

statewatch

monitoring the state and civil liberties in the UK and Europe

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EU-US secret agreement in the making

- secret agreement on criminal matters, investigative procedures and joint teams being negotiated without the European or national parliaments being consulted

- *Statewatch* refused access to full-text of documents because: "the interest of protecting the Council's objectives outweighs the interest in "democratic control".. which is referred to by the applicant"

Statewatch has obtained a copy of the secret negotiating agenda for an agreement (treaty) between the EU and the US on judicial cooperation in criminal matters which would have major implications for peoples' rights and liberties.

The proposed agreement started out as one on combating terrorism but now extends to crime in general. The Council of the European Union (the 15 governments) has authorised the EU Presidency (currently Spain) to:

open negotiations with the United States for the purpose of concluding one or several agreements on cooperation in criminal matters between the EU and the US. The negotiations should be.. conducted in the spirit of cooperation between likeminded and equal partners (emphasis added)

In the negotiations with the US the EU governments appear to be willing to drop or modify (in a negative way) a number of basic rights and protections built into EU law and protected by the European Convention on Human Rights.

The agreement (and any future agreements) will be negotiated and agreed in secret under Articles 38 and 24 of the Treaty on the European Union. Neither national or European parliaments are required to be consulted let alone civil society.

The "line to take"

The negotiating mandate is divided into two parts: "Issues to be raised by the EU" and "Issues raised by USA" and against each issue raised is the EU "Line to take". The issues raised are the result of informal talks between the EU and US that began on 29 September last year.

As regards "serious crime" the EU wants to "facilitate search and seizure in bank accounts" and on improving cooperation and "reducing delays" proposing the creation of "contact points in each Member State and in the USA".

The EU is also making two major proposals: First, that the

legal basis should be made for:

the setting up of joint investigative teams

for the creation of undercover police operations. There is no reference to rules on the civil or criminal liability of team members or to the legal rules to be applied to their operations.

Second, under the heading: "Improve investigation procedures" the EU is proposing:

creating a common approach to searches, seizures, interception of telecommunications

There is no mention of Article 8 of the ECHR (the right to private and family life) nor any reservations on issues such as dual criminality or extraditability.

The EU positions under the heading "Guarantees and safeguards" make no mention of the European Convention on Human Rights and worryingly says the issue of "data protection" should be "raised by the EU at a later stage".

Most extraordinary of all, under the same heading, on the issue of the "death penalty" the EU "line to take" is:

inform the USA that some Member States may wish to have specific provisions in this regard (emphasis added)

It appears that "some" EU Member States are willing to become "accomplices" to the death penalty, by supplying evidence and witnesses to the US in death penalty trials - even though all EU member states have ratified Protocol 6 to the ECHR and have signed Protocol 13 to the ECHR (which ban the death penalty absolutely).

The "Issues raised by the USA" cover "narrowing down the political offence exception" (to extradition), extradition of nationals and "Special courts" (on which the EU is to "seek assurances" that those extradited will be the subject of ordinary US courts proceedings).

On the issues raised by the US on extradition the traditional "political offence" exception to extradition could be weakened by

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"taking a modern approach" and many EU member states may have to drop constitutional bans on extraditing their own nationals. This latter protection is to be dropped under the proposed EU Framework Decision on arrest warrants but this is still subject to the ECHR and EU court judgements and to make such changes in this context is highly questionable.

Nor is there any mention of a refusal to extradite, for example, to give protection against "double jeopardy" (which means that a person cannot be tried on the same facts where a judgement has already been given in one state).

All EU measures agreed in this field are based on the principle that all member states have ratified the European Convention on Human Rights. The US has not ratified the ECHR and cannot because it is not a member of the EU.

There are grave doubts about adequate parliamentary or judicial control over the ratification and implementation of the treaty. It is not clear whether the usual powers of the EU Court of Justice on criminal law and policing matters will extend to such a treaty and data protection is to be taken up at a "later date".

From terrorism to crime in general

In the immediate aftermath of 11 September the EU's Justice and Home Affairs Council on 20 September agreed that an agreement should be negotiated with the USA on "penal cooperation on terrorism" (emphasis added). On 21 September the US Mission in Brussels wrote to the EU Presidency in response calling for: "a formal agreement with the EU on judicial cooperation in criminal matters" (emphasis added). On 29 September informal exploratory talks were started between "the US authorities and the [EU] Troika operational in Washington" on an agreement - this was followed up when "a high-level Troika from Ministries of Interior and Justice, the Commission and the [Council] General Secretariat visited Washington DC on 18 October 2001". At the Gent European Council (15 prime ministers) on 19 October the EU agreed to the broadening of an EU-US agreement from "terrorism" to "criminal" matters in general (including terrorism).

At the informal meeting of the Justice and Home Affairs Council (JHA) on 14-15 February the Ministers endorsed the opening of negotiations with the US on: "one or several agreements on cooperation in criminal matters" and to "continue the informal exploratory talks with the US side". The JHA Council on 25-26 April authorised the EU Presidency (currently Spain) to: "negotiate an agreement on judicial cooperation in criminal matters, including terrorism, on the basis of Articles 38 and 24 TEU" (Council press release).

Secret treaty-making

Articles 38 and 24 of the Treaty on European Union as agreed at Amsterdam in 1997 allow the Council of the European Union (the 15 governments) to negotiate and conclude agreements with non-EU states. The Articles do not provide for any parliamentary involvement (national or European) at the stage of agreeing the mandate for negotiations or during the negotiations - in fact, right up to the conclusion of any negotiations the content of the talks are, in principle, secret.

On 13 March *Statewatch* applied to the Council for the first two drafts of the EU discussions on the negotiations (neither of which is listed on its public register of documents). On 3 April the Council refused access because it would be "prejudicial" to the EU's interests "in the efficient conduct of negotiations with a third country". *Statewatch* appealed against this decision on the grounds that to withhold access on an issue which could have "huge implications for peoples' rights and liberties.. [and] it is quite unacceptable in a democracy that such an agreement should be negotiated and agreed in complete secrecy". In response the Council said on the issue of "public interest" that the:

interest of protecting the Council's objectives outweighs the interest in "democratic control" of the negotiating process which is referred to by the applicant

At the time of writing *Statewatch* has not received the official replies with two documents which the Council is to give "partial access" (with text blocked out) subject to the exception (under Article 4.1.a: International relations of the 2001 Regulation on access). In the meantime *Statewatch* obtained a later version of the documents in question which shows that many of the rights and protection built into EU laws and judgements are under imminent threat.

A full analysis is available on: www.statewatch.org/news

IMMIGRATION

ITALY

Navy accused as immigrants drown

On 7 March, a boat carrying dozens of mainly African immigrants sank after being broken in two by a wave in a rough sea as it was being towed towards the Sicilian island of Lampedusa by a local fishing boat that responded to its distress call. Eleven passengers survived out of a total reported to have been over 80: twelve bodies were recovered and the rest are missing, presumed dead. The *Elide* fishing boat was the main participant in the rescue attempt although a nearby navy ship, the *Cassiopea*, had been warned about the struggling ship but failed to take charge. Francesco Giacalone, captain of the *Elide* told *Il manifesto*: "The navy could have done more...when we spotted the shipwrecked persons, we immediately warned the...navy. They sent a helicopter. And when the *Cassiopea* arrived, we asked them to tow them. It looked to us like the safest way. They [refused], saying that we were going well. A quarter of an hour later the boat sank". The *Elide* crew rescued nine people and the navy ship eventually sent a launch saving another two. The *Cassiopea's* captain argued that the poor state of the 10-metre vessel was such that approaching it with a big ship could have wrecked it, although rescue launches were available. An investigation has been opened into the deaths and failure to provide assistance.

The Italian defence ministry dismissed criticism and interior minister Scajola said that managing immigration was "a European problem". He claimed that detention centres are needed in "transit countries for illegal immigration, so that these people may be held and identified", calling for a common European border police (Berlusconi and Schroder echoed these views on 11 March 2002 in Trieste), and adding that the new Italian law on immigration, widely criticised as xenophobic, "will make us safer and better protected from illegals who come here to commit crimes" (see *Statewatch vol 11 no 6*).

On 28 March 1997, the navy came under strong criticism after the sinking of the *Kater i Rades* by a navy frigate, in which 120 people reportedly lost their lives. The two ships collided while the navy frigate was conducting aggressive manoeuvres known as "harassment" and lost control in the rough sea. The navy was being used to patrol the seas in order to prevent ships loaded with "illegal" immigrants from reaching Italy. The new Bossi-Fini immigration bill (see *Statewatch vol 11 no 6*) that is undergoing parliamentary scrutiny would introduce this role for the navy as a standard practice.

A few days later, on 11 March, the corpses of six Albanian immigrants were recovered in a rescue operation conducted by two navy helicopters in which 22 persons were saved. Their

dinghy set sail from Valona in Albania and was overturned by the rough sea.

On 11 November 1998, Salvatore Orani, who was the head of Lampedusa's port authorities until 1 August 2001, described the Channel of Sicily as the "graveyard of the Mediterranean". The sea in this area is notoriously rough, and Orani believes that "over 10% of those who leave don't arrive at their destination, [they] die in the sea", citing the worried calls from family members who saw them leave, failed rescue missions after distress calls and corpses fished out of the water by fishermen's nets as evidence.

Il manifesto 9-10.3.02, 12-13.3.02; *Repubblica* 18.4.02.

FINLAND

Prison "detention centre" closed

The *Katajanokka* prison in Helsinki has been closed for being in breach of international obligations for the treatment of prisoners. Now the Interior Ministry has decided to build a detention centre on the prison site, to be ready for use by the summer this year. In Finland, as in the UK and other EU countries, past court rulings have held that asylum seekers and migrants should not be imprisoned. The government's responses have been the renaming of prisons as "reception centres" and "houses", as was the case at Campsfield in the UK. Ironically, this has often made the situation for immigrant detainees worse, as staff do not fall under legally enforceable prison regulations with clearly defined prisoner's rights. Now Finland is following suite by building an immigration detention centre on a former prison site. Planning provisions include the installation of surveillance equipment, armoured glass, an enclosed "recreation area", the legal possibility of restricting visitors as well as legal powers to use force against detainees.

The future detention centre has been rented from Helsinki Council by the *Employment and Economic Development Centre (TE-centre)*, an institution responsible for "supporting enterprise and influencing and participating in regional development in general", which is answerable to various ministries. The detention centre will closely cooperate with the Helsinki reception centre for asylum seekers. Campaigners are asking for protest letters and faxes to be sent to the institutions listed below. *TE-centre Uusimaa*, PL 15, 00241 Helsinki, Tel: 00358-9-2534 2111, Fax: 00358-9-2534 2000, e-mail: uusimaa@te-keskus.fi; *Helsinki reception centre for immigrants*, *Kylasaarenkatu 10*, 00580 Helsinki, Tel: 00358-9-310-42900 or 310 42912, e-mail: helsingin.vastaanottokeskus@hel.fi; For more information see www.fi.noborder.org

SPAIN

Minister rebuffed over "criminal" migrants

When he presented the Spanish crime figures for 2001, which indicated a 10% increase (mainly in crimes against property), Interior minister Mariano Rajoy highlighted reasons to explain this increase. These included the claim that it is now easier for victims to report crimes, since telephone and internet crime reporting facilities have been set up. The main causes, however, were that criminals were able to commit offences repeatedly because courts were not punishing offenders quickly or harshly enough. The increase in the number of illegal immigrants in Spain, and the difficulties in expelling those found guilty of committing offences, was another priority: "An increase of 39.61% has been recorded in the number of foreigners detained for all forms [of crime], but with regards to thefts in houses using force, and thefts using violence and intimidation, 50% of

detainees are foreigners". Rajoy told the Spanish Senate that he had asked the general prosecutor [*Fiscal general*] to expel foreigners who commit crimes in Spain, but noted difficulties with this as repatriation agreements have only been concluded with Morocco, Nigeria and Senegal.

For repeat offenders, Rajoy called for preventative custody to be used more often, as 64% of those arrested were repeat offenders. *El Pais* reported that a dossier by the *Jefatura Superior de Policia* (Police Chiefs' Headquarters) in Madrid named 85 people who had been detained a total of 3,561 times. The dossier says that "independent of evidence for them to be charged, they represent a menace to society for this excessive number of arrests".

The head prosecutor of the Madrid high court of justice, Mariano Fernandez Bermejo took exception to the way in which the distinction between "immigration and criminality" was being blurred. Bermejo said "It is a lie that immigration is a cause of crime; the cause is social exclusion". He added that "...we must not call members of organised criminal groups immigrants, because this would be to insult people who come to Spain to undertake work that we don't want, such as taking care of our grandparents or cleaning our houses".

