stole £2,000 worth of books from the collection of a dead man. In early November, the trial of Raymond Simpson, charged with possession of £5,000 worth of crack with intent to supply, was stopped after the judge at Snaresbrook Crown Court became 'very worried' about conflicting evidence from Stoke Newington officers.

There is concern in Stoke Newington that the report will not go to the heart of the widespread corruption at the police station. An independent report by the Hackney Community Defence Association has expressed concern that the policemen will not be convicted of criminal offences and local MP, Diane Abbott, has called for an independent inquiry.

Voice 17.11.92; *Guardian* 21.11.92; *Independent* 6, 21.11.92.

Gill Smith Campaign

Allegations of an assault on a black woman, Gill Smith, have been made against officers at Forest Gate police station. The incident took place in early October when Gill and a friend were arrested after they had an argument outside Forest Gate British Rail station, in east London. Gill was assaulted and subjected to racist abuse on the journey back to the police station and on she arrival was forced to undergo an intimate body-search in front of male officers. A campaign in support of Gill and against police harassment of black women in Newham was launched at the beginning of December and can be contacted at the *Justice for Gill Smith Campaign, PO Box 273, London E7. Tel 081 555 8151*

Police in the dock - or not

The trial of Detective Superintendent Melvin, due to start in November, was postponed pending results of a new inquiry into the death of PC Keith Blakelock. Melvin is on charges of conspiracy to pervert the course of justice arising from his conduct during the investigation into Blakelock's death. Campaigners are angry at the decision, and point out that any new inquiry cannot affect the legality of Melvin's behaviour in the original inquiry. They fear that the delay will enable the trial to be quietly abandoned at a later stage.

This is what has happened in the case of PC Judd, against whom charges of perjury and conspiracy to pervert the course of justice were dropped after a trial at which the jury could not agree. Judd was the officer in the case of Rupert Taylor, who in December 1989 was awarded £60,000 damages for false imprisonment and malicious prosecution. Judd's retrial was dropped because of 'the length of time since the offence' which meant that 'a fair trial could no longer be guaranteed'. Thames Valley police, for whom Judd now works, said it was unlikely that disciplinary charges would be brought (*Independent* 17, 25.11.92).

Geoffrey Dear, former Chief Constable of West Midlands police, has added his voice to the protests at the decision not to prosecute any members of the West Midlands Serious Crime Squad for conspiracy to pervert the course of justice. Dear, now an Inspector of Constabulary, was criticised when he disbanded the Squad for allowing them time to clear their desks, which meant that many documents went missing, making the investigation into them more difficult (*Guardian* 20.11.92).

Random stop and search

In early December 1992 random stop-and-search of vehicles came back to city streets. In London, Operation Rolling Rock saw task forces of 45 armed men with sniffer dogs stopping vehicles, which were searched by men in body armour. The road blocks were taken up in Manchester a few days later. Their trigger was the IRA bombing campaign in the run-up to Christmas, and their apparent aim to detect and deter bombers. But it was reported that in the weekend of 5/6 December, when 83 vehicles were stopped in east London, three arrests had been made for possession of cannabis. Liberty's John Wadham expressed concern that the stops appeared unlawful, and would be bound to lead to increased harassment of Irish and black communities.

Under PACE, there must be reasonable suspicion of stolen or prohibited goods to justify a search of a vehicle, and Scotland Yard have been lobbying the Home Office for months for the power to stop and search at random. But, despite the early evidence that such stops are being misused and could lead to scenes not witnessed since the early 1980s in Britain, there seems to be little concern that the police might be breaking the law; they themselves deny that the stops are random, and the Home Office says there are

no plans for legislation to give the police random stop powers (*Observer* 6.12.92, *Guardian* 7, 8.12.92).

Policing - in brief

* **Sheehy Inquiry:** The members, and paid employment, of the Sheehy Inquiry into police responsibilities and rewards is as follows: Sir Patrick Sheehy (Chairman, BAT Industries); Mr John Bullock (Joint senior partner, Coopers Lybrand); Professor Colin Campbell (Vice-chancellor, University of Nottingham); Mr Eric Caines (Director of personnel, National Health Service) and Sir Paul Fox (Managing director, BBC television) *Hansard* 29.10.92.

