



The “war on freedom and democracy”

**an analysis of the effects on civil liberties
and democratic culture in the EU**

by Tony Bunyan

The "war on terrorism" has turned into an ongoing "war on freedom and democracy" which is now setting new norms - where accountability, scrutiny and human rights protections are luxuries to be curtailed or discarded in defence of "democracy".

Introduction

Has the world changed after 11 September 2001? The answer is surely yes, but not in the way that Bush (and his allies) mean. We have seen a "sea change" of great magnitude as we enter a second era of Western imperialism or rather a new version of US imperialism - unlike the Cold War period the USA is no longer dependent on "allies" or "coalitions" (though these are useful to legitimate their actions).

But there is another difference between the Cold War era and the new one.

We now have a political system at the national and EU levels which not only lacks content and accountability, but more importantly lacks a belief in the liberal democratic system itself. Government ministers and officials state that the EU is "democratic" (as is every EU Member State) and this together with "freedom" is what the "war on terrorism" is all about. But their actions speak a different language and have done for some time.

It can be argued that the high point of in the development liberal-democracy was during the Cold War.[1] During this period liberal-democracy had to have some substance, some tangible reality in opposition to Soviet-style communism. With the fall of the Berlin Wall in 1989 it was not just the USSR that disappeared but with it too the content of liberal democracy's political culture.

The end of the Cold War was a "victory" for capitalism over the command economy but it was a triumph for economics rather than politics. There was no guarantee that liberal democracy as we had known it would survive. At a seminar on the third world and "liberal democracy" at Wilton Park (a UK government sponsored think tank) in 1996 the recorded conclusion stated:

"Democracy must not be confused with capitalism. The former is a political system while the latter is an economic system. Although many capitalist countries are democracies, capitalism can exist without democracy"[2]

Principles gave way to pragmatism, the retention of power became the primary aim of western political parties.

Of course EU ministers and officials will simply argue: what is the problem? All the member states of the EU are democracies and all are signed up to the European Convention on Human Rights (ECHR) - our freedoms and rights are therefore safe.

A democracy, or rather a liberal democratic political culture, is not simply about elections every four or five years and a worthy court in Strasbourg which is able to deal with some of the worst excesses. Rather

a healthy democratic political culture is one that is diverse, informed, discursive, pluralistic, multicultural, and tolerant of peoples and their ideas.

It is also a culture that has a sense of history which informs the present and guides the future.

It is a culture that is not limited by parliamentarianism but rather one that encourages all elements in civil society.[3]

Nor is it a culture where most research is funded by and for the state. It is rather a culture where critical views are encouraged not marginalised.

The state of the "European" democratic culture, is even weaker than that at the national level. There is: i) a lack of informed scrutiny by parliaments and civil society of new measures introduced; ii) there are no mechanisms in place to monitor the practices (implementation) that flow from new measures; iii) there is no real freedom of information; iv) no real involvement of independent civil society (by which I mean groups not funded by the institutions); and finally, v) a quiescent, compliant, media.

The most critical area of EU activity, the one that most affects peoples' liberties, is the field of EU justice and home affairs, the so-called "area of freedom, security and justice". Its origins lie in the "Trevi" period. The Trevi *acquis*, 1976-1993, was incorporated into the Maastricht *acquis*,[4] 1993-1999. The Trevi and Maastricht *acquis*, together with the Schengen *acquis* (1985-1999), were bequeathed to the Amsterdam period *acquis*. [5]

These *acquis* are comprised of over 700 measures, some binding (eg: Conventions and Joint Actions) some intergovernmental (eg: Recommendations, Conclusions). The full *acquis*, as determined by the EU, has to be adopted and implemented by applicant countries *in toto* - they are not allowed to make any changes whatsoever.[6]

What characterises this whole swathe of measures, and resulting practices, is that there was virtually no meaningful parliamentary scrutiny, let alone the chance for civil society to have any say or influence.

Even now, under the Amsterdam Treaty, national parliamentary scrutiny reserves (where they exist) are routinely noted then ignored by the governments. The European Parliament is "consulted" on Title IV TEC immigration and asylum issues and on Title VI TEU police and legal cooperation - but its views too are routinely ignored.

From well before 11 September there was evidence in the EU that democratic standards were slipping on issues like civil liberties, data protection, scrutiny and accountability, legal protections and the rights of refugees and asylum-seekers fleeing from poverty and oppression.