The targeting of immigrant communities by Spanish police may also have an impact on arrest statistics. Operation *Ludeco* (see *Statewatch* vol 12 no 1) for example, is intended to counter an alleged increase in crime by Colombians and Ecuadorians through strict surveillance of the 157,000-strong communities, and more diligence in applying the current immigration law and carrying out expulsions. *Fair Trials Abroad*, an organisation that undertakes work assisting people arrested in foreign jurisdictions, has highlighted that in several European countries, and Spain in particular, foreigners are often denied the judicial guarantees enjoyed by nationals.

El Pais, 5, 7, 15 & 25.3.02.

UK & GERMANY

The targeting and criminalisation of Kurdish refugees

Kurdish refugee communities in the UK and Germany have been on the receiving end of intensive targeting and criminalisation "by state and non-state actors" since the 1980s. This is the conclusion reached in a report by Desmond Fernandes. The targeting and criminalisation of immigrants and refugees is identified as a chief trait of immigration policies at both EU and national levels. The role of international geopolitics, police surveillance and harassment, the role of the media and political parties, and the violence of far-right groups are also highlighted.

The use of the asylum system by UK authorities includes the rejection of refugees in cases where it was recognised that they suffered persecution and torture, and the exclusion of people whose asylum claims had not been heard. Asylum applications by Kurds from Iraq and Turkey in 2000 were routinely rejected, in spite of continued bombing in northern Iraq by US, UK and Turkish aircraft, and Turkish army bombing raids on civilians. Thousands of asylum seekers are detained in prisons and detention centres in Britain every year.

The targeting of Kurds in Germany is also characterised by blanket rejections of asylum applications and deportation to Turkey (which sometimes directly leads to mistreatment on their return).

Key to this is Germany's "alliance" (through NATO) with the Turkish state, as well as business and strategic interests in Turkey, leading to an extension Turkish persecutory policies against Kurds. These include the decisions to ban the PKK and to

allow the deportation of Kurds for carrying out "criminal offences" (such as distributing PKK propaganda).

Lawyer Gareth Peirce criticises anti-terrorist cooperation between the UK and Turkey for criminalising the Kurdish refugee community:

Without engaging the legitimacy of a Kurdish struggle for national rights, the British police have deliberately worked to cast doubt on every Kurd in the UK as a terrorist suspect

This view is supported by evidence that the Kurdish community is subject to surveillance by the Metropolitan Police Special Branch, infiltration by MI5 agents and undercover police officers.

The proscription of the PKK in 2001 under the Terrorism Act 2000 is likely to criminalise many forms of support and fundraising (a person wearing a T-shirt that carries images or symbols supporting the PKK may be liable to six months in prison).

In Germany, it has been shown that MIT (Turkish intelligence) and FAS (Iranian intelligence) psychological warfare operations have resulted in misinformation and the use of agents provocateurs to discredit Kurdish refugees. Turkish agents carried out criminal acts (including arson against Turkish businesses) in order to blame Kurdish activists, were caught and subsequently expelled from Germany.

The report also documents cooperation between German and Iranian security services, the FAS monitoring of Iranians living in Germany and the exposing of Iranian agent and agent provocateur Hamid Khorsand in 2000. The role of German security services in ensuring that Kurds (especially from Turkey) cannot escape persecution outside their country of origin cannot be underestimated. In 1987 there was the now infamous PKK show trials followed by the outlawing of the PKK and other 35 organisations said to be linked to the PKK in 1993 under German anti-terrorist legislation.

The media, political parties, racists and far-right groups have also played a role, which has been heightened by policies such as dispersal and vouchers for asylum seekers in the UK. The Dover Express's description of Kurdish and Kosovar refugees as "human sewage" is a case in point, as is the Sighthill estate in Glasgow, where there have been over 70 racist attacks, including a murder.

The dangerous stereotypes portrayed in the media and by government sources had the effect of "making it acceptable for many Germans to endorse government and neo-Nazi actions against the pro-PKK Kurdish refugees". Attacks on immigrants increased, including gun and arson attacks (in September 1992 two Kurds were poisoned by fumes after a Nazi arson attack in Saarwellingen).

"The Targeting and Criminalisation of Kurdish Asylum Seekers and Refugee Communities in the UK and Germany", by Desmond Fernandez, October 2001. Available from: Peace in Kurdistan, Campaign for a political solution of the Kurdish question; 44 Ainger Road, London NW3 3 AT. Tel. 0207 586 5892, fax. 0207 483 2531.

Immigration - new material

L'asilo negato (Asylum Denied), *Guerra e Pace*, March 2002, p.40-42, Moreno Biagioni. This piece compares the requirement in article 10 of the Italian Constitution to offer the right of asylum to "the foreigner in whose country the effective exercise of the democratic freedoms guaranteed by the Italian Constitution is impeded", with new legislation premised on the assumption that asylum seekers are abusing the right to asylum "to procrastinate or avoid expulsion measures being taken against them for illegal residence", (see *Statewatch 11:6*). The proposed new law has been criticised by NGOs as well as the UNHCR and Catholic organisations. It allows for the detention of asylum seekers in centres, their expulsion pending appeals to be filed from abroad, and allows the use of the navy to prevent the arrival of "illegal" immigrants

(often asylum seekers) by boat. Biagioni looks at the Programma Nazionale Asilo (PNA), a pilot scheme enacted in early 2001 and partly financed by the European Refugee Fund to welcome, assist and protect refugees.

El asilo en crisis (Asylum in crisis), *Mugak*, no 17, (October-December) 2001. This issue focuses on the failure by the EU and its member states to protect asylum seekers, betraying the scope of the 1951 Convention on the status of refugees. It highlights the reasoning by which the right to seek asylum is being undermined, with the suppression and restriction of the Convention's guarantees through claims that they are too many, that they are economic migrants, or that if any country offers decent conditions (ie working while the application is under scrutiny) it will be overrun by asylum-seekers. Ruud Lubbers, High Commissioner for Refugees, belittled such claims by reminding a conference of ministers from the 143 signatory states of the Convention that Iran and Pakistan are offering refuge to four million Afghan refugees. Nonetheless, this approach may mean that the introduction of common EU standards for the treatment of asylum seekers will seek out the lowest standards existing in member states' national legislation. Articles look at the European Regulation on the right to asylum, expulsion procedures and the myths regarding refugees from the Spanish media and civil authorities, an Amnesty International report on how the construction of Fortress Europe is undermining international rules on human rights and on refugees, an analysis of how European governments are approving legislation denying refugees access to social security. Available from Pena y Gona 13-1, 2002 San Sebastian, Spain.

CIVIL LIBERTIES

UK

Wombles claim victory in court

Seven members of the Wombles (White Overalls Movement Building Libertarian Effective Struggles) faced charges including assaulting a police officer, causing criminal damage to a police van and using threatening words and behaviour at Horseferry Road magistrates court from 29 April to 3 May 2002. Five defendants were acquitted. Simon Chapman was convicted for causing criminal damage and "using threatening words and behaviour", and Clayton Elliott for a public order offence. Chapman admitted kicking a police van after an arrest and Elliot invited a policeman with a drawn truncheon to hit him. The two were fined £100 and ordered to pay costs. One of the accused claimed a "close to complete victory", stressing that it was a "waste of taxpayers money". Another lost his job as he awaited trial.

The Wombles claimed that the choice of date, at the same time as Mayday demonstrations took place, alongside media demonisation of anarchists, would prejudice the trial. The group says that none of their members was ever convicted of violence or charged with carrying weapons, despite regular monitoring by a police Forward Intelligence Team (FIT) and filming during demonstrations.

The Wombles say that on the evening in question (31.10.01), a group of fifteen people were stopped by police as they headed to a Halloween party dressed as ghosts after attending a peaceful protest against Henry Kissinger. The Wombles grew out of experiences on the N30 Euston demonstration in 1999 (see *Statewatch vol 9 no 6*) and Mayday 2000 and their actions mimics the approach taken by the Italian *Tute Bianche* (White Overalls), involving the wearing of white overalls stuffed with padding to allow them to resist police charges non-violently. The group stress that, despite similar uniforms, there are ideological differences with the Italian group.

Wombles press dossier, April 2002; Guardian, 30.4.02, 4.5.02; Independent

Civil liberties - new material

Secrets & Lies, Stephen Dorril. *Free Press* no. 127 (March-April) 2002, p.1. Useful article that charts the build-up "for a full-blown disinformation campaign in the British and American press" in the countdown to the war against Iraq. Dorril accepts that while "some of these stories are undoubtedly true", others are "not all they appear to be" originating from unreliable sources such as the US-backed Iraqi National Congress". Those emanating from sources such as the US Office of Strategic Influence or the Labour Party, are simply fabricated, he says. But, as Dorril notes, "this is just the start, the real gems have yet to appear."

American spin doctor in London, Donald Macintyre. *Independent Tuesday Review* 19.3.02., p.8. Interview with Tucker Eskew, the director of the Office of Media Affairs at the White House, who has been based at the Foreign Office in London since November. Here he is working with Tony Blair's spin doctor, Alistair Campbell, with the newly-founded Coalition Information Centre to ensure the propaganda war for the "war on terrorism" is not impeded by the truth. In what is described as a little known and unprecedented "propaganda campaign" Eskew attacks the "really outrageous jumping to conclusions" by sections of the British press who have criticised the illegal (and barbaric) treatment of Afghani prisoners of war on the US military base imposed on Cuba at Guantanamo.

Northern Ireland statistics on the operation of the Terrorism Act 2000: 19th February to June 2001, H. Kerr & D. Lyness. *Research & Statistical Bulletin* 9/2001 (Northern Ireland Office) October 2001

Why we still need empires, Robert Cooper. *Observer* 7.4.02. This is an abridged version of an article by a "senior British diplomat" extracted from the book "Reordering the World" published by the Labour Party think tank, the Foreign Policy Centre (patron: Tony Blair). Cooper argues for a return to the good old days of imperialism: "...when dealing with old-fashioned states outside the postmodern continent of Europe, we need to revert to the rougher methods of an earlier era - force, pre-emptive attack, deception, whatever is necessary to deal with those who still live in the nineteenth century world of every state for itself." He argues that this "voluntary imperialism" would be one "compatible with human rights and cosmopolitan values" as exemplified by the IMF and the World Bank, multilateral institutions that "provide help to states wishing to find their way back into the global economy and into the virtuous circle of investment and prosperity."

EUROPE

SPAIN

Law to make Batasuna illegal

The Spanish government is on the verge of approving a law that is expressly aimed at making Basque political party Batasuna illegal. The draft Law on Political Parties was approved on 16 April by the Consejo General del Poder Judicial (General Council of Judicial Power). The judicial body was divided, as only the 11 magistrates appointed by the ruling Partido Popular (PP) voted in favour. Eight others considered that some of the articles are unconstitutional. The criticism of this draft is based on the belief that it is unconstitutional that the law may be applied to events that occurred before its entry into force; on the belief that it is not sufficient that illegalisation can be demanded by 50 members of parliament or 50 senators; the discrepancy of the fact that the competent body for decisions regarding the disbanding of a party be a Special Court of the Supreme Court rather than the ordinary judiciary, that is, the Civil Court of the Supreme Court; finally, the ambiguity and vagueness with which the acts deemed illegal are

described. The PP is willing to approve this law (it has a majority in the Parliament) despite the fact that the entire opposition opposes it.

The Partido Nacionalista Vasco (PNV) has already announced that it will present an appeal against the law to the European courts. This initiative coincides with the recent ruling by the European Court of Human Rights which repealed another illegalisation decreed by the Turkish State against a political organisation. That was the Party of the Workers of the People, founded in 1990 and disbanded three years later because the Constitutional Court ruled that it "seeks the division of national integrity". As happened in previous instances - at least three such cases have been annulled in Europe - the court decreed that Ankara contravened the Treaty of Rome, annulled the prohibition and fined the Turkish state for causing "moral damage".

EU

Surveillance of communications: Mystery of the missing minutes

Under the Swedish Presidency of the European Union in 1998 a proposal was being discussed to update the infamous ENFOPOL 98 measure - which sought to extend the surveillance of telecommunications to e-mails and the internet. This was not adopted because of a huge outcry by civil society. ENFOPOL 98 resurfaced as ENFOPOL 29 in a new and revised form - in the spring of 2001 - setting out how the "Requirements" to be placed on service and network providers should be interpreted in the EU (the "Requirements" were adopted in the EU on 17 January 1995 in secret by "written procedure").

ENFOPOL 29 was approved at the meeting of COREPER (the high-level representatives committee drawn from each EU member state) on 23 May 2001 and it appeared on the "A" Point agenda (ie: it would simply be nodded through by the Ministers without debate) for the Justice and Home Affairs Council (JHA) on 28-29 May 2001. (Council "Resolutions" do not have to be sent to national parliaments or the European parliament they can simply adopted without any consultation)

ENFOPOL 29, a 16-page document entitled "Draft Council Resolution on law enforcement operational needs with respect to telecommunications networks and services", did not appear on the Council press release for the JHA Council on 28-29 May. However, the "spin" was that it had been agreed subject to a reservation by Germany (whether by the government or the parliament was unclear). On 20 June 2001 ENFOPOL 29 was superseded (after linguistic checking) as a "Legislative" proposal in the form of ENFOPOL 55. But nothing happened, the measure appeared never to have been adopted so a mystery surrounded its fate.