* **Miscarriages of justice:** Between January and September 1992, the Metropolitan Police paid out £477,000 in damages settlements and awards, in 116 cases, according to figures released by Home Office minister Michael Jack. Nationally, the figure paid out to victims of miscarriages of justice and police malpractice was £1,719,000 in 1991-2, compared with £839,000 in 1990-91, and £285,000 in 1989-90. *Hansard* 16.11.92.

* **'Quik kuf':** The Home Secretary has agreed that the police can use a new type of handcuff - the 'quik kuf' imported from the USA. The 'kuf' uses a rigid bar to link the cuffs rather than the current chain. It is claimed that it is easy to put on and reduces the chances of injury to police and prisoners. *home Office press release*, 20.11.92.

* **France: policing conference:** The French Institute for the Higher Study of Internal Security (IHESI) held a conference on European policing in Paris in December 1992. Concern was expressed by MEPs and other at the extent to which EC wide developments were occurring through inter-governmental agreements and that *informal* police and security networks and bilateral relations between EC police forces are producing more information exchanges than formal multi-lateral agreements between the EC states.

Policing: new material

The attitude of police in a divided society: the case of Northern Ireland, Richard Mapstone. *British Journal of Criminology*, Vol 32 no 2, pp183-192.

Statistics of drugs seizures and offenders dealt with, United Kingdom, 1991. *Home Office Statistics Bulletin* 25/92

When the guards guard themselves: undercover tactics turned inwards, Gary Marx. *Policing & Society*, vol 2 pp151-172. Looks at covert means to uncover corruption among police, prison guards, prosecutors, defence lawyers and judges in the US.

Contemporary problems of law and order in England, Barry Loveday. Paper available from: *Institute of Public Policy and Management*, University of Central England, Perry Barr, Birmingham B42 2SU.

Prostitute women and AIDS: resisting the virus of repression, English Collective of Prostitutes. Crossroad Books, price £4.00. Available from: King's Cross Women's Centre, 71 Tonbridge Street, London WC1H 9DZ.

Parliamentary debates

Policing (London), *Commons*, 23.10.92, cols 675-697 & 713-750

IMMIGRATION

Asylum Bill

The Asylum and Immigration Appeals Bill finished its committee stage in December, had its third reading on 11 January and now goes to the House of Lords with no important concessions by the government. Home Office immigration minister Charles Wardle refused to back down on the abolition of the right of appeal for visitors, limiting his 'concession' to a right for a refused applicant to re-apply immediately (and pay a second fee) without having the refusal held against him. Even Tories (apart from rightists such as Roger Gale) were disappointed by the minister's rigidity on this, and on his refusal to agree to the provision of 'advocates' (friends) to unaccompanied refugee children, to help them through all stages of the asylum process.

The appeals procedure for asylum-seekers, which in 'manifestly unfounded' cases are supposed to be dealt with within a week, were justified by the minister on the ground that at present there are 'too many lawyers and too many opportunities for delay ...'. Legal aid is, of course, not available for representation in the immigration appeals system.

Provisions allowing local authorities to check the immigration status of applicants for housing to see if they were asylum-seekers emerged unscathed, despite the CRE's advice that they were racially discriminatory and in direct conflict with all existing guidance on homelessness and race relations legislation.

Fingerprinting of all asylum-seekers and their dependants, including children, was justified by the 1,600 suspected cases of multiple applications for asylum or for benefits (although only 27 prosecutions and 11 convictions had so far resulted). Wardle's argument was that once we had fingerprinting, we would know how many multiple claims there were. 'A bona fide applicant could', he said, 'make an application, go through the process, and after resting for a week, could think, "I could do this all over again". Some people have done that,' he assured an incredulous committee. Fingerprinting of children, with no lower age limit, was justified by Wardle on the ground that 'there are indications that in some cases asylum-seekers have borrowed children when making an asylum application in order subsequently to inflate benefit claims'. No evidence was given for this startling allegation. The fingerprinting provisions will apply to asylum-seekers already here, and the government intends to start by 'targeting groups that cause particular anxiety ...'. On past experience this is likely to mean Africans and Asians rather than Bosnians. The minister did not clarify the important question of against what will the fingerprints be checked, except to indicate that in some cases it would be necessary to call in the asylum-seeker to have his fingerprints taken again.