We have, in effect, an EU "democracy" built on sand. A democracy which has little meaningful legitimacy. Thus there was in place a democratic culture which was very poorly placed to resist the kind of attacks on liberties and rights we are now witnessing.

Post 11 September there has been at the EU level (as well as the national level) an avalanche of:

- new measures
- new practices
- new databases
- new *ad hoc* unaccountable groups

most of which have little to do with countering terrorism but rather concern:

- crime in general;
- the targeting of refugees, asylum-seekers, the resident migrant population and protests and protestors;
- the creation of a "US-EU axis" for cooperation on border controls, immigration, extradition and other legal cooperation.

Let us look at a few examples.

The EU definition of terrorism

Two new measures were rushed through the EU (Council and European Parliament) and national parliamentary scrutiny before Christmas 2001.[7] These were the Framework Decision on combating terrorism and the Framework Decision on a European arrest warrant.

The Framework Decision on combating terrorism was drafted by the European Commission and its publication was immediately criticised because it overtly referred to its potential use against "urban violence" in the Explanatory Memorandum and the Commission's website said measures were intended to counter "radicals committing violence".

At the time, in late September, it was very hard to make any criticism but we and others did. There was literally a six week period when no-one in Brussels, including the European Parliament, would listen. Then the reaction from many groups in civil society began to produce some effect. However, we also knew that events in Gothenburg and Genoa (where protestors had been shot by police and one killed) were still fresh in the minds of Ministers and officials. Whatever the eventual wording we knew that the majority of EU governments viewed protests at least as "quasi-terrorist".

In the end a Statement (which has no legal status or effect) was attached to the Framework Decision seeking to distinguish between "terrorists" and the right to demonstrate in democracies. But the wording of the measure remained ambiguous.

Article 1 defined "Terrorist offences" and says that each EU Member State must ensure that the term covers:

"the following list of intentional acts which, given their nature and context, may seriously damage a country or an international organisation, as defined as offences under national law, where committed with the aim of:

- “(i) seriously intimidating a population, or*
- (ii) unduly compelling a Government or international organisation to perform or abstain from performing any act, or*
- (iii) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation”*

It then lists a number of offences, many of which are obvious (eg: murder). However, under Article 1.iii.e. these offences include:

"causing extensive destruction of a Government building or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on a continental shelf, a public place or private property likely to endanger human life or result in major economic loss"

There are millions and millions of people who, quite rightly, want governments and/or international organisations (eg: NATO, WTO etc) to "perform or abstain" from many acts. If this "aim" is furthered by demonstrations/protests which result - for whatever reason - in, for example, extensive damage to private property resulting in a major economic loss then these people become "terrorists" through the effect of their actions.

Perhaps as telling as the formal decision was the refusal of the majority of EU governments to explicitly remove any potential use of the Decision against those exercising their democratic rights. Equally contradictory was a refusal (though mentioned in the "Statement") to exclude liberation struggles fighting against repressive and authoritarian regimes (many of which are supported by Western governments). On the other hand, "actions by the armed forces of a State in the exercise of their official duties are not governed by this Framework Decision".

This was complemented by further decisions taken by "written procedure" (ie: proposals are circulated and agreed if no Member State objects) on 27 December 2001 (the day after Boxing Day). The measures, in part, implemented the UN Security Council resolution 1373 and extended the definition of terrorism to include "active or passive" support for terrorist organisations and introduced the principle

that security services should vet all asylum applications.

European arrest warrant

Another "emergency" measure that went through all the legislative stages in weeks was the Framework Decision on the European arrest warrant. This does away with almost all of the checks and balances of the existing extradition procedure. For a list of 32 offences there will now be no legal test in the requested state. The requesting state simply has to say that a person is wanted for one of the listed offences and this person can be arrested - their homes searched and property seized - and deported to stand trial. There is no *habeas corpus*, no appeal, no rights for the suspect.[8]

Exchanging "information" on terrorists or protestors?

The Framework Decision on combating terrorism is binding and has to be incorporated into national law across the EU (and the applicant countries). However its contradictory ideology contaminates other measures too. For example, the Recommendation proposed by the Spanish Presidency, adopted without debate by Justice and Home Affairs Ministers on 13 June 2002, for the "introduction of a standard form for exchanging information on terrorists". The Recommendation says the information to be exchanged should concern "individuals with a criminal record in connection with terrorism as defined in the Framework Decision on combating terrorism". The meaning of a "criminal record" can vary from state to state and could simply cover, for example, people arrested for sitting down non-violently in the road.