That is until 19 April 2002. Suddenly on the Council's Register a document appeared dated: 4 April 2002 and its subject matter was "Outcome of proceedings: Article 36 Committee on 3 and 4 May 2001". The Register clearly states that the date of the meeting was: 3 May 2001, the date of the document: 4 April 2002 and the archive date as: 19 April 2002.

The delay in producing the "Outcome of proceedings" of the Article 36 Committee on 3/4 May 2001 for 11 months is quite extraordinary - it is normal procedure for the "Outcomes" of the last meeting to be agreed at the next one. In this case the next meeting of the Article 36 Committee was on 10 May 2001 and the "Outcomes" of this meeting were produced on 18 May 2001 - just over a week later.

On investigation the mystery deepens as the formal Minutes of the JHA Council on 28-29 May (produced in the autumn) state that "Item 16" (ENFOPOL 29) on the "A" Points agenda was not adopted.

The reason for the apparent cover-up may lie in the belated "Outcome of Proceedings" of the Article 36 Committee meeting on 3/4 May 2001 which include the following:

The German delegation insisted on the highly political sensitiveness of this file [ENFOPOL 29] and advised the Presidency to inform the European Parliament despite the fact that it is not supposed to deliver an opinion on draft resolutions. The Commission indicated that Commissioner Vittorino might intervene on this issue at the 28-29 May Council. The Presidency insisted on the need to proceed quickly on this file. It undertook to inform the Parliament on the substance of it.

The German delegation clearly took seriously the need to properly consult the European Parliament in the light of the previous outcry in 1998/99. However, there is no evidence on the record that the Commission raised the issue or that the Swedish Presidency "informed" the European Parliament of its "substance" (which is a euphemism for saying the parliament would be told what was in the proposal but would not be formally consulted, that is, asked to prepare a report on its views).

The mystery of ENFOPOL 98 which became ENFOPOL 29 then ENFOPOL 55 is thus solved, it was never adopted. However, in the present post 11 September climate, where the demands of the EU's law enforcement agencies increasingly override liberties, rights and privacy, its reappearance for the third time is to be expected.

ENFOPOL 55 Council Resolution on law enforcement agencies needs (previously ENFOPOL 29 & 98); ENFOPOL 29 COR 1: updated version of 14 April 2001; ENFOPOL 29, Enfopol 98/19 re-visited, 30 March 2001; ENFOPOL 19, 15 March 1999: Interception of telecommunications - Draft Council Resolution on new technologies (final version of ENFOPOL 98, this was never adopted); ENFOPOL 98 REV 2, 3 December 1998: Interception of telecommunications - Draft Council Resolution on new technologies; ENFOPOL 98 REV 1, 10 November 1998: Interception of telecommunications - Draft Council Resolution on new technologies; ENFOPOL 98, 3 September 1998: Interception of telecommunications: Council Draft Resolution in relation to new technologies.

EU

Statewatch appeals successfully against US veto on access

In December 2001 the Council of the European Union refused *Statewatch* copies of the agendas of the EU-US Senior Level Group and the EU-US Task Force because the US vetoed access to them. *Statewatch* appealed against the initial decision of the General Secretariat of the Council and, finally, on 6 March this year 35 agendas were released (ten of the meetings were conducted by "video-conferencing"). However, the released agendas contained no less than 458 sections of information blocked out with the phrase:

Not accessible to the public

In July last year - after a four year fight and two successful complaints to the European Ombudsman - *Statewatch* finally obtained the agendas of ten EU-US high-level planning meetings between September 1996 and February 1998. The agendas concern meetings of the "Senior Level Group" and the "EU-US Task Force" set up under the New Transatlantic Agenda agreed in 1995.

On 23 July 2001 *Statewatch* applied to the Council for the agendas of these two groups after 25 February 1998. On 22 August the Council extended the deadline for replying by one month and on 20 September the Council asked for more time to carry out "consultations". As no reply was received *Statewatch* wrote again to the Council on 15 December. On 18 December the Council finally replied - after the new Regulation on access to documents had come into force on 3 December 2001.

Their letter said that the agendas of the "Senior Level Group" and the "EU-US Task Force" were "drawn up jointly by the EU and US side" and are "at least partly- third party documents". The Council had therefore "consulted the US authorities" and:

the US authorities said they were opposed to releasing the documents in question, as in their view they are to be considered as "government-to-government documents" not intended for - even partial - publication.

In these circumstances, the General Secretariat [of the Council] cannot but conclude that the release of these agendas would significantly disturb the good functioning of the cooperation between the European Union and the United States"

On 6 January 2002 *Statewatch* lodged an appeal against the refusal of access to the agendas:

a) contesting the issue of "co-authors" which was expressly addressed, and rejected, by the European Ombudsman in the original *Statewatch* complaints;

b) saying that the Council's claim that releasing the agendas could "significantly disturb the good functioning of cooperation between the EU and the US" is preposterous - the 1996-1998 released agendas showed they contain no sensitive information;

c) The Council's view that because the US objects to the release of the agendas that it has no choice but to refuse access is contrary to its obligations under the Regulation to reach an independent decision.

The Council again asked for more time to "consult" before releasing the agendas (or parts of them) in March. Its answer to the appeal said that:

the Council decided to refuse access to specific parts of the documents which contain annotations intended to guide the discussion and were meant for internal consideration only. The release of those parts could significantly disturb the good functioning of the cooperation between the EU and the United States and potentially have an impact on the European Union's relations with third countries

The US authorities, having first opposed any release of the agendas (even partial access), did a U-turn and reluctantly agreed provided 458 deletions were made.

What the documents tell us

All that can be gleaned from the agenda alone is the scope of these high-level meetings between the EU and the US. The World Trade Organisations (WTO), the Transatlantic Business Dialogue (TABD) and the Transatlantic Labour Dialogue (TALD) figure regularly as topics, as do discussions on China (Human Rights), Russia, Ukraine, Turkey, data protection (safe harbour), UN reform and finances, Kyoto, Plan Colombia, climate change.

The agendas also make clear that justice and home affairs issues are consistently on the agendas. Drugs and the trafficking in women together with "Law enforcement: organised crime, computer [Not accessible to the public], stolen vehicles proposal, Europol exchange follow-up" and more recently "asylum/migration and police cooperation". In this respect a number of the issues figuring in post 11 September EU-US cooperation on justice and home affairs matters were already on the table in these meetings.

Europe: in brief

■ **Spain: Authorisation for the US to spy in Spain:** The new Defence convention between Spain and the US, signed on April 10, authorises the criminal investigation services of the US airforce and navy to operate in Spain. This agreement has been strongly criticised for its ambiguity, "on matters of mutual interest which affect US goods or personnel in Spain", as this would allow investigations not only regarding US military

personnel, but Spanish or third-country nationals as well. The suspicion that the activities of individuals may affect US goods or personnel is enough to justify the use of these powers, which are without precedent in similar agreements between the US and other countries. Furthermore the new convention envisages "cooperation in military intelligence" to counter terrorist threats. Curiously, Spain has just abolished its military intelligence service (CESID) and its successor, is a civil, rather than military, intelligence service, the Centro Nacional de Inteligencia (see *Statewatch* vol 12 no 1).

■ **SIS II takes ominous shape:** "Requirements" for SIS II, the second generation Schengen Information System (SIS) have been outlined by the EU. The proposals would introduce a number of new functions for the SIS, allow more types of personal information to be retained, provide wider access for law enforcement and administrative agencies and reduce data protection standards. Four new functions for the SIS are planned. Two incorporate recent proposals - revealed by *Statewatch* - to create a database of violent trouble-makers, who to be prevented from travelling to certain events during certain periods, and another detailing all visas issued (and refused). The other two new roles for the SIS are entirely new proposals and would create a "restricted access terrorist database" and a new category of "persons precluded from leaving the Schengen area", including people under criminal investigation, prisoners on conditional release and children at risk from abduction. For full story see: <http://www.statewatch.org/news/2002/apr/01sis.htm>

■ **Europol to be given access to the SIS, then custody?:** EU working parties are to begin making preparations to give Europol access to the Schengen Information System (SIS). Recent proposals will not just allow Europol to consult data, but to add and amend it as well. Under the two-stage EU Presidency proposal, phase one covers "immediate access to all information" with a "partial download" facility. Phase two provides for the "possibility of [Europol] updating SIS by adding, deleting and modifying information". For full story see: <http://www.statewatch.org/news/2002/mar/15europol.htm>

■ **EU: Presidency defies EU treaties, ECJ case law and council legal service to put the case for private security:** In December of last year, the incoming Spanish presidency of the European Union presented a proposal to establish a "network of contact points of authorities with responsibility for private security". Then, after successive drafts of the proposal in January and February, the EU Council Legal Service delivered an opinion clearly opposing any Council Decision on the grounds that it "encroached upon the sphere of Community competence and was not feasible under Article 47 of the Treaty on European Union (TEU)". This opinion has been quickly countered by the legal service of Spanish State Secretariat for Legal Affairs and the Spanish presidency is determined to press ahead with the proposal. Unable to address the powerful legal argument, it has instead put the case that private security is now inextricably linked to public security provided by the state, and therefore a matter for the EU Justice and Home Affairs Council. See: <http://www.statewatch.org/news/2002/apr/07private.htm>

■ **Belgium: Five Belgian police officers sent to trial over death of refugee during deportation:** It is reported that a Belgian court has decided on 26 March that five police officers are to be tried for the death of Semira Adamu, a Nigerian asylum-seeker, who died as police tried to subdue her on a plane when the authorities were trying to deport her in 1998 (see *Statewatch*, vol 8 no 5). Associated Press reported that three face charges of assault and battery and involuntary manslaughter for allegedly pushing Adamu's head into an airline pillow just before the plane was to take off from the Brussels airport. Also sent to trial were two officers supervising the repatriation, who watched as Adamu was forcibly placed on board and strapped into a seat. The

Brussels court ordered the two to face criminal negligence charges saying they let the use of violence to restrain her go on for too long and should have stopped it. For full story see: <http://www.statewatch.org/news/2002/mar/17adamu.htm>

■ **Sweden: USA puts three Swedish citizens on UN terrorist list:** The United States has put three Swedish citizens, of Somalian origin, on the UN list for freezing the funds of terrorist suspects. The three men, Abdirisak, Ahmed Aliyusus and Abdulaziz Ali, are members of Al Barakaat, a network of organisations set up to allow Somali people around the world to send money back to their families and relatives in Somalia. After public reaction to the freezing of their assets, the Swedish government demanded evidence from the USA which the USA said it did not need to provide. When it eventually did so, the Swedish Security Police stated that there was no substance in any of the material sent over as "evidence". For full story see: <http://www.statewatch.org/news/2002/apr/03somalia.htm>

■ **Spain: State agencies put protestors under extensive internet surveillance:** In the run-up to the Barcelona EU Summit 15-16 March the Spanish police and the Guardia Civil put the website, discussion pages and mailings lists of the organisation "Nodo50" under extensive surveillance. The group monitored the surveillance and produced a report to explain how the Spanish Ministry of Internal Affairs knew everything that the Nodo50 had been discussing and was "lying when it maintains that violent actions are being prepared including production of a sabotage manual, urban guerrilla warfare etc". See: <http://www.statewatch.org/news/2002/mar/08spain.htm>

MILITARY

GERMANY

Military service tested

Over recent years, more and more EU member states have abolished the practice of compulsory military service. Rather than representing a drive towards the demilitarisation of society however, this development has reflected the restructuring of the EU armies to deal with the new "security concerns" of the EU after the collapse of the Soviet Union. In Germany, there have been longstanding demands from peace activists for the abolition of compulsory conscription, and the constitutionality of the practice was recently tested with the Federal Constitutional Court. The court ruled against the plaintiff, but only on grounds of formal mistakes on the part of the regional court which first ruled in his favour, not on grounds of a substantive examination of the claim. Contrary to the government therefore, lawyers and activists do not interpret this most recent ruling as a defeat for the campaign for the abolition of compulsory conscription, but as a move to gain more time for the government to restructure Germany's "outdated" army.

The background to the debate in Germany has to be seen in relation to EU efforts to harmonise the structure of their armed forces for future cooperation, in particular in the Rapid Reaction Force, as well as in relation to Germany's efforts to establish itself militarily on the international scene again after World War Two (see *Statewatch* vol 11 no 6). One important aspect of the EU's security and defence policy is the harmonisation of the structure and training of the Member States' armies. Compulsory military service however, poses problems as to the compatibility of different military systems for EU military cooperation and warfare.