In an interesting exchange on the secrecy and lack of accountability surrounding the meetings of European ministers and officials, Wardle complained: 'I can't conduct negotiations in a shop window.' He thought it 'utterly unrealistic' to expose to the public gaze discussions before formal agreements had been reached. No one pointed out that it is pretty useless making such discussions public after the ink is dry on the agreement.

Parliamentary Debates: Standing Committee A: Asylum and Immigration Appeals Bill November-December 1992.

Asylum statistics

There has been a dramatic fall in the numbers of people seeking asylum in Britain in 1992. Statistics to the end of March 1992 reveal that only 1,750 applications were made each month, compared with 3,900 per month in 1991. There has been a fall of 2/3 in asylum-seekers from Zaire, Angola, Ethiopia, Sri Lanka and Pakistan. In the first quarter of 1992 7% of applicants were granted full refugee status, and a further 67% were given exceptional leave to remain (ELR). Only 26% were refused. Refugee groups and lawyers criticise the low recognition rate of refugees, and point out that a large proportion of those granted ELR have medical evidence of torture and should have been granted full refugee status. Another large group of those granted ELR are victims of civil war who cannot show individual persecution (accounting for most Ethiopians in the past, as well as the vast majority of Sri Lankans and Angolans).

Since the world has not become a noticeably better place since 1991, the fall in numbers applying for asylum is only explicable by the combination of the near-universal visa regime (which means applying from abroad), the impossibility of getting visas as refugees (seen in the Bosnians' plight), and the carrier sanctions which prevent refugees from embarking on planes or boats or trains which might bring them to Britain. It is clear from the figures that Fortress Britain is well in place.

Dublin Convention

The eight member states which have not so far ratified the Dublin convention (applying the first safe country principle to asylum-seekers within Europe, and allowing detailed exchange of information on them), agreed at the Immigration Ministers meeting on 30 November in London to do so as soon as possible in 1993. The Convention has led to an increase in the 'refugees in orbit' phenomenon whereby asylum-seekers are shuttled backwards and forwards between European airports. Until recently, the High Court in London refused to examine any return of an asylum-seeker to another European country, but recently it has asked the Home Office to stay its hand in a few cases where the country concerned has indicated unequivocally that it will send the asylum-seeker straight back to Britain. The British government is one of the four countries which has ratified the convention. It was 'laid' before parliament and ratified without no debate (see *Stewatch vol 2 no 5*).

Ministers asked the Ad Hoc Group on Immigration to speed up work on the European automated fingerprint recognition system (EURODAC). In the Committee stage of the Asylum Bill Kenneth Clarke rather disingenuously referred to this as a 'feasibility study' and indicated that the government was not at all committed to the exchange of asylum-seekers' fingerprints with other European countries - although one of the grounds for being 'manifestly unfounded' is to have made an application elsewhere, which can most easily be checked through fingerprints. Further Euro-acronyms surfaced at the meeting: CIREA, the Centre for information, discussion and exchange on asylum, and CIREFI, the Centre for information, discussion and exchange on the crossing of borders and immigration. The former has just started work, and the latter is to be established (see feature on pages 10-11).

Fingerprinting refugees

At the meeting of the EC Immigration Ministers in the Hague, Holland in December 1991 it was agreed that a feasibility study should be undertaken for the matching of the fingerprints of asylum seekers across the EC. This was followed up in June 1992 in

Lisbon of the Trevi & Immigration ministerial meetings (comprising Internal and Justice ministries). At the Trevi session of this meeting, Switzerland which is an 'observer' within Trevi (the 12 EC states comprise the full members), presented a feasibility study on a computerised system of information on the fingerprints of asylum seekers - called EURASYL.