The suspicion is that the definition of "terrorism" is being widened by the measure is reinforced by Recommendation 1 which says the purpose is to prevent:

"activities carried out by terrorist organisations to achieve their criminal aims at large international events"

and Recommendation 4 which speaks of:

"organised groups run by terrorist organisations for the purpose of achieving their own destabilisation and propaganda aims"

The rationale is plainly ludicrous. There have been no terrorist attacks on EU Summits or international meeting held in the EU. No members of al-Qaeda or any other terrorist group have ever been seen handing out leaflets at such meetings to "propagandise" their aims.

The absurdity is well illustrated by the reply of a UK Home Office Minister to the House of Lords Select Committee on the European Union. The Minister wrote:

"this initiative is essentially about ensuring that those hosting large international events within the EU are informed that known terrorists with a police record intend travelling to the event in question with the intent of furthering their aims"

Does this mean that there are dozens, if not hundreds, of **known** terrorists wandering around the EU who have not been arrested, charged, convicted and imprisoned?

Clearly not. The intent was not to deal with suspected terrorists, who are tracked by the internal security agencies and special anti-terrorist squads. Rather it is to counter protests and protestors. As set out in the first draft of the measure (but amended later), it is to deal with:

"incidents caused by violent radical groups with terrorist links.. and where appropriate, prosecuting violent urban youthful radicalism increasingly used by terrorist organisations to achieve their criminal aims, at summits and other events arranged by various Community and international organisations"

The Spanish Presidency proposal started out as a Framework Decision but ended as an intergovernmental "Recommendation" - which did not have to be submitted for scrutiny to national or European parliaments.

The exchange of information, through the secure EU internal security agencies BDL (*Bureau de Liaison*) e-mail network, is likely to be extensively used by Spain, Portugal, Italy, France and Germany to target protest groups.

That such a measure could pass through the EU, without proper parliamentary scrutiny, is worrying in itself. Its adoption confirms fears that the definition of terrorism has been broadened. Moreover, it adds to the measures already in place to counter protests: i) the JHA Conclusions of 13 July 2001 putting in place surveillance of protest groups; ii) the plan to create a new database on the Schengen Information System (SIS) on protestors; iii) the plan agreed to bring together para-military police units (eg: carabinieri, CRS, Tactical Support Groups - UK) for EU Summits and international meetings.

The surveillance of telecommunications

The paucity of the political culture has left the door open to other powerful influences, especially for state official and agencies and international fora.

A classic case is the long-standing demand of the EU's law enforcement agencies (police, customs, immigration and internal security) for the retention of telecommunications data and their access to it. The saga began in the summer of 1993 when the FBI called a meeting at its headquarters in Quantico and invited a number of EU countries. The International Law Enforcement Seminar (ILETS) was set up to continue the discussion and this in turn fed into G8 sub-group discussion on the issue. In effect the same, small, group of officials from each country moved between different fora to get their views across - ILETS, G8, EU Working Party on police cooperation.

The discussions led to an EU-FBI "plan" to get through "Requirements" to be laid on communications providers to give access to data on production on an "interception order" and to allow for "real-time" interception (possibly across a number of countries). The FBI got a new law through in October 1994 and the EU rushed virtually the same "Requirements" through on 17 January 1995 (by "written procedure").

This was just stage one. In 1998 the EU agencies and the FBI wanted to update the "Requirements" to cover mobile phones and internet usage but there was a huge public outcry when the document was leaked and the issue was put on "hold" (ENFOPOL 98, 10951/98, 3.9.98).

The "Requirements" however only dealt with specific judicial or administrative orders concerning an individual or a group (in the UK a warrant signed by the Home Secretary, in other EU countries usually by a court order) suspected of a **specific** offence. They did not authorise the surveillance of historical data.

When the European Commission proposed in July 2000 uncontroversial changes to the 1997 EC Directive on privacy in telecommunications the law enforcement agencies saw their chance. What blocked their access to historical data was the 1997 Directive which said that traffic data (covering phones, mobiles, e-mails, faxes and internet usage) could only be retained for billing purposes (ie: to help the customer) after which it has to be erased. This was usually after 3-7 days.

The European Commission, the European Parliament, the EU Data Protection Commissioner, the EU's Article 29 Working Party on data protection and a host of civil society groups were opposed to changes which would render the 1997 Directive meaningless. But on 20 September the EU Justice and Home Affairs Minister Council adopted a series of measures in response to 11 September. These included access to telecommunications data by law enforcement agencies for the purpose of "criminal investigations" (not simply terrorism). In December 2001 the European Commission caved-in and then in May the two largest parties in the European Parliament (the PPE, conservatives and PSE, Socialist) also changed their minds and backed the Council's position.