A report by the EU defence committee on the preferred movement towards a professional army system in the EU (EU

Document 1669, 10.11.99) was being prepared at the same time as German defence minister Rudolf Scharping called for a planning report to assess the restructuring of Germany's armed forces, which had played more of a symbolic rather than an interventionist role until the fall of the Berlin wall. The report says that the size, structure and equipment of the *Bundeswehr* did not meet the army's new role. This is why the government then appointed an independent *Commission on the Common Security and the Future of the Bundeswehr*, to analyse and examine "the risks and interests of the Federal Republic of Germany in the field of security". The Commission report was presented on 23 May 1999.

The aim of the restructuring was to:

prepare the Bundeswehr in terms of size, structure, armament and equipment for the task it is most likely to perform within its mission: participation in crisis prevention and crisis management operations - to be able to fulfil national and Alliance defence requirements and meet international commitments

and thus to

enable the armed forces to cooperate effectively with the partners in NATO, the EU, the UN and the OSCE and to as far as possible Europeanise security, defence and arms acquisition policy. Two operational contingents with a total of 90 to 100 combat aircraft, 10 ground-based air defence squadrons, as well as aerial refuelling and airlift components

The question of the possible future form of the military service and the size of the armed forces was central to the Commission, which is why it had:

in-depth discussions on the advantages and disadvantages of armed forces based on voluntary and compulsory military service...[as] the drastic downsizing of the Bundeswehr would have made the transition to a purely voluntary system seem only natural. The commission, however, is of the opinion that the Bundeswehr of the future cannot rely solely on volunteers

Conscripts will continue to be needed - albeit in far fewer numbers than at present.

The Commission recommended that the 10 months of compulsory military service be retained, but that the conscription would be selective with a view to "downsizing". The focus should be on crisis prevention and crisis management and an "operational force component of 140,000 troops, functional and fit for employment in an alliance role" should be created.

The reform has been implemented over the past two years and it is likely that compulsory conscription will be abolished in Germany in the near future. Before this can happen however, the government has to successfully fight the continuously falling numbers of willing conscripts and professional recruits by increasing "the attractiveness of the military profession" (Commission report) as well as promoting:

the possibility of voluntary military service in all status groups, including reservists with specialist training

The Constitutional Court ruling of mid-April this year held that the regional court in Potsdam did not fulfil the formal requirements which would have made an application for constitutional testing admissible. Wolfgang Menzel, the federal spokesman for the *German Peace Association - United Opponents of War Service* (DFG-VK) said that questions relevant to the constitution, such as equality in conscription (with regards to the now selective compulsory conscription) had not been dealt with at all. Although the mood amongst anti-conscription activists therefore is not bleak after this most recent decision, a future positive ruling would be double-edged, given that the professionalising of Germany's armed forces has the clear aim of increasing its military role in international conflicts. This is why anti-war activists have shifted their focus from compulsory conscription to the fight against German military interventions abroad.

WEU-Dokument 1669 (10.11.99) Die europäischen Länder auf dem Weg zu Berufsstreitkräften. BERICHT - vorgelegt von den Berichterstattern Davis und Schloten im Auftrag des Verteidigungsausschusses. [EU Document 1669. European Countries on the way towards professional armed forces. REPORT - presented by rapporteurs Davis and Schloten on behalf of the defence committee]; Bericht der Kommission Gemeinsame Sicherheit und die Zukunft der Bundeswehr - Erneuerung von Grund auf (23.5.99) [Report by the Commission Common Security and the Future of the Bundeswehr - A Fundamental Renewal (23.5.99)]; Jungle World 17.5.02, <http://www.bundesregierung.de/frameset/index.jsp>

Military - In brief

■ **Europe: Green light for Galileo:** Meeting in Brussels in March, European Transport Ministers decided to go ahead with the militarisation of Galileo, the rival satellite project for the American Global Positioning System (GPS). The GPS technology makes the advanced American precision bombing possible that is now crucial for military intervention abroad (Gulf War, former Yugoslavia, Afghanistan). The whole system consists of 30 satellites should be operational in 2008 and will cost a minimum of 3.6 billion Euro. According to the *Financial Times* it will not provide a huge advance on the GPS technology since the Americans have lifted the restrictions on commercial users two years ago. There are many civilian applications but the perspectives of commercialisation are doubtful as many basic services are already provided free by GPS. The main European strategy is to become independent of the US in this area. During the Gulf War GPS service was suspended. However there are doubts that this will happen in the future because the commercial applications have become too important. *Financial Times* 27.3.02; *Le Monde* 26.3.02

PRISONS

UK

ECHR finds prison death violated Articles 2 and 13

The European Court of Human Rights held on 14 March 2002 in the case of *Paul and Audrey Edwards v the United Kingdom* (no 46477/99) that there had been a violation of Article 2 (right to life) of the European Convention on Human Rights as regards the circumstances of their son Christopher Edwards' death; that there had been a violation of Article 2 as regards the failure to conduct an effective investigation; there had been a violation of Article 13 (right to an effective remedy).

Christopher Edwards was "tentatively" diagnosed as schizophrenic in 1991. He was arrested on 27 November 1994 and taken to Colchester police station after making "inappropriate" suggestions to women in the street. He was later remanded in custody at Chelmsford prison, initially on his own. On 28 November Richard Linford was placed in the same cell as Christopher Edwards. Linford had a history of violent assaults, including assault on a cell mate in prison. He was diagnosed schizophrenic. Each cell had an emergency call button, which lit up a green light outside the cell and activated a buzzer and a red light on the landing. At 9pm on 28 November 1994, a prison officer became aware that the buzzer linked to the cell was malfunctioning, but did not report this. Shortly before 1am on 29 November 1994 the prison officer responsible for D landing heard a buzzer sound but no red light on the landing control panel. Some time later he heard continuous banging on a cell door and on going to investigate saw the green light on outside

Edwards' and Linford's cell. Officers entered the cell to find that Linford had kicked and stamped Christopher Edwards to death.

In 1995, a private, non-statutory inquiry was commissioned, which reported on 15 June 1998. It concluded that ideally Edwards and Linford should not have been in prison and in practice ought not to have been sharing a cell. It found a "systemic collapse of the protective mechanisms that ought to have operated" to protect Christopher Edwards. It identified a series of shortcomings, including poor record-keeping, inadequate communication and limited inter-agency co-operation. The applicants were advised that there were no civil remedies available to them, and on 25 November 1998 the Crown Prosecution Service maintained that there was insufficient evidence to proceed with criminal charges.

The European Court of Human Rights was satisfied that information had been available which identified Richard Linford as suffering from a mental illness with a record of violence which was serious enough to merit proposals for compulsory detention and that this, in combination with his bizarre and violent behaviour on and following arrest, demonstrated he had been a real and serious risk to Christopher Edwards when placed in his cell.

Regarding the measures which the authorities might reasonably have taken to alleviate that risk, the Court observed that the information concerning Linford's medical history and perceived dangerousness ought to have been brought to the attention of the prison authorities. It was not. The Court concluded that the failure of the agencies involved in the case (medical profession, police, prosecution and court) to pass on information about Richard Linford to the prison authorities, and the inadequate nature of the screening process disclosed a breach of the state's obligation to protect the life of Christopher Edwards. There had therefore been a violation of Article 2.

The Court observed that no inquest was held and that the subsequent conviction of Richard Linford did not involve examination of witnesses as he pleaded guilty to manslaughter and was subject to a hospital order. Considering whether the inquiry had provided an effective investigative procedure, the court noted that the inquiry had heard a large number of witnesses and reviewed in detail the way the two men were treated, but the inquiry had no power to compel witnesses and as a result two prison officers (one of whom had walked past the cell shortly before the death was discovered) declined to attend. The Court found that the lack of compulsion of witnesses detracted from the inquiry's capacity to establish the facts relevant to the death, and thereby to achieve one of the purposes required by Article 2 of the Convention. The inquiry also sat in private, Mr and Mrs Edwards could only attend while giving evidence, were not represented and were unable to question witnesses. The Court therefore found that they could not be regarded as having been involved in the procedure to the extent necessary to safeguard their interests. The Court concluded that the lack of power to compel witnesses and the private nature of the proceedings failed to comply with the requirements of Article 2 to hold an effective investigation into Christopher Edwards' death.

The Court noted that a civil action in negligence or under the Fatal Accidents Act before the domestic courts might have furnished a fact-finding forum with power to attribute responsibility for Christopher Edwards' death. However, as it was not apparent that non-pecuniary damages would be awarded or that legal aid would have been available, the Court did not find this avenue of redress of practical use. Similarly, a case brought under the Human Rights Act 1998 would only have applied to any continued breach of the procedural obligation under Article 2 after 2 October 2000 and would not have led to the payment of damages related to Christopher Edwards' death. The Court found that Mr and Mrs Edwards did not have access to appropriate means of obtaining a determination of their allegations that the

authorities failed to protect their son's life or the possibility of obtaining an enforceable award of compensation for the damage suffered - there had therefore been a breach of Article 13.

Zahid Mubarek campaign setback

The family of Zahid Mubarek, who was beaten to death in his cell by a known violent racist, Robert Stewart, has suffered a setback in their campaign for a public inquiry into the murder. The court of appeal has overturned a ruling in the lower court that ordered the Home Secretary to hold a public inquiry into the "systemic failures" which led to the murder.

Mr Justice Hooper had found that the right to life guaranteed by the European Convention on Human Rights at Article 2 required the Home Office to carry out an independent investigation into the killing, to be conducted in public, with legal representation for the Mubarek family, disclosure to them of relevant documents, and the right to cross-examine witnesses, (see *Statewatch* vol 10 no 2, vol 11 no 5).

In the court of appeal, Lord Woolf, Lord Justice Laws and Lord Justice Dyson ruled that a public inquiry was not necessary and that no violation of Article 2 had occurred. They held that it had already been established that the prison service was at fault, an inquiry into this had been held, and the family invited to be involved; the cause of death had been established by Stewart's conviction for murder and there was no basis for prosecuting any member of the prison service. There were no "factual unknowns" which would hinder the family in bringing a civil claim for damages. "What remains to be investigated?" the judges asked.

Zahid Mubarek's uncle, Imtiaz Amin, said "The judgement is not answering any of the questions we want answers to. Why was Zahid sharing a cell with such a racist individual? How was such a premeditated murder allowed to happen?"

The Mubarek family intend to appeal to the House of Lords. *Guardian* 16.4.02; *1990 Trust*, 16 April 2002.

Sentencing policy in chaos

The government's criminal justice policies become less coherent by the day, according to caseworkers from Miscarriages of Justice UK. With a prison population at a 70,266 record high, prison service director-general Martin Narey has called on judges to sentence offenders to custody only as a last resort. Mike Newell, president of the Prison Governors' Association, wants radical action to reduce numbers, including stripping magistrates of the power to jail offenders. "Magistrates have a wide range of community penalties available to them, but they insist on imposing inappropriate sentences. These powers should now be taken away from them to stop such inappropriate sentencing."

Prison numbers since December 2002 have risen by an extra 300-600 prisoners per week. Much of the recent increase appears to be due to a sharp rise in remand prisoners (up 13% in the last year) and in the number of women being sent to jail (up 21% over the same period.) Martin Narey has told prison governors to make much greater use of the early release home detention curfew scheme because prison numbers were "reaching crisis point." The Home Office has opened 26 new prisons since 1992. Current capacity is now 71,834. The most overcrowded prisons are currently Shrewsbury (which has 338 prisoners in accommodation intended for 185) and Preston (with 556 prisoners in accommodation intended for 306).

As Miscarriages of Justice UK observe, though, a sense of crisis appears not to have affected the Home Office, which has been keen to focus press attention instead on mobile phone thefts and a brief spate of carjackings. Heightened public fears about such crimes and the "tough talking" of the Home Office around the issues have clearly affected the willingness of magistrates to grant bail in relation to street crimes. On April 16 2002, Home

Secretary David Blunkett called on courts to make use of powers under section 130 of the Criminal Justice Act 2001 to remand in custody teenage offenders aged 12-15 who have a recent history of committing offences on bail. It is thought that 600 local authority secure unit places will be necessary to accommodate this addition to the prison population. To make room for them, teenage offenders who have been sentenced will be moved to young offenders' institutions at Lancaster Farms, near Lancaster and at Onley, Warwickshire. In turn, some YOI inmates will be dispersed across the prison system. Speaking at a conference on youth crime the same day, Blunkett went further, calling for an "intensive fostering scheme - as a form of "protective custody" for child offenders aged 10 and 11. Paul Cavadino, of the National Association for the Care and Resettlement of Offenders, responded: "It is wrong in fact and questionable in principle to think that the imprisonment of 10 or 11 year olds is a burning issue needing urgent government action".

Guardian 2.3.02, 16.4.02; *Miscarriages of Justice UK statement* 16 April 2002.