The study proposes a centralised computer system covering the EC, the EFTA countries and others (Iceland, Canada and Australia are mentioned) which would allow the comparison of asylum seekers fingerprints. This it says would be able to detect duplicate applications (under the Dublin Convention a person may only apply to one EC country) and bogus claims under false names ('an asylum seeker often assumes another identity when he passes into another country'). It claims that in Switzerland, which has been operating such a system since 1998, 'approximately 4-6%' are double applications. The study argues that the benefits of such a system would be to accelerate the processing of applications, and would reduce the welfare costs of looking after asylum seekers. The system would be able to deal with 2.5 million records.

It recognises the problem of data protection and that of legitimising the transfer of data which it sees as 'preventing unwanted leakage'. Like other discussions of data protection in the EC there is more concern over preventing the leakage of embarrassing information than ensuring that the records are correct and accurate.

EURASYL, feasibility study, Berne, June 1992.

Switzerland: AUPER2 computer

From 1 January 1993 the Swiss authorities are registering all foreigners, refugees and asylum seekers on a computer system called AUPER2. The information on each person will not only include names, addresses and places of work but also religious and political activity, racial characteristics and social security assistance received. Cantonal (regional states) police and social assistance officials will have access to the system and will be able to put information in. The legal basis of the computer system is not based on law but on an 'ordonnance' which does not allow the parliament to authorise or question its operation.

Kommittee Schluss mit dem Schuffelstaat

Germany: Socialists' shame

Gunter Grass has resigned from the SPD in protest at its agreement to abolish the constitutional right to asylum in Germany. Clause 16 of the constitution gives anyone reaching Germany the right to seek political asylum. Its abolition, which Germany's Right and centre parties have been calling for years, will leave the country subject to the Geneva Convention, which many argue is in fact wider in its terms, encompassing as it does asylum on religious, racial and social grounds as well as political ones. But the Constitutional right to asylum has been of vital symbolic importance. It has also inhibited the German authorities from indulging in the 'pass-the-refugee' exercise of shuttling refugees back to other 'safe' countries passed through en route. With the change in the law refugees arriving from other EC countries and other countries considered to be 'safe' (like Poland and Hungary) will be returned. It also underpinned the decision of the administrative court last year which held carrier sanctions against airlines to be unlawful.

The SPD's turnaround has been condemned as a surrender to the forces of neo-nazism which have used the arrival of hundreds of thousands of asylum-seekers as an excuse for widespread racist violence over the past two years.

IRR proposals

At a PDS Congress in Berlin in November, the director of the Institute of Race Relations, A Sivanandan, described the developments in European asylum and immigration policy as 'borrowing the lowest common denominators of each country's racism to devise a pan-European policy'. An exclusive, blood-based citizenship, rather than an inclusive citizenship based on birth or residence in the country, encouraged racism, he said, and prevented black people from taking on the struggle against that racism. He put forward proposals for a pan-European policy based on the best practice of European countries: the adoption by all countries of Germany's constitutional right to asylum, rather than Germany's abolition of it, for example.

Race & Class (January 1993), 2-6 Leeke Street, London WC1X 9HS.

Holland: refugee maimed for life

A confidential report from the Rijkrecherche (internal affairs) leaked to the press said that in April 1992 a refugee was maimed for life by the Dutch military police (KMAR) at Schipol airport (see *Statewatch vol 2 no 6*). The Rumanian refugee resisted when the KMAR tried to put him back on a plane to Rumania. When he struggled and cried out the military police pushed a gag in his mouth, wound linen adhesive tape around his head - only his nostrils were left free - and handcuffed him. The report quotes a witness as saying: 'A short time later he was still and his skin turned blue'. When he stop breathing and his pulse stopped the tape was removed and an ambulance called. The ambulance crew and doctors were only told that he was unwell and not told about the tape. In hospital it was found that he was suffering from lack of oxygen and had suffered serious brain damage. He cannot use his arms or legs, is blind and can hardly speak.