Gone was the privacy protection that traffic data had to be erased and a provision came in allowing EU member states to adopt laws at national level requiring the retention of traffic data. The hard-won right to privacy in telecommunications was rendered a thing of the past and the potential surveillance of the whole population of Europe is now on the agenda.

Apologists for the changes argued that the new provisions were non-binding and it was up to each member state to adopt laws at a national level. Yet even while the measures were being debated EU governments were drafting a binding Framework Decision on the retention of data.

They also argue that protections were built in by virtue of an express reference to the European Convention on Human Rights - but reference to the ECHR provides no additional protection as *all* EU Directives are automatically subject to the ECHR.

This is an example of how the post 11 September ideology has made it much easier to introduce measures governments (and officials) have wanted for a long time.

The EU state and the creation of unaccountable groups

Post 11 September saw an extraordinary growth in the creation of unaccountable groups of officials and agencies.

The Police Chiefs Operational Task Force (PCOTF) emerged from the Tampere Summit in October 1999 but its legal and constitutional status has never been resolved. It was intended to concentrate on "three or four top priority organised crime problems" but after 11 September was given a series of operational roles covering: intelligence and information exchange; cooperation between national anti-terrorist units, security at airports, border management planning and operations and the coordination of para-military police units for EU Summits and international meetings.

When *Statewatch* applied for access to minutes of their meetings we were told that the PCOTF did not come under the Council of the European Union and therefore the documents could not be supplied.

Security and intelligence chiefs from across the EU now hold regular meetings. There are no details of their meetings, nor any lines of scrutiny or accountability.

The Spanish Presidency of the Council pushed through a Recommendation allowing the creation of *ad hoc* multinational teams of police and internal security agents (ie: Spain-France-Italy). These teams are explicitly not intended to track down, arrest and charge suspected terrorists - this is the job of the joint investigation teams to be created under a Protocol to the Mutual Assistance Convention. It appears these "teams" to "gather and exchange information" may well follow the infamous precedent set by undercover units in Northern Ireland and Spain.

What we are witnessing too is the next stage in the development of the European state, in particular of coercive "hard" state functions, agencies and practices.[9] The growth of the state in the EU can be traced from the Trevi era (1976-1993) when policymaking (and practical cooperation) was *ad hoc*, intergovernmental and non-binding through to the Maastricht era (1993-1999) when the previous informal arrangements were formalised and made permanent, especially at the policymaking level. The Schengen Information System (SIS) went online in March 1995 and Europol operational in June 1999, but with these two exceptions it is during the current Amsterdam era (1999 and ongoing) that a whole series of agencies, databases and ad hoc groups have emerged as the internal security matrix of the EU.

Scrutiny of new EU measures by national and the European Parliament is simply consultative and their views, when they are asked, are routinely ignored. As to the control and accountability of these new agencies there is literally no mechanism in place in any parliament.

The activities of agencies and the exercise of their unaccountable powers are growing by leaps and bounds. Within years, if not months, the exchange of data on individuals "suspected" of offences (however minor), or "suspected" of being an "illegal" migrants, a visa overstayer, a "suspected" protest "troublemaker" or a request for interception of an individual's organisations' telecommunications or a request (under the European arrest warrant) for a individual to be arrested, their person and home searched and items seized and held in detention prior to extradition to another EU state will become commonplace. Of course, exceptional abuses of power will end up in the courts or the European Court of Human Rights but most will not. We are entering a period when "self-regulation" (by the agencies of themselves) becomes the norm.

The emerging EU state is indeed different to the national state, not just because it exercises cross-border powers, but rather because even traditional, and often ineffective, liberal democratic means of control, scrutiny and accountability of state agencies and practices are not in place nor is there any political will to introduce them.

The US-EU Bush letter

When we look back at this period one of the most significant documents will be the letter from Bush to the EU dated 16 October 2001. This presented a series of 47 demands for EU-US cooperation against "terrorism" – many did not concern "terrorism" but rather crime and immigration.

They included the exchange of telecommunications data, the direct exchange of personal data with Europol, the establishment of common border control policies including data on asylum-seekers and a new category of "inadmissibles" to be refused entry by the US and the EU.[10]

Since 16 October there have been dozens of meetings between EU and US officials in both continents and US (and Canadian) officials are sitting in on numerous EU working party meetings on immigration and asylum, standard forms for reporting, transit plans (whereby the US deports people to Asia and Africa via EU airports). border management, Europol, policing, cybercrime and drugs.