Prisons - in brief

■ **UK: Irish deaths in custody:** On 23 March, 31-year old Irish remand prisoner Patrick Maloney was found hanging in his cell. He was the fifth Irishman found hanged in Brixton prison in three years. Yvonne McNamara of the Brent Irish Advisory Service stated, "Irish nationals are not just being discriminated against in British jails, they are dying." A conference on "Justice and the Irish Community", held on 12 April, discussed the spate of deaths at Brixton and allegations that Irish prisoners were being harassed by prison officers who had served in the security services in Northern Ireland. At the inquest into the March 2001 death of Michael Barry, evidence was heard that alarm bells at the jail were sabotaged by Brixton prison staff. At the conference, Fr. Gerry McFlynn, of the Irish Commission for Prisoners Overseas, expressed his concern that Irish people convicted of crimes in Britain are increasingly being deported to Ireland, even if they have lived in Britain for decades. Among the instances cited by Fr. McFlynn were a man who had left Ireland at two years old, a man with a wife and family in Birmingham and a man with grandchildren in England, all of whom were deported. *Irish Commission for Prisoners Overseas; Inquest; Irish World* 19.4.02.

Prisons - new material

"**Turkish jails, hunger strikes and the European drive for prison reform**", Penny Green. *Punishment and society*, vol 4 no 1, January 2002, pp.97-101. This piece criticises the role of the Council of Europe's Committee for the Prevention of Torture, Inhuman and Degrading Treatment (CPT) in promoting the F-type isolation cell regime. The CPT fails to acknowledge "the politicised nature of the Turkish prison population". Green says that there seems to be a "penological tenet, held by the moral custodians of penal policy in Europe that single cell prison accommodation is a mark of a civilised society representing a significant evolutionary development from the dormitory style accommodation". By way of contrast, she notes that "imprisonment in Turkey may be less of a de-humanising experience than incarceration in many western European establishments", because the dormitory system facilitates communication and solidarity between prisoners. It also offers protection against arbitrary violence by prison guards or security forces. The CPT's approach leads it to "focus on reforms to existing F-type prisons", while ignoring opposition to single cell prisons by prisoners. This approach "accords" with the Turkish state's desire to isolate prisoners and stop them from organising. Protests over single cell prisons for political prisoners continued through the 1990's, with 12 political prisoners dying on hunger strike in 1996, and 11 killed in a raid by security forces to break up protests in Ulunclar Central prison in

Ankara in 1999. Justice Minister Hikmet Sami Turk said in December 2000 that no transfers would take place until three measures were in place, including amendments to relax Article 16 of the 1991 Turkish Anti-Terrorism Law, which "provides for a regime of intense isolation", with "no open visits" and "communication with other convicts ... prevented". On 19 December [year], a raid by security forces on twenty prisons in which two gendarmes and thirty prisoners were killed, led to the forcible transfer of over 1,000 prisoners to three of the four F-type prisons which are presently operating (Edirne, Kandira, Sincan and Tekirdag). In April 2001 prison monitoring boards were established, sentence execution judges were created, and amendments to the Anti-Terrorism Law provided for the introduction of rehabilitation and educational programmes and activities for prisoners. Inmates could attend these depending on the offences they had committed and behaviour in prison, "to the extent that this does not pose a security threat".

POLICING

ITALY

Naples police charged

Eight policemen from the Naples flying squad have been placed under house arrest in connection with the treatment of protestors at the Global Forum on e-government organised by the Organisation for Economic Cooperation and Development (OECD) held in Naples on 18 March 2001 (see *Stawatch* vol 10 no 3/4 and *Stawatch news online*, July 2002).

Forty thousand people protested against the meeting and clashes with police took place in *Piazza Municipio* when protestors tried to push their way through police lines to gain access to the "red zone", which was forbidden to demonstrators. On the day, 200 people were injured, 83 detained, two arrested and 13 placed under investigation. According to *Il Sole 24 ore* newspaper over 100 police officers are under investigation in connection with events in Naples. Police are accused of violently charging protestors and sealing off all exits, so that non-violent demonstrators were caught up in the violence. The preventative custody orders, however, relate to violence and abusive treatment against demonstrators at the hands of the police in custody in the *Raniero* police barracks - where people were rounded up in hospitals and held. Events in the barracks are reminiscent of what happened in *Bolzaneto* carabinieri barracks in Genoa in July 2002, when protestors were detained and violently abused by police.

The arrest of eight policemen provoked strong responses from police unions and government officials, and colleagues of the accused linked arms in protest outside the police headquarters in Naples to form a human chain claiming, "these arrests are illegal". *Alleanza Nazionale (AN)* Communications Minister, Maurizio Gasparri, argued that the magistrates responsible for the orders have a political agenda and that "in moments like these it is impossible not to take sides". Deputy prime minister Gianfranco Fini, also of AN, stated that if the arrests "were not backed by the necessary evidence we would be in the presence of a very serious act, for its consequences on the morale of law enforcement agencies".

The police trade unions joined in the protests. The *Sindacato Italiano Appartenenti Polizia (SIAP)* claimed that:

Talking of law enforcement agencies as "bandits in a uniform" is the same as killing again all the victims of duty - that is - everyone who, in the name of justice and democracy, has sacrificed their lives

Journalist Carlo Gubitosa noted that there is a substantial difference between calling policemen "bandits in uniform" and placing eight officers under house arrest for specific offences. The *Sindacato Autonomo di Polizia (SAP)* attacked the

magistrates saying that it will "verify whether the reasons invoked by the Naples judicial authorities for the use of preventative measures [leading to] house arrest against our colleagues" exist, warning that conflict with the judicial authorities may follow. The *Sindacato Unitario Lavoratori di Polizia* (SIULP) went so far as to claim that the problems for the police are not only caused by "those who use the streets to exercise violence" but also by "those who, having to apply the precise rules of justice, sometimes end up carrying out gross injustices" - effectively asking for the law to be more flexible to ensure impunity to police officers acting under duress, in difficult circumstances.

The custody orders were issued against deputy local auxiliary chief of police Carlo Solimene, a head police commissioner, Fabio Ciccimarra, and police officers Pietro Bandiera, Michele Pellegrino, Francesco Incalza, Francesco Adesso, Luigi Petrone and Paolo Chianese (who was abroad when the arrests took place). Fabio Ciccimarra is reportedly also under investigation for events in Genoa. The arrests were called for by prosecuting magistrates Marco Del Gaudio and Francesco Cascini, and authorised by the judge for preliminary investigations, Isabella Iabelli.

The investigating magistrates justify the arrests on a number of grounds:

for the objective seriousness of the acts... considering the substantial organisation established to carry out illegal acts, and due to the negative personality of the [persons] under investigation, who have tended to abuse their role as public officers to harm the collectivity and carry out violence as an end in itself

Those arrested distinguished themselves, say the magistrates, by "participating actively in acts of violence, so much so that their faces stuck in the minds of those who suffered the worst abuses". The high level officers not only participated in the crimes, but they also allowed them [to take place], and failed to acknowledge them subsequently, filing reports talking of a "calm situation, without significant clashes". Furthermore, the violence has nothing to do with behaviour during public order situations, as the "violent conduct took place inside barracks, outside of any context of provocation and suffered by helpless youths who were already injured and went to [hospitals] A&E departments to seek medical treatment". The arrests are also aimed at preventing "similar criminal conduct, even as revenge against persons that identified them".

Numerous testimonies, including a dossier by the *Rete No Global* were included as evidence, and there were mentions of kicks, punches, vaginal searches, people forced to do press-ups naked, a person forced to sing fascist songs and someone whose head was placed in a sink full of urine. 13 of the 83 persons who were detained in the barracks were charged. Victims of the abuses accused official media outlets of being "fearful and accommodating" for naming them, and handing over lists of their names to the police, actions that "put citizens who responsibly testify against any kind of injustice perpetrated against them or third parties at risk from reprisals of different kinds". The violation of their privacy, they continue, "is a very serious precedent that brings us back to the time when accusers became defendants in summary trials".

A press statement by the *Rete No Global* that participated in organising the demonstration describes events in Naples, Gothenburg and Genoa as making up a "red thread of blood" that demonstrates "the international dimension of a repressive strategy carried out by centre-left and centre-right governments alike".

The centre-left government was in power in Italy at the time of the Naples demonstration. Spokesperson Francesco Caruso said that there is little satisfaction in knowing that some persons who physically carried out abuses have been identified or arrested. He claims that the priority is to establish three things: firstly, who ordered the "savage charges, from all sides and

without leaving exit routes in Piazza Municipio, with 40,000 persons present"; secondly, who ordered the rounding up of injured persons and those accompanying them in hospitals to bring them, "still bleeding", into barracks; and thirdly, who ordered the detention for over six hours of people who were being violently abused and insulted "not allowing lawyers, doctors and politicians to know where they were held, thus preventing them from checking their conditions".

Il Sole 24 Ore, 5.5.02; Carlo Gubitosa, "Arresti a Napoli: la parola ai poliziotti"; www.ilnuovo.it 26.4.02; Slai Cobas Napoli - statement 27.4.02 *Rete No Global* statement 27.4.02, www.noglobal.org; *L'Unita* 27.4.02; *Repubblica* 26-27.4.02.

UK

Retention of body samples "necessary in a democratic society"

The Queen's Bench Divisional Court has ruled that police are not prevented by Article 8 of the European Convention of Human Rights from keeping the fingerprints and DNA samples of suspects who are subsequently cleared of committing any offence. The controversial ruling, in late March, tested police powers introduced under last year's Criminal Justice and Police Act. The government's genetic watchdog, the Human Genetics Commission, has expressed concern about allowing the police to keep samples from suspects in criminal cases if they are found to be innocent.

Lawyers acting for a youth (identified as "S") and a Sheffield man, Michael Marper, brought the case after police refused to destroy the samples provided by them. "S" was 11 when he was charged with attempted robbery and his fingerprints and DNA samples were taken in January 2001. He was acquitted in June and South Yorkshire police were asked to destroy his fingerprints after they had fulfilled the purpose for which they were taken. The police responded to his lawyers by informing them that they would be retained "to aid criminal investigation." The case against Marper, who had no previous convictions, was discontinued by the Crown Prosecution Service after charges were not pressed against him. In June the police refused a request for his samples to be destroyed.

Mr Justice Levensen said that he was "unconvinced" that Article 8 was engaged and argued that retention "was in accordance with the law" as amended by Section 82 of the Criminal Justice and Police Act 2001. Furthermore, the "interference" (ie. the retention of an innocent citizen's body samples) was "necessary in a democratic society for the prevention of disorder and crime." Levensen's decision was criticised by Helena Kennedy QC, the chairwoman of the Human Genetics Commission who warned of creating an underclass of potential offenders "who were constantly under suspicion, even though they had never been convicted." A spokesperson for *Liberty* described the decision as disappointing - "...it must be wrong in principle to collect DNA samples from innocent people." The government plans to hold 3.5 million DNA samples within three years.

Guardian 23.3.02; *Times* 4.4.02

West Mercia police accused of obstructing inquest

On the eve of the inquest into the death of Jason McGowan West Mercia police have been accused of covering-up vital information by the McGowan family. Jason McGowan was one of two related black men found hanging within months of each

other in Telford, Shropshire. Jason had been investigating his uncle Errol's hanging, which his family believe was carried by a racist gang, when he also was found hanged on New Year's Day 2000 (see *Statewatch* vol 10 no 1).

Last July an inquest into Errol's death concluded that he had been driven to take his own life as a result of a sustained campaign of racist harassment (see *Statewatch* vol 11 no 3/4). Now, confronting their second inquest within a year, family members have complained that West Mercia police have failed to publish an allegedly highly critical report by Scotland Yard's racial and violent crime unit into their investigation into Jason's death. They may be forced into seeking a judicial review, delaying the inquest.

A year ago, after the McGowan family had lodged a complaint with the Police Complaints Authority, about the attitude of the police, Peter Hampson, the chief constable of West Mercia constabulary, apologised to the families of Errol and Jason McGowan over his force's handling of the investigations into their deaths. Their actions led to the appointment of John Grieve, head of Scotland Yard's race and violent crimes task force, to carry out a new investigation. It is this report that is alleged to contain serious criticisms of the West Mercia investigations and which the force is refusing to release to the family.

The racial and violent crimes unit report, details of which have been leaked to the *Guardian* newspaper, made "more than 10 criticisms and recommendations" about the West Mercia investigation. Among these the force was accused of failing to gather CCTV footage from near the crime scene, failing to rapidly follow up witnesses, were too slow in pursuing Jason's mobile phone records and carried out a desultory attempt to appeal for information about the events leading up to the death. The West Mercia force has since attempted to distance itself from the report, leading to a rift between them and the task force. An informed source told the *Guardian*: "West Mercia assumed it was suicide and their errors followed from that. Their initial assumptions set them on the wrong track for the investigation." Family solicitor, Imran Khan, added: "They are not releasing the review because they are embarrassed by the contents."