The report says that the use of adhesive tape in order to calm people down is routine and that they found other cases of violence being used against rejected refugees. The man is being allowed to stay in Holland for 'humanitarian reasons'.

Immigration: new material

Protecting migrants rights: application of EC agreements with third countries, Elspeth Guild. Churches Committee for Migrants in Europe, Briefing paper no 10, pp25, price 2.5 ECUs from: 174 rue Joseph II, B-1040 Bruxelles, Belgium.

Children or Refugees? A survey of West European Policies on unaccompanied refugee children. Children's Legal Centre, 20 Compton Terrace, London N1 2UN, price £5.00 for individuals and refugee/community groups, £10.00 for statutory and national groups, pp72.

Parliamentary debates

Asylum & Immigration Bill, *Commons*, 2.11.92, cols 21-121

TREVI, EUROPOL & IMMIGRATION

report on the EC Immigration/Trevi Ministers conference
which set out new asylum policies and heralded the end of the Trevi Group

Introduction

The meeting of the EC Interior Ministers on 30 November - 1 December 1992 in London was, as usual, conducted in secret with the press given selective briefings. The meetings of the 12 Interior Ministers (including the Home Secretary from the UK) take place twice a year at end of each of the six-monthly Presidency's of the EC. The Interior Ministers' meeting reports to the following full EC Council meetings of Prime Ministers - the latest being that in Edinburgh on 11-12 December chaired by John Major.

Prior to the Interior Ministers meetings a whole series of secret committees and working groups are held. During the British Presidency (July-December 1992) there were over 60 such meetings of officials, police, immigration, and customs officers, and internal security services. Their meetings too are held in secret, drafts discussed and amended, disputes resolved and their reports in turn are reported to the Interior Ministers meeting where their minutes are routinely ratified - only points of contention are discussed by the Ministers. The European Parliament and the 12 national parliaments have no opportunity to discuss the documents prior to the meeting. The UK parliament does not discuss the reports considered, partly because it is not told what has been decided and partly because the procedure followed allows for no debate. A 'planted' written question elicits a few anodyne lines in Hansard from the Home Secretary reporting in the most general terms on the outcome of the meetings.

At the meeting in London last year the first day, 30 November, was spent on immigration and asylum policy, and on border controls. The next morning, on 1 December, Trevi matters were dealt with.

Immigration and asylum

The resolution on 'manifestly unfounded' asylum applications, reported in the last issue of *Statewatch*, was split into two resolutions and a conclusion. The most contentious parts of the draft's preamble, which referred to 'economic migrants' and to 'intercontinental travel seldom being necessary for protection reasons', have now mostly been cut. This followed a further report in October expressing concern about the 'presentational impact' of the first draft prepared by the UK Presidency. But the substance of the resolutions is the same: victims of human rights abuses, torture, 'disappearances' and all the horror of modern civil war, are expected to seek sanctuary elsewhere in their own country if possible, then to seek it in the first 'safe' country they pass through (or could have gone to). If any of these conditions apply, or if the country they have fled from is deemed 'safe', their applications will not be considered substantively; they will be declared 'manifestly unfounded' and subjected to an accelerated appeal procedure designed to get them out of Europe within a month.

Applications will also be deemed manifestly unfounded if the authorities believe they were 'made to forestall expulsion', if the applicant has failed to comply with, for example, a fingerprinting request, or has destroyed or mutilated documents, or has been rejected elsewhere, or expresses a desire for better living conditions or a job, or there are other urgent reasons for getting rid of the applicant, such as 'serious public security reasons'.

Two issues were left unresolved. The German Minister felt it would be 'helpful' to have an agreed list of 'safe' countries, other considered this would be controversial. Some countries wanted a

provision to be included that the removal of asylum seekers to a third country considered 'safe' should be dependent on this country agreeing to accept them - this was turned down because it would take too long.

The two resolutions and conclusion on asylum, a discussion on a resolution on family re-unification (this was deferred for minor amendment to the next meeting) and a report on EURODAC (see Immigration section) had been agreed by midday on 30 November. The afternoon was completely taken up with a discussion on border controls and the UK's refusal to remove entry checks (see *Statewatch*, vol 2 nos 4, 5 & 6).