Despite the widely reported differences between the EU and the USA on how to prosecute the "war on terrorism" at the international level we are seeing in practice an entirely new level of EU-US cooperation on internal security. This represents a partial shift from informal transgovernmentalism (meetings in secret international fora) to the formalisation of cooperation between the EU and the USA.[11] **We are witnessing the creation of a "northern axis" with a common internal security policy. The USA is, in effect, the 16th member of the EU.**[12]

Targets of the new ideology

The emerging ideology utterly blurs the distinction between terrorism and resistance to oppression and political dissent, between resistance/liberation struggles against authoritarian and undemocratic regimes and plain terrorist groups and between self defence by protestors against attack, or self defence by migrants of their local communities against racist and police incursions. Moreover, this new "anti-terrorist" ideology has quickly permeated not just the language but concrete proposals from the EU.

Translated into practice we can see the first two groups targets of the new internal security strategy of the EU state, protests and protestors (see above) and:

refugees and asylum-seekers, visitors on visas plus resident, settled, third country nationals. All are potential terrorists or "supporters" of terrorism, whether "actively or passively".

This means their international movements have to be recorded (whether via the new visa database or as air passengers). Asylum applications have to be vetted by the security agencies to check for any connection with alleged terrorists. Selected groups of third country nationals have been targeted, checked and "profiled".

Under the guise of combating terrorism the rights of resident third country nationals are to be weakened. Whereas the original draft EU proposal on the rights of third country nationals in the EU said that a criminal offence would not be grounds for removing residence rights, now this has changed so that a criminal (not terrorist) offence can lead to the deportation of whole families.

Thus **the logic of the "terrorism" ideology brings with it a new form of institutionalised racism in the EU.** A racism based on a move from multiculturalism (communities of many races coexisting) to monoculturalism (white, Western, values now have to be adopted by migrants through so-called "integration" measures) and where:

“European anti-terrorist laws, adopted post 11 September, are breeding a culture of suspicions against

Muslims and people of Middle-Eastern appearance, who are increasingly treated in the same way as were 'enemy aliens' during the first and second world wars" [13]

Just a temporary aberration?

I have just described a few of the dozens of new measures introduced post 11 September. It can be asked whether all the measures are entirely new or were in the pipeline anyway - the answer is that some were, some were not, but most not in the form in which they have emerged.

Are these developments simply temporary? Will the demonisation of protestors, refugees and asylum-seekers and others come to an end and the old tolerance and democratic values, however imperfect, re-assert themselves? Is what is happening simply like a big stone dropped into a pond and the large ripples get smaller and smaller and finally it is smooth again - everything is back to normal.

The answer is no. Something much bigger is happening.

Sivanandan, Director of the Institute of Race Relations, says:

"Globalisation has set up a monolithic economic system; September 11 threatens to engender a monolithic political culture. Together, they spell the end of civil society"

He is absolutely right, we are seeing a "sea change" - the forging of a new global hegemony similar but quite different to that of the Cold War era.

The EU is not immune from this new ideology but rather is helping to shape it. EU governments have colluded in the outrageous bombing and aftermath in Afghanistan and may do likewise in Iraq in time.

The "legitimacy", the tone, of the new ideology may differ between the EU and the US but its effect is the same. In each the fight against "terrorism" and the consequential re-drawing of the boundaries between the demands for security and the preservation of civil liberties and peoples' rights is presented, reported on, and largely accepted as defending the common interest, the common good, the interests of all.

It is also important to situate the new ideology in the EU's political landscape because there is a dreadful conjuncture between new repressive measures post 11 September and the rise of racist and fascist political parties across Europe.[14]

There was a time when there were 12 social democratic governments as against three from the right but that time is long gone. Now nine are from the right or extreme-right and six from the centre to so-called centre-left (UK, Germany, Sweden, Finland, Belgium and Greece). Not only has the EU as a whole moved to the right but, in reaction to the rise of racist parties in electoral politics, the social democrats have demonstrably shifted to the right too on immigration, migrants rights and monoculturalism. The racists (and fascists), rather than being disowned, have found their views embraced by EU governments in order to retain power.