The McGowan family have complained that the West Mercia force is refusing to make the report available to their representatives for the inquest. The family's spokesman, Suresh Grover, has stressed that "this document is absolutely necessary to us", adding "it has vital information". West Mercia police, on the other hand, argue that the review is "privileged" and that its "contents are not relevant to the matter to be decided at the inquest." They say that "It is the force's view that if the family or their legal representatives want access to any material, they should make an application to the coroner." However, Deborah Coles of the campaigning group Inquest, said: "Documents remain the property of the investigated force. They own that investigation and it's up to them to disclose [it]."

After the racist murder of Stephen Lawrence, the MacPherson Report into his death recommended that:

That there should be advance disclosure of evidence and documents as of right to parties who have leave from a coroner to appear at an inquest (Recommendation 42)

The Stephen Lawrence Inquiry, Report of an Inquiry by Sir William MacPherson of Cluny (CM 4262-1)

Campaign wins new investigation into death

Deputy Assistant John Grieve, the head of the Metropolitan police racial and violent crimes unit, has acceded to demands for a new inquiry into the death of a young black man, Shaun Rodney, who was found dead in Ilford city centre on 27 June

2001. An inquest, that was scheduled to take place in March, was referred back after the coroner raised questions about the conduct of the police investigation. The Rodney family had, for some months, called for a new team to carry out the inquiry, before taking their case to Grieve. The family believe that racial prejudice was behind the flawed investigation.

Grieve has now agreed with Shaun's family that there were "serious shortcomings" in the investigation of a death, about which many unanswered questions remain. Police reached the wrong conclusion that he had killed himself, and as a result the cause of his death has never been thoroughly investigated. The second investigation will be carried out under Detective Chief Inspector Magnus Gudmundsson and will look at the initial police inquiry, the events preceding Shaun's death and other issues raised by the family.

The Justice for Shaun Rodney Campaign can be contacted through Zaineb Kemsley on 0208 555 8151; Justice for Shaun Rodney Campaign press release 5.3.02; Independent 29.3.02.

Social centre raided

A squatted social centre, modelled on areas for social, cultural and entertainment activities that are widespread in Italy, was raided by police in Stoke Newington on 13 April. The operation against the "Radical Dairy" took place at 8am, when between 30 and 40 police officers (some in riot gear) drawn from seven vans blocked off the street and entered the premises. The alleged reason for the raid were two warrants: one issued under the Misuse of Drugs Act, and the other by the London Electricity Board (LEB). For over an hour police searched and filmed the premises, eventually leaving after seizing two computers without providing a receipt for the property. Police claimed that the computers were seized in order to prove that electricity was being used to secure a prosecution.

However, as with raids on Indymedia in Italy, extensive internet surveillance of activist websites (www.nodo50.org) and mailing lists by Spanish state agencies (see *Statewatch* news online February and March 2002), and threats and raids suffered by activists hosting websites (www.ourmayday.org.uk) concerning the "Mayday Festival of Alternatives" in the UK (see *Statewatch* news online March 2002) indicate, police forces increasingly view IT facilities as useful sources to get information about activists' contacts and activities.

In relation to the Misuse of Drugs Act, no arrests were made for drugs and occupants of the Radical Dairy claim that a notice at the entrance of the centre showed that contacts with LEB had been taking place, proving their intention to pay any bills and that an account was being set up. Nonetheless the road outside the centre was dug up and the electricity supply cut off. Occupants claim that they have been aware of monitoring by the police Forward Intelligence Team (FIT), and neighbours claimed that police asked them if they could place a camera in their house to monitor the centre opposite. Neighbours came out in support of the occupants, claiming that it was a "clear political intelligence operation" and an "openly political raid", and stressed, "the people here have been nothing but good for the local community".

The Radical Dairy has operated as a social centre for over three months, running a number of activities including English lessons for non-speakers, drama and singing workshops, DJ workshops for children, Shiatsu massages and political discussions. The centre has a library and participated in campaigns against the deportation of No-Border activist Nico Sguiglia from Spain (see *Statewatch* vol 12 no 1) and against the sell-off of public property by Hackney Council. In response to an article in a national newspaper that ominously referred to the Radical Dairy as a "North London safe-house", occupants stress

that it is in fact an "open house" in which "people can come together to raise the standard and quality of life in their communities by themselves".

Radical Dairy press statement, 13.4.02; Hackney Gazette 18.4.02

Policing - in brief

■ **UK: Duwayne Brooks to sue police:** Duwayne Brooks, the best friend of racist murder victim Stephen Lawrence who was stabbed to death in south-east London in 1993, has won a court case to sue the Metropolitan police for negligence. Duwayne, who was with Stephen on the night he was murdered, alleges that police officers breached the Race Relations Act and will sue the police commissioner and 13 officers for wrongful arrest and negligence. The action follows a series of legal battles and the latest ruling by three appeal judges reinstates claims that were struck out by a judge at the Central London County Court in 1999. Duwayne, who suffered from post-traumatic stress syndrome after the murder, says that police officers did not treat him as the victim of an attack but as a suspect: "The police treated me like a suspect not a victim...The only way the police are going to improve their behaviour is when they are held responsible and have to account for themselves in court." A Police Federation spokesman expressed "disappointment" at the decision, while a Scotland Yard spokesperson said that the force is considering appealing against it to the House of Lords. A fortnight earlier the current Metropolitan commissioner, John Stevens, launched a scathing attack on the criminal justice system for failing the victims of crime - it would appear that his arguments were not meant to apply to cases such as that of Duwayne Brooks. *Guardian 27.3.02.*

■ **UK: Murrell murder to be reviewed.** At the beginning of April it was announced that the unsolved murder of Hilda Murrell, a 78-year old peace campaigner whose tortured body was found dumped in woodland six miles from her home in March 1984, is to be re-examined by West Mercia police. The "cold-case review" does not have any new leads but will re-examine forensic evidence and other lines of inquiry. The initial police investigation was based on the premise that she was killed by a burglar in a robbery that went wrong. However this was questioned by her nephew, a former Royal Navy intelligence officer, who claimed that she had been killed by organisations close to the nuclear industry to prevent the presentation of a paper exposing flaws in the design of pressurised water reactors. The argument gained credence when it was discovered that unmonitored private security companies had been hired to spy on protestors at the Sizewell nuclear plant. This story was denounced by the Labour MP, Tam Dalyell, in 1984 who argued that she had been killed by British intelligence personnel who were looking for documents connected to the sinking of the *Belgrano* during the Malvinas (Falklands) war. West Mercia police have said that they are not expecting any quick results.

Policing - new material

Deaths in police custody: Deaths of members of the public during or following police contact, Police Leadership and Powers Unit. *Home Office circular 16.3.02.* This circular advises chief police officers of the government's attempts to change the definition of deaths in custody. The United Families and Friends Campaign have described the report as "...a political exercise intended to obscure the gravity and extent of these deaths."

A Fair stop, Ravi Chand. *Police Review 5.4.02.* pp.22-23. Chand, the president of the National Black Police Association, warns that the "random use of [police] stop and search" will only create further distrust and resentment among the large number of law abiding people from the black and other communities who find themselves being stopped frequently.

RACISM & FASCISM

UK

Klan man jailed

A former "grand dragon" of the Ku Klux Klan (KKK) in Wales, Allan Beshella, was jailed for three months at the beginning of March after being found guilty of racially harassing Muslim shopkeeper, Mohammed Nawaz. Within days of the 11 September attacks, Beshella threatened Mr. Nawaz, questioning him about his religious beliefs at his shop in the south Wales town of Maesteg. He then attempted to intimidate him, saying that he "was the Klan man" before adding, "kill the Jews". Beshella returned to the shop a fortnight later with a friend and made further threats. The men refused to pay for alcohol they had taken and a shop assistant was told: "You've got a pretty face. I'm going to mess it up." Beshella has served half of his sentence on remand, and is likely to be released with a few weeks. While Beshella has been sentenced to three months in prison - Mr Nawaz has been forced to move fearful for his family's safety. The London-born Beshella joined the Ku Klux Klan while he was resident in California, before fleeing to the UK thirteen years ago, after being convicted in 1972 in Los Angeles for molesting children. While in the USA he had been a leader of the defunct Invisible Empire, Knights of the Ku Klux Klan. Back in Wales Beshella's home became a focus of activity for the Rhondda Valley skins, who ran a campaign of terror against local residents, particularly if they were black or had left/liberal political views. Although Beshella and his followers were active in Wales - his convicted colleagues were held responsible for a wave of racism inside Parc Prison by the Prison's Inspector.

Racism & fascism - in brief

■ **UK: Chinese monitoring group launched.** In April the first Chinese monitoring and campaigning group, *Min Quan*, was launched at an event attended by 150 invited guests, in London. The guests heard keynote talks by the civil rights lawyer, Imran Khan and from the only recognised Chinese actor in the UK, David Yip. The meeting also heard from Chinese victims and their families who have suffered from racist attacks and murders. The group will be chaired by Bobby Chan, who has been active in Chinatown, Soho, for 25 years. The *Min Quan* website can be accessed at: www.tmg.co.uk/minquan

■ **UK: Sarfraz Najeib launches civil proceedings:** Sarfraz Najeib, the young Asian student who was brutally beaten by a racist gang has taken out a civil action against Leeds United footballer, Lee Bowyer. Bowyer was found not guilty of grievous bodily harm at Hull Crown Court in December. The judge ordered him to pay costs, exceeding £1 million, because he had lied to the police about his role. The Najeib family have said that they will launch similar claims against Jonathan Woodgate and two other men convicted for their roles in the attack. Also in April the *Daily Mirror* newspaper appeared in court to explain why they published an article, on 8 April last year, which caused the collapse of the first trial of the Leeds United players and their friends. The Attorney General prosecuted the tabloid after it ignored the instructions of Sarfraz's father and published an interview with him, in which he contradicted the judge's ruling that there was no racist motivation for the attack. They ran the story while the jury was deliberating. The paper was fined £75,000 and costs of £130,000. *Guardian 20.4.02.*

The “war on freedom & democracy” - an update

Spanish Presidency initiative links “terrorism” and protests, Germany government proposes EU-wide “profile searches” and the European Commission puts forward plans for EU border police with full powers

Exchanging information on terrorists or protestors?

The Spanish Presidency of the EU seems to be determined to get through its controversial proposal to introduce "a standard form for exchanging information on incidents caused by violent radical groups with terrorist links" (see *Statewatch*, vol 12 no 1).

The proposal now runs to six drafts. The subject of the first two draft proposals referred to "violent radical groups with terrorist links". This was changed in the third draft to "exchanging information on terrorists". However, the content and intent did not change.

The first two drafts

The initial proposal explicitly said - despite previous assurances - that the EU definition of terrorism includes:

violence and criminal damage orchestrated by radical extremists groups, clearly terrorising society, to which the Union has reacted by including such acts in Article 1 of the Framework Decision on combating terrorism

Article 1 of the first two drafts said - in a clear reference to Gothenburg and Genoa last summer - information should be exchanged on:

incidents caused by 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 EU Presidency said in explanation that these "incidents" are:

the work of a loose network, hiding behind various social fronts, by which we mean organisations taking advantage of their lawful status to aid and abet the achievements of terrorist groups' aims

Basic intentions clear

The proposal has run into some opposition in the Council's Working Party on Terrorism from the Netherlands and a minority of member state governments. This explains the change in the title of the drafts and the dropping of the overt references to protest groups given above. However, the following observations are required:

1. The same Working Party has already agreed on a standard form to exchange data on real terrorists (see below). So why is this measure necessary?

2. All the subsequent drafts, including the latest one (dated 13 May) refer to:

i) "terrorist organisations [achieving] their criminal aims at large international events". But there have been **no** terrorist attacks at EU Summits or other international meetings held in the EU. The only problem, for governments, at EU Summits and meetings like the G8 in Genoa has come from protests.

ii) "terrorist organisations for the purpose of achieving their own destabilisation and propaganda aims" at EU Summits and international events. This is plainly ludicrous, no real terrorist group would stand outside the G8 Summit and hand out leaflets for "propaganda" purposes.

3. The information on individuals is to be exchanged through

the "BDL Network", the security communications network used by the internal security agencies (like MI5) in the EU. No data protection provisions are set out, nor is any mechanism set out for accountability.

4. The Spanish Presidency, because it is running out of time (Denmark takes over from 1 July), has changed the basis of the measure from a Framework Decision under Article 34.2.c. of the Treaty on European Union (TEU) (which requires the European and national parliaments to be consulted) to an intergovernmental "Recommendation" (which the 15 EU governments can agree without consulting anyone).

Despite the change in language - and a reference to Article 6 of the TEU on liberties and fundamental rights - the intent of the measures remains the same as set out in the first draft, to bracket protestors with terrorists.

The four later drafts

The grudging change in the language used is evident. In the third and fourth drafts there were references to:

a gradual increase, coinciding with various EU summits and other events, in violence caused by uncontrollable elements from other countries, a fact which has clearly caused society great concern

This is a clear reference to protests and protestors.