Border controls

Martin Bangemann, Vice-President of the European Commission responsible for internal border controls, proposed a one line resolution calling for 'no systematic border controls' after 1 January 1993. Discussion lasted until the early evening with no agreement because of the UK's refusal to accept the resolution because it was seen as a prelude to complete abolition. Kenneth Clarke, the Home Secretary who was the UK representative, said the Bangemann proposal had: 'No chance of being accepted'. He said that the UK would maintain 'systematic controls' against third country nationals living in the EC 'indefinitely' and made great play on the fact that the Schengen Agreement (covering nine EC states, excluding the UK, Ireland and Denmark) had not yet been agreed. Mr Clarke accepted that the Schengen countries would maintain entry checks against non-Schengen countries including the UK.

The idea, widely reported in the press, that the so-called Bangemann 'wave' for EC nationals entering the UK could be a compromise was simply redefined at the meeting. The 'wave' would mean EC nationals would walk through passport control holding up their passports or national identity cards. It had been assumed that this compromise discussed between Mr Clarke and Mr Bangemann in Lisbon in July and in London in September would apply to all entry to the UK by EC nationals. However, the briefing supplied by the UK government stated it would *only apply to entry via seaports and not airports - through which most people arrive*. Moreover, the UK government would not even introduce this measure until the Schengen countries removed their internal controls (expected to cover sea and land entry by the summer and airports by the end of 1993).

Mr Clarke said that by the end of 1993 the only remaining land entry controls would exist between Denmark and Germany and Gibraltar and Spain - he neglected to mention the border controls (see Northern Ireland section) between the Republic of Ireland and Northern Ireland.

There was little discussion and no agreement on the draft External Borders Convention. This has been held up for over eighteen months by the intractable dispute over Gibraltar between the UK and Spain: is it an internal or external border?

Europol

The second day of the conference was concerned with Europol and the Trevi Group. The meeting discussed a number of matters relating to Europol: 1] A report from the Ad Hoc Group on Europol; 2] the European Drugs Intelligence unit (EDIU) which was expected to start work at the beginning of January; 3] the post of the co-ordinator; 4] the site of the Europol headquarters; and 5]

the text of the Ministerial Agreement on Europol (an inter-governmental agreement signed by the attending Ministers but subject to parliamentary ratification in each country). There was no agreement on the co-ordinator or on the site. The EDIU project team based in Strasbourg is temporarily head by Mr Storbeck (Germany), with a deputy from Belgium, Colonel Bruggeman. The competition for the permanent site of Europol was between the Hague (Netherlands), Strasbourg (France) and Rome (Italy) - as the Edinburgh Summit the following week agreed that the European Parliament is to be permanently based in Strasbourg it is unlikely that Europol will be based there too.

Trevi

The Trevi Ministers meeting, on the morning of 1 December, noted reports from the Ad Hoc Working Group on Europol, the new Ad Hoc Group on International Organised Crime, and from the four Trevi working groups [Groups WGI, WGII, WGIII and Trevi 1992, see box]. The work of the Trevi Group has been surrounded in great secrecy, few of its deliberations are made public and no details released since the publication of its programme of action in June 1990.

It is now possible to report on its current work. WGI agreed a 'full Terrorist Threat Assessment Document' reporting that there had been no changes over the past six months but that there would be a report on 'future' threats from now on [this assessment was also sent to the EPC Group on terrorism]. A new text was agreed to remove confusion between the role of the police and internal security services investigating terrorist organisations. The UK hosted a seminar on gathering intelligence on terrorist incidents in April and on bomb scene management in November. Later WGI endorsed a set of good practice guidelines and agreed to compile a list of key contacts on counter-terrorism. Work on investigating terrorist funding and laws in each country is being undertaken by the Judicial Cooperation Working Group. The growing volume of communications between Trevi officials in the 12 EC states has created problems for the TREVI Secure Fax Network (TSFN). The problem is now being considered in the longer-term under the 'third pillar' on the Maastricht Treaty, covering justice and home affairs. This will require a new, secure communications system for the 'third pillar', the Council Secretariat and the European Commission (see below), which may well be an electronic mail system rather than faxes.