Is it possible for a "democracy" to slide into lawlessness? Most of the checks and balances laid down and the role of the courts are geared to ensuring that the "law" is properly implemented. But what if the new laws themselves are antithetical to democratic values? The checks and balances are still in place and the courts too but these cannot be guarantors of the legitimacy of excessive laws - that is, laws which remove basic rights.

One by one the historical norms of the liberal-democratic culture are being undermined or abolished. The next in line may be the ECHR itself. The Council of Europe has started the process of revising the 1950 Convention - which could not be happening at a worse time. One of the critical provision for the rights of refugees is Article 3 which says:

"Article 3 - Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment"

A number of leading EU governments (including the UK) are considering backing a proposal to remove the words: "or to inhuman or degrading treatment or punishment".

In previous periods of history we have seen draconian measures put through at the national level but, in my view, we have never seen such an assault on peoples' rights and democratic standards.[15] Each new measure, viewed on its own, may seem an aberration but a whole host of changes as part on an ongoing continuum constitutes a shift of enormous proportions.

There is another, hidden, issue - that of collusion, active or passive. Governments, ministers and officials who are bringing in these sweeping changes do so consciously and are therefore responsible for their actions. Police officers, prison guards, immigration border officials, para-military police units, undercover agents feel no need to question the consequences of their actions - they are simply following lawful orders.

But there is collusion too by many others. Officials who disagree but who keep silent for fear of their jobs, journalists who simply report press releases and "spin" as fact and so on.

And in the wider civil society too there is a collusion, a collusion of silence and inaction. Many can see that you cannot defend "democracy" by destroying it but choose to stay silent and get on with their, comfortable, daily lives - what is happening does not affect them.

If we are to restore democracy and liberties each of us has to find our own form of resistance. This may be by writing letters, publishing critical academic articles, tracking, monitoring and publicising what is happening, building coalitions of resistance and through protests in the streets and cities of Europe.

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This analysis brings together a series of talks by Tony Bunyan in London, Dublin, Oslo and Copenhagen. The views presented are personal ones as *Statewatch* does not have a corporate position and does not seek to create one.

FOOTNOTES

1. This is not to argue that there has ever been a "golden age" when "liberal democracy" was in place. Rather it is say that from this point onwards liberal democratic culture was in retreat.

2. Wilton Park paper 120, HMSO, 1996.

3. Parliamentarianism at its worst argues that having been elected governments have the right to govern unhindered by the views of their people on particular issues.

4. An *acquis* is an accumulated list of adopted measures/policies.

5 The Amsterdam Treaty came into effect in May 1999.

6 Nor were researchers from within the EU allowed access to hundreds of documents assessing the "state of play" in the negotiations with the applicant countries. Access we were told could impede ongoing negotiations and undermine the efforts of the EU.

7 Their formal adoption was delayed by national parliamentary scrutiny reserves. The Framework Decision on combating terrorism came into effect on 23 June 2002 and the Framework Decision on the European arrest warrant on 13 June 2002.

8 At the time of writing a number of requests (eg: from the USA and France) for the extradition of terrorist "suspects", post 11 September, have been rejected by British courts because the evidence supplied did not justify the extradition request.

9 While it is certainly true that theories on the national “state” cannot simply be applied to the EU most academic theory suggests there is no such thing as a European “state”. Typically the EU would be described as: “a non-state polity with postnational governance arrangements and an indeterminate form”, Jo Shaw in “Voices, spaces and processes in constitutionalism”, Blackwells, 2000. Others concentrate on the views and opinions of the “actors” (officials, officers, agents) rather than structures to offer an explanation of the EU’s development – which is not very productive as state “actors”, at national or the European level, very rarely comprehend the totality in which they operate.

10 On the basis of this an EU working party has proposed that "inadmissibles" should include those "flagged" by NATO, the World Trade Organisation and other international bodies.

11 A shift not dissimilar to the formalisation of the "Trevi" group under the 1993 Maastricht Treaty.

12 By sitting in on EU preparatory working parties US officials are in a position to exercise an unseen and unaccountable influence on EU policy-making and practices. This is in addition to cooperation on the whole host of broad measures set out in the Bush letter and subsequent meetings.

13 See: "Racism: the hidden cost of September 11", by Liz Fekete. Published by the Institute of Race Relations.

14 This is not to say that racist politics are the preserve of overtly racist parties. Ever since the mid-1980s at least EU government themselves have fuelled racism by their rhetoric and practices.

15 For example, the UK's temporary Prevention of Terrorism Act in 1974 which still lives on today in the Terrorism Act 2000.

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