Through all the drafts there is an extraordinary logic. On the one hand the measure is obviously concerned with protests at EU Summits and other international meetings, on the other it refers to the definition of terrorism set out in Article 1 (which confirms fears that Article 1.iii.e. could embrace protests and trade union activity, see below), and on yet another hand it refers to Article 6 of the TEU guaranteeing fundamental rights.

The definition of terrorism in the Framework Decision covers actions which "may seriously damage a country or international organisation" where the aim is to: "unduly compel a Government or international organisation to perform or abstain from performing any act" (Article 1.ii, which covers just about every EU-wide protest). These factors need to be taken together with Article 1.iii.e. which says it covers actions:

causing extensive destruction to a government 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

led to the concern of civil society groups that the definition is intended to embrace protests (and other democratic activity) along with terrorism.

On 9 April the fifth draft stated that:

the Netherlands delegation backed by some other delegations considered the description of individuals concerned by the decision is too vague

The Netherlands government, and some others, wanted a reference to the names and organisations formally listed as terrorist groups and individuals whose funds are to be frozen (given in the 27 December Common Position and subsequently updated) - if this proposal had carried the day at least protests and protestors would have been excluded, but the majority of EU governments did not agree and the latest draft (13 May) makes no reference to those formally listed as "terrorist".

The latest version says: "to enable a rapid adoption of the

text the Presidency presents the present instrument that has the legal form of a Draft Council Recommendation" - which effectively by-passes parliamentary scrutiny.

The preamble of the "Recommendation" says that there:

might be a risk that terrorist organisations will use larger international events for carrying out terrorist offences as defined in Article 1 of the Framework Decision on combating terrorism

The preamble goes on to refer to acts carried out by "various loose networks of terrorists" and the "need for analysis and proactive monitoring".

This is followed by five Recommendations. The first refers to exchanging information against "terrorists" who seek to achieve their criminal aims at large international events". The second says the standard form should be used "to exchange such information as is considered necessary or desirable" in accordance with national laws (which differ from state to state). The third says "care" should be taken that the information exchanged "concerns individuals with a police record in connection with terrorism as defined in the framework decision on combating terrorism". The fourth says that information should refer to "members of actual organised groups run by terrorist organisations for the purpose of achieving their own destabilisation and propaganda aims" and must not relate to people exercising their rights as set out in Article 6 of the TEU. The fifth and final Recommendation says member states should "use the BDL network for the exchange of data" (that is, the national internal security agencies). Attached to the "Recommendation" is a form called: "Template for exchanging information regarding terrorists" including "passport number", "violent acts" and "scars" and provides space for the inclusion of a photo and fingerprints.

UK Home Office Minister:

"No major policy implications":

The proposal was first sent to the UK parliament for scrutiny on 11 April (which was then in the form of a Framework Decision) and the version deposited was the fourth revision of the first draft (REV 4). It was accompanied by an "Explanatory Memorandum" from the Home Office Minister, Mr Bob Ainsworth, in which he says that there were no major policy implications as far as the government was concerned and that it was scheduled for agreement at the Justice and Home Affairs Council on 25-26 April - clearly hoping the committee would "nod" it through.

The House of Commons European Scrutiny Committee was not impressed either by the Minister's reasons for not depositing earlier (the first draft was dated 29 January):

This has been a fluid proposal subject to numerous and frequent amendment. The latest version of the document is the first to offer any kind of stability

nor by his conclusion that there were "no major policy implications". Their report says:

We are pleased that this document was not, in the event, on the agenda of last week's JHA Council, since we have not had enough information to assess it properly. It is surprising to learn that it is a "revised version of the proposal", both because it is the first version we have seen and because it does not appear to be very well thought through

The Committee says it shares the concern of the Netherlands government and asks: what is to prevent the form being used for "persons who exercise their constitutional rights set out in Article 6 TEU". The House of Commons, and the House of Lords Select Committee on the EU, maintained their scrutiny reserve on the measure until further information is forthcoming.

Standard form already agreed?

What is extraordinary about the Presidency proposal is that the same working party agreed on a standard form to exchange information on terrorism in a series of meetings last year. On 17

September 2001 the working party agreed that, after the attacks in the USA, there should be the "rapid exchange of information on terrorist attacks". A standard form was agreed which was to be sent through the BDL network.

The discussions in the working party on the standard form largely took place before 11 September and were clearly concerned with real "terrorism" and not protests and protestors. Indeed one of the key discussions in the working party was whether or not to explicitly refer to "Terrorist bombings or attempted bombings" or simply to any "bombing or attempted bombing" (which would automatically be assumed to be "terrorist"). There were six versions of the report and in an unpublished (REV 4) report this issue is clearly confronted by a number of EU member states who want the proposal clearly limited to "Terrorist bombings or attempted bombings" - the final version adopted this view.

Six categories of terrorist activity are listed as qualifying for inclusion provided they met one of two criteria where the incident is of international significance: "either because the target (person or building etc) is foreign (eg an embassy) or because the claim emanates from a foreign group" or that the "incident is serious where there are a large number of victims or significant damage".

In addition, under the Action Plan on Terrorism" (point 27) there is the: "Systematic transmission to Europol of any piece of data relevant to terrorism" which covers not just terrorist incidents but all ongoing intelligence data. Also under the Action Plan EU member states have seconded internal security agency officers to Europol to handle this role.

Conclusion

There is little doubt that the majority of EU governments are happy with the proposal and are well aware that the target spelt out in the first draft - covering "radical extremists groups [and] violent urban youthful radicalism" - has been maintained in the latest draft.

Sneaking the measure through as a "Recommendation" will allow those governments that want to use it - especially Spain and Italy - the cloak of "legitimacy".

Sources: EU documents: 5712/02, 5712/1/02 REV 1, 5712/2/02 REV 2, 5712/3/02 REV 3, 5712/4/02 REV 4, 5712/5/02 REV 5; 27th report of the House of Commons European Scrutiny Committee, 14.5.02.

EU-wide "profile searches"

The demands in the short one-page document presented by the German Presidency on 24 October 2001 are one by one coming onto the "security" agenda of the EU. The latest to surface is a proposal, again from the German delegation, for the introduction of "European-wide computerised profile searches".

In a report sent to the EU's Article 36 Committee (high-level officials from Home/Interior Ministries) the German delegation developed this proposal in March. It argues that "security authorities" need "effective tools to combat international terrorism" such as computerised profile searches on an EU-wide basis.

The searches enable the automated comparison of "personal data carried out by the police". The initial phase, the report says, involves:

prominent individual features of known trouble-makers or perpetrators

to be identified on the basis of:

personal characteristics or typical behaviour, and are combined to build up an overall picture (the "profile")

In the next phase "selected data kept by public and private bodies" (for example, from employers, telephone, electricity and

gas suppliers and residents' registration authorities) is "compared" to the "characteristics" identified.

In the final phase the list of people is comprised of: "a small number of persons remain who meet all the search criteria" and these "will then be subject to a thorough police examination in order to establish whether they are perpetrators or persons posing a threat to public safety".

The report says computerised profile searches can be used: i) to "avert dangers" or ii) for "criminal prosecution purposes". The latter clearly strays beyond combating "terrorism".

The German report says that in Germany the search criteria have to be authorised by a judge and that there are limitations on how the data can be used and deletion deadlines.

The proposal begs the question: how does "profiling" actually work in Germany?

Profiling (*Rasterfahndung*) in Germany?

Rasterfahndung (profiling) was first used in Germany in the seventies when the police (especially the BKA) were searching for people involved in the RAF (Red Army Faction). The most famous in this period was the profile search operation "Energy programme" in 1980, which gives a good idea of how the method works. The purpose of the operation was based on the assumption that RAF people were living in illegality and trying to avoid all possible contacts with public authorities and all written contracts that would allow them to be traced. So first the police obtained client data from local energy providers. From this mass of information they excluded those people who paid their bill with a permanent remittance order and data where payer and user were the same. They checked the remaining people against the car register and excluded those who had registered a car. Thus the number of people became smaller and smaller. The remainder were checked by conventional methods, that is by police visits to homes, by asking neighbours or employers etc. Although the searches were extensive the results were small. In only one case is it claimed that the police detained an RAF man (Willy Peter Stoll) as a result of a massive profile search operation. There was never any public discussion on the balance on the costs and results of the operation.

While in the seventies the *Rasterfahndung* was carried out without any legal basis, the method was incorporated into the police codes of the Länder and into the criminal procedural code, which is federal. This followed the decision of the constitutional court on the census in December 1983 which declared that there was a concept of privacy and that every intervention into this right must have a legal basis and that the grounds must be stated. Thus the legislation was passed in the second half of the eighties when the *Ratsrefahndung* itself did not play any major role. The operations were costly, labour intensive and, experience had shown, that they were not really efficient.

Now the criminal procedure allows the method in case of certain serious crimes. Most Länder police codes allow the method in cases where there is a serious present danger for the life, the integrity or liberty of a person or threatens a Land or the federation.

There are limits on how the results of profile searches can be used in most Lande, the data protection commissioner has a right to check the process and in some Lande people are informed by letter that they have been checked (and can then asked for information on the data held on them).

The profile searches that started in September 2001 right across Germany were based on the police codes. The objective was to get hold of "sleepers", unknown supporters of "Al Qaeda". The court orders for the searches were quite extraordinary. The Berlin court declared on 20 September that for the existence of a serious "present" danger the factor of time was not decisive (that is, the "present" threat did not have to be proved).

The court then issued a series of criteria for the data that

public authorities and private enterprises had to hand over to the police. The description looks like the formula for every well-behaved "foreigner": Islamic religion but no visible fundamentalist orientation, no criminal or police record on normal crimes, financially independent, no children, studies in technical professions, much travelled etc. The day after the same court reduced the criteria to only two: most probably of the Islamic religion and most probably originating from one of 17 Islamic or Arabic countries (including France, ie: French Maghreb people). On this basis the police of each land compiled about twenty thousand hits which were then reduced (A special BKA data base at the beginning of the year contained more than 19,000 people, 11,000 of whom were from the North Rhine-Westphalia land).

On 15 January the Berlin Landgericht (land court) and the Wiesbaden Landgericht (for Hessen) stopped the searches in those two Länder due to a court action by immigrant students who said there was no present danger - referring simply to the declaration of the Government who had said on a number of occasions that attacks like those in the USA were not probable in Germany. The Wiesbaden court went on to say, that the police investigated people belonging to fundamentalist organisations, but had not detected any terrorist networks. Other Länder however authorised massive searches based simply on the criteria that the people concerned were not Germans (eg: North Rhine-Westphalia).

In general profile searches are carried out where the police have no suspicion or evidence against a group of people, they are in effect a method to construct or create a suspicion - being directed against people who are clearly not suspected of having committed a crime. The only "suspicion" against them is that they have the same profile as the police think the real authors of a crime or the real trouble makers may have. Even those who are directly checked by the police are not suspected in a legal sense.

Moreover, the grounds for the mass profile searches carried out after 11 September in Germany are clearly racist.

Conclusion

The proposal by Germany for the introduction of European-wide computerised profile searches would lead to the invasion of privacy of hundreds of thousands (maybe millions) of people not suspected of any offence. Moreover there is no guarantee whatsoever that the restrictions on the use of data and the rights of people to be informed that they have been placed under surveillance operating in some German Lande would be replicated at the EU level.

Sources: EU documents: 13176/01, 24.10.01; 6403/02, 8.3.02; CILIP, Berlin.

EU border management police to be launched

On 7 May the European Commission produced a Communication entitled: "Towards integrated management of the external borders of the Member States of the EU". The Communication follows the instruction to bring forward a proposal by the European Council (the 15 EU governments) meeting in Laeken on 14-15 December.

The speed and urgency proposed by the Commission is due to a long-standing distrust of the border controls ability of the countries applying to join the EU and the post 11 September direction of the EU which puts "security" above all else:

The European Union's external borders are.. a place where a common security identity is asserted

While the "Conclusions" of the Laeken Summit spoke of tackling "terrorism, illegal immigration and the traffic in human beings" the Commission's Communication adds national security, police and public order investigations and surveillance, and customs checks - in effect all the elements affecting internal security. It argues that checks at external borders ("first pillar": which comes under Title IV of the Treaty establishing the European Community) and "arrests.. or the challenging of a person threatening public order" (under the "third pillar", Title VI of the Treaty on the European Union) should both be seen as one process. For example:

In everyday action, it may happen that the services controlling the external borders must carry out both tasks simultaneously: checking entry to the territory begins always with checking passports and visas.. however the check on entry may lead to a task with a policing or judicial nature, if it appears that the person is wanted or poses a security threat

and:

a formalised process of exchanging and processing data and information between authorities operating at external borders and those operating within the area of freedom of movement

The core proposals are for:

1. The creation of an "External borders practitioners common unit" which will put into effect the many short and medium term measures including joint multinational teams.

2. The introduction of a "security procedure" called "PROSECUR" based on "direct links and exchanges" of "data and information between authorities concerned with security at external borders". PROSECUR would have access to the Schengen Information System (SIS), "privileged links with Europol", access to the new database being created on visas and its own "encrypted Intranet".

Within the framework of PROSECUR the "compartmentalism" of different services could be overcome, for example:

a request could also be generated for a service to send another service the information and documents needed for the full treatment of an offence or threat observed at the external border

and:

the intelligence services of a Member State should be able to supply all border guard services and consulates of the Member States without delay with sufficiently relevant and precise information to enable them to exercise target surveillance of certain types of individuals, of objects, of geographical origin or modes of transport for a given period

The PROSECUR information exchange system would comprise:

"- the SIS [Schengen Information System] used to consult information on the occasion of checks at external borders;

- the various electronic data banks being developed (e.g. network of visas issued and refused) to consult the information made available by other authorities;

- the channels for exchange of information relating to prevention of drug trafficking;

- an encrypted Intranet connecting national contact points to exchange information interactively or to consult on very precise measures to be taken within a very short time with regard to a person crossing the external border;

- the traditional means of telecommunication (telephone or radio), passing through national contact points if necessary."

The Commission concludes that "in the long term" these powers "should be formalised through a legal instrument".

3. Identifying "risks": in addition to access to EU databases the Commission proposes that the border guards should have access to various means of "technological surveillance" including "digitised biometric data", "remote sensing techniques for

external border surveillance" and the use of the EU's *Galileo* satellite radio-navigation system which will bring a "new dimension" of "surveillance at the external borders" (*Galileo* is due to be operational from 2008).

This would be aided by the creation of "permitted crossing points on land external borders" and a surveillance system "between crossing points".

4. In the short-term national border authorities would receive "the support of a European Corps of Border Guards" exercising "real surveillance functions at the external borders by joint multinational teams" (emphasis in original).

Long term: the creation of a European Corps of Border Guards (no longer controlled and accountable at the national level) with a:

permanent headquarters staff structure charged with its operational command, the management of its personnel and equipment

The Commission proposes doing as much as possible at the operational level without having to amend the EU treaties. It lists 12 measures establishing the whole system: "without amending the Treaties". Only the formal establishment of the European Corps of Border Police is thought to require Treaty change and this is largely because it would:

consist of staff having the full prerogatives of public authority needed to perform [their] functions, irrespective of their nationality and their place of deployment

The coercive powers to be given to the Border Police would include the following:

- *check the identity papers, travel documents and visas of persons crossing the external border legally or illegally;*

- *question aliens on the reasons for their stay in the common area of freedom of movement, or on the reasons why they have crossed the external border outside the official crossing points;*

- *go on board a civilian ship or boat in the territorial waters of a Member State to question the captain as to his route and to verify the passengers' identity;*

- *notify a person that he is admitted or refused entry to the common area of freedom of movement;*

- *apprehend a person and hand him over to the competent national authorities to take the appropriate preventive or enforcement measures (administrative, police, customs or judicial) where necessary.*

The Commission's proposal:

1. makes scant reference to the protection and rights of asylum-seekers

2. makes no mention of data protection or other human rights obligations

3. does not put forward any rules governing the practices of the External borders practitioners common unit - which it says can be set up without any changes to EU Treaties

4. does not propose any rules or data protection measures for the PROSECUR information exchange system - which it says can be set up without any changes to EU Treaties

5. makes no proposals for the democratic scrutiny of the operations of either the common unit or PROSECUR

The Commission's proposal follows a now familiar, but quite unacceptable, post 11 September characteristic: peoples' rights and protection, rules and procedures, accountability and democratic scrutiny are cast aside in the interests of "internal security".

Equally worrying is the prospect that the coercive powers proposed for the European Corps of Border Police may be a precursor for an equally unaccountable European Police Force in the future.

Towards integrated management of the external borders of the Member States of the European Union, Communication from the European Commission, COM (2002) 233 final, 7.5.02.

Racist justice = No justice

Marcus Omofuma was killed during his deportation en route from Austria to Nigeria, at the trial of the three police officers charged Marcus was declared to have "joint guilt" in his own death. In "The Trial of Marcus Omofuma" Chibo Onyeji writes of an analogous situation:

"The defense argued that the policemen who battered Rodney King were endangered by him and that Rodney King's conquered body, which was shown by the video as it was "being brutally beaten, repeatedly, and without visible resistance" was, in fact, the source of this endangerment"

On 1 May 1999, the asylum seeker Marcus Omofuma was killed during his forceful deportation from Austria to Nigeria via Sofia on a Balkan aeroplane after police bound and gagged him. In two international expert medical reports, the cause of death was determined to be suffocation as a consequence of gagging. On 4 March, the trial against three officers of Austria's Foreigner's Police began in the district court of Korneuburg on grounds of "torture of a prisoner resulting in death". The proceedings however, seem to have confused the victim with the perpetrators, as the gagging of the Nigerian man by three police officers was portrayed as self-defence, a position which was supported and finally partially accepted by the court. On 15 May, presiding judge Alexander Fiala sentenced the officers to eight months on probation. He justified the sentence, which is pending appeal, by declaring the "joint guilt" of Marcus in his own death.

The Rodney King syndrome

The use of racist stereotyping to justify the killing of black men is not new in the history of European and American judicial handling of killings of black people by white officials. In his book about the trial, ("The Trial of Marcus Omofuma"), Chibo Onyeji writes that:

One of the remarkable events in the celebrated Rodney King case in the United States of America in 1991 was the logic of the defence attorneys for the police. The defense argued that the policemen who battered Rodney King were endangered by him and that Rodney King's conquered body, which was shown by the video as it was "being brutally beaten, repeatedly, and without visible resistance" was, in fact, the source of this endangerment. The remarkable thing about this logic is not that it could be constructed at all but that it passed muster enough to lead to the acquittal of the police officers

A similar logic was applied in the Omofuma trial. The first days of the trial were characterised by denials of responsibility and the reversal of the roles of the victim and the perpetrator. Everytime mention was made of Marcus Omofuma, he was described as aggressive, screaming, resisting officials and making "animal noises". Josef B., one of the accused officers, admitted that when asked by a witness for the grounds of the deportation, he replied Omofuma was a criminal and drugs dealer, so as not to have to explain the details of the asylum process.

The events leading up to the death

The picture of a violent Omofuma and helpless officials acting in self-defence becomes even more bizarre when considering the facts of the case as presented in court by witnesses. The officers not only taped Omofuma's mouth, but his whole body. Officers started binding him in the car on the way to the aeroplane and carried him into the aircraft, where the binding process continued. The upper body as well as the head were bound on the seat with tape, according to witnesses, so tightly that his ribcage was severely restricted and breathing made almost impossible. A Dutch witness stated in court that one officer sitting behind Omofuma even pressed his foot against the back of Omofuma's seat in order to pull the tape as tightly as possible around his chest. Omofuma, it was stated, was sweating profusely. Another witness confirmed that when Omofuma started kicking the seat in front of

him in panic, the person sitting in front of him, an employee of Balkan Air, got up and gave Omofuma blow to the head. Another witness watched an officer binding the tape ten to twenty times around his head. When the victim then started to blow air through his nose with extreme force, the officer started shouting at him "Shut up", the witness then heard further blows to Omofuma's body. Half an hour later, he was dead. Officers, who were asked by concerned passengers to check his health when he stopped moving, claimed after checking his pulse that "he's alive".

The events following the death

Just as scandalous as the death of Marcus Omofuma was the official response that followed. When the plane landed in Bulgaria and officers removed the tape to get him out of the aeroplanes and saw that he showed no signs of life, they summoned the airport emergency doctor, who pronounced him dead. Although the first official reaction made public in Austria, was one of "shock", the authorities built a wall of silence around the circumstances of the death. It took weeks before the responsible officers were suspended from duty. The medical evaluation of Omofuma's death by the internationally renowned Bulgarian pathologist Professor Stojcho Radanov, which said that cause of death was suffocation, was first discredited by the Austrian newspaper *Kronen Zeitung*. This was followed by attempts by the Interior Ministry to influence the pathologist's findings. When this failed, a second evaluation was initiated in Austria, carried out by Professor Reiter, who suggested that a weak heart might have caused of death.

When Omofuma's mother, his brother and brother-in-law arrived in Vienna, the official reaction by the Interior Ministry was to force them to take a DNA saliva test to prove their identity, not to offer condolences. Whilst the court ordered a third independent medical examination, the three officers were allowed to resume duty on full pay. In May 2001, Prof. Bernd Brinkmann's medical examination came to the conclusion that Marcus Omofuma died of suffocation and concluded that "it was a slow death, a struggle which lasted from 20 to 30 minutes. Even an hour is possible and cannot be ruled out"

After growing outrage against the official handling of the death and many demonstrations, Austrian police initiated the infamous "Operation Spring", where around one hundred black African migrants were arrested under charges of drugs dealing. The string of trials which followed, and which led to many severe prison sentences, were all based on evidence from one witness, whose identity remained anonymous. The deaths however, continued: one year after Omofuma's death, Richard Ibekwe died in unexplained circumstances whilst in juvenile custody and during a police raid, Imre B. was shot dead by police. On 3 August 2001, Johnson Okpara died after allegedly jumping out of the window of a police station whilst being interrogated.

The verdict: laughing whilst gagging does not prove intent

The court found it proven that on the 1 May 1999, Marcus Omofuma was subjected to the following treatment at the hands of the three policemen: his mouth was taped, his jaw was fixed in

place prohibiting vertical movement, his head was fixed to the head rest, his chest was taped to the seat back from elbow to shoulder, that in the area of his chest he was also bound for a short time with Velcro fastener and that he was subjected to two or three further blows with adhesive parcel tape when he moaned. All possibilities to articulate himself were prevented. As a consequence, Marcus Omofuma slowly suffocated to death over a period of at least 30 minutes to one hour. On this point the court relied on the expert testimony of Professor Brinkmann (<http://www.8ung.at/gutachten>).

The decision, pending appeal, of the District Court of Korneuburg under the chairmanship of Judge Fiala reads "Guilty of causing death by negligence under particularly dangerous circumstances. Sentence: eight months on probation"

Thus the court accepted that the objective facts of the case led to the conclusion that the prisoner had been tortured but that the necessary intention on the part of the officers had not been shown. Intention of this nature had not been demonstrated by the Public Prosecutor, who had relied on *Dolus Eventualis* (that is, toleration of circumstances which would logically lead to death), nor was it possible to say that there had been enough evidence during the trial itself. The testimony of one witness who stated that an officer had laughed while taping the prisoner was not in itself sufficient to prove intent.

The court could therefore not determine any aggravating circumstances. The long duration of the situation was balanced by the danger involved. Mitigating factors were the irreproachable lifestyle of the accused, their previously good reputation, their contribution to ascertaining the truth, the length of the proceedings, the fact that the accused were not the only ones responsible but also those "who stand above them". Marcus

Omofuma could also be said to have a share of the blame in that he offered resistance to the officers carrying out their executive duties.

The choice of the legal basis for this sentence, that is negligent behaviour leading to death, is argued by campaigners to be a political choice. The court rejected the accusations under paragraph 312 of the Austrian Criminal Code (torture or failure of duty towards a prisoner) on grounds of no intent. However, even without intent, section 2 of paragraph 312 holds that officers also have to be punished when severe negligence leads to the damage of the health or the physical and psychological development of the person the officer is responsible for. The difference in the application of this paragraph however, is that in the case of death, there is a minimum sentence of one year. There is, however, no minimum sentence for the lesser offence of death by negligence.

This sentence is in line with the court's logic throughout the trial. Presiding Judge Fiala thought that the deceased Omofuma was carrying "joint guilt in the events", because he resisted against a legally enforced deportation order. This, together with the defence lawyer for the police, Harald Ofner, arguing that "if Omofuma had survived the flight, he would have been prosecuted for resisting officials and for bodily harm", sums up the trial. One commentator said that Ofner's comment should not to be seen as cynicism, but that it reflected the reality.

Website on the trial: http://no-racism.net/racismkills/index_en.htm; for more information you can contact: Für eine Welt ohne Rassismus, c/o Schottengasse 3a/1/59, A-1010 Wien, e-mail: fewor@no-racism.net; See also www.noborder.org for information on the trial in English language.

NORTHERN IRELAND

Inside Castlereagh: Files stolen from Special Branch HQ

Shortly after 10.00pm on 17 March, three people entered Special Branch headquarters, overpowered the only police officer on duty in "Room 220" and left some 20-30 minutes later with a number of files and documents, and possibly computerised information. The incident happened at the notorious Castlereagh police complex which is not only home of the 800-strong Special Branch and the interrogation centre (closed in December 1999), but also housed the British Army's Joint Support Group (JSG), formerly called the Force Research Unit (FRU). It has long been assumed that Castlereagh was one of the most secure police stations on these islands.

This is not the first time there has been a raid on offices belonging to the security services and in apparently secure compounds. In January