WGII is working on: 1] the policing of road traffic; 2] interception of communications undertaken by Belgium and the Netherlands on the legal position and cryptology; 3] police training including the production of a European directory on police training; 4] police communications on an EC-wide level, with agreement on needs between Schengen and non-Schengen countries. WGIII is tackling money-laundering, crime analysis, agreeing common terminologies, methods and techniques. The common definitions agreed include 'terrorism' as: 'the use and attempt to use violence by a structured group to obtain political objectives' and 'organised crime' as: 'a uninterrupted series of criminal activities committed by a group of individuals with the intention of obtaining benefits, influence or power'.

The Trevi 1992 working group has now ended with its work being taken over by the Trevi Senior Officials group and the detailed work by WGIII. The group's final report stresses the need to monitor developments in the 'transition to future police cooperation structures'.

Part of Trevi 1992's work has also been taken over the new Ad Hoc Group on Europol. This group agreed to provisions for the start of the European Drugs Intelligence Unit (EDIU) and drafted the text of the Ministerial agreement on Europol - agreed on 1

December. This is intended to legitimise Europol until a Convention has been drafted and then agreed in each country's parliament. In the meantime control of Europol's development will lie with the Trevi Senior Officials group and the Ad Hoc group on Europol will undertake the detailed work. The UK will continue to provide the chair of this group.

Another new group, the Ad Hoc Group on Organised Crime, held two meetings, 18 September and 28 October, and two further meetings are planned during the Danish Presidency (January - June 1993). The group is undertaking a survey of organised crime in each state.

The end of Trevi

Kenneth Clarke said on 1 December that he had thought this would be 'the last meeting of Trevi', and he looked forward to the group having a permanent office and secretariat in Brussels when the 'third pillar' of the Maastricht treaty came into effect. Until then the work of Trevi is being 'shadowed' by the new K4 Committee.

The Maastricht Treaty provides under the 'third pillar' (in Article K) for cooperation on borders, immigration, asylum, law and policing. The creation of a European Police Office (Europol) is laid down in Article K 1.9. 'Third pillar' issues will come under the remit of the European Council (the governments and officials of the 12 EC countries) and will remain inter-governmental - the initiative and power will lie with the individual states, not with the Commission or Parliament. The work will be under the control of a Coordinating Committee of senior officials from each state (Article K 4). The money for the new setup will be paid for out of the budget of the EC. Proposals for action will come from the Secretariat, the 'new' Trevi, or a member state. The European Parliament will be allowed to ask questions, will be informed of discussions, and will be 'consulted' (Article K 6). Jacques Delors described the new arrangement as follows: 'Member states will inform and consult each other within the Council. The Council may adopt joint positions, decide on joint operations and draw up conventions; the Commission has no power of initiative in this area'.

Conclusion

If the Maastricht Treaty is agreed in 1993 the Trevi group will move from the secrecy of its inter-governmental status to become 'secret' with the framework of the European Community and still remain inter-governmental (as will the 'second pillar' covering defence and foreign affairs). The European Parliament has played no part in its creation. It will be 'consulted' and allowed to ask questions but it will not be accountable to the parliament in any democratic sense. Power will reside with the 12 governments, or rather with officials from the 12 states.

Europol will be in place by 1994, it too will be run by senior officials and report to the heads of state (the European Council). Immigration and asylum policies similarly have been prepared, discussed and agreed in secret, only then are the conclusions announced by governments. Parliaments (national and European) and people are excluded from the debate about the creation of institutions which are coming together to constitute the European state.

Resolution on manifestly unfounded applications for asylum; Resolution on a harmonised approach to questions concerning host third countries; Conclusions on countries in which there is generally no serious risk of persecution, London, 30 November 1992; Press release: conclusions of the meeting of the ministers responsible for immigration, London, 30 November - 1 December 1992; Home Office press release, 17.12.92; European Parliament, written answer, 5.11.92. Copies of the resolutions are available

The Trevi group was set up in 1976. Its name is an acronym for terrorism, radicalism, extremism and violence. Initially set up to combat terrorism Trevi's remit was extended to embrace not just terrorism but also illegal immigration, border controls, police cooperation, drugs and serious crime. This was formally set out in the Programme of Action agreed by Interior Ministers in Dublin in June 1990.

Working Group I (WGI): deals with terrorism and compiles assessments of threats 'both from within and outside the Community'. *Working Group II (WGII)*: is concerned with police cooperation and the exchange of information on matters such as equipment, computers, training, forensic science and public order. *Working Group III (WGIII)*: was set up in 1985 to deal with serious crime including drugs trafficking; it has prepared the reports for the creation of the European Drug Intelligence Unit (EDIU) as the first step to the creation of Europol. *Trevi 1992*: was set up in April 1989 specifically to consider the 'policing and security implications of the Single European Market' and to improve cooperation to 'compensate for the consequent losses to security and law enforcement' in the members states. Two new groups also work within the Trevi framework, the *Ad Hoc Group on Europol* and the *Ad Hoc Group on Organised Crime*.

Meetings of these groups, and their sub-groups, are attended by police officers, Special Branches, internal security agencies, immigration and customs officers and officials from Interior/Home Ministries. UK representation from the police (Association of Chief Police Officers, ACPQ), the Metropolitan Police Special Branch (European Liaison

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Policing in the 1990s: Haldane Society of Socialist Lawyers Public Meeting, Thursday 18 February 1993, 7pm at Vera Austry Room, London School of Economics, Houghton Street, London WC2. Non-members: £1 Members: free. Speakers: Newham Monitoring Project, Tony Bunyan, Hackney Community Defence Association (invited).

Directory of internationalism: UNITED for Intercultural Action, a network against nationalism, racism, fascism and in support of migrants and refugees have published a Directory of Internationalism. Copies of the directory cost DM 10 (or equivalent in convertible currency). UNITED for Intercultural Action, Postbus 413, NL 1000 AK, Amsterdam, Holland.

Police, Crime & Justice in Europe: the Centre for the Study of Public Order at Leicester University are working on a study of police organisations, crime and justice in the EC. Details of their work and programme can be obtained from: Dr Rachel Woodward and Ms Lynne Turnbull, Police, Crime and Justice in Europe, Centre for the Study of Public Order, University of Leicester, 6 Salisbury Road, Leicester LE1 7QR.

Canadian Association for Security and Intelligence Studies (CASIS): Annual

conference at Carleton University, Ottawa, Ontario on 5-6 June 1993. Participants and papers are welcome. Topics include: methods in intelligence, political crime, terrorism, Low Intensity Violence and Security issues. Details from: Jeffrey Ian Ross, Conference Coordinator, University of Lethbridge, Department of Political Science, 4401 University Drive, Lethbridge, Alberta, Canada T1K 3M4. Tel: ++ 403 329 2573 Fax: ++ 403 382 7108.

Freedom & Responsibility of the Press: a free information pack to back a private member's Bill is available from: Clive Soley MP, House of Commons, London SW1A 0AA.

Conference - Statewatching the new Europe. Saturday 27 March 1993. University of London Students Union, Malet Street, London WC1. 10am - 6pm. Workshops on: policing, immigration and asylum, Trevi and Schengen groups, prisons, security and intelligence, racism and fascism, Europol. Registrations: £6 individuals (£2 unwaged), £10 voluntary groups, £20 institutions to *Statewatch, PO Box 1516, London N16 0EW*.

Translators wanted: French and German to English for project. Contact Statewatch: PO Box 1516, London N16 0EW. Tel: 081-802-1882.

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Gladio *Statewatch briefing*, introduction and background country-by-country; article (2pp); *State Research*, article from 1977 (1p). Total: 16 pages. Cost: £2.00 inc p&p.

Official secrecy in the European Community? *Statewatch briefing*, May 1992. Cost: £3.00 inc p&p (Europe £3.50; outside Europe \$10 or £4.00 sterling).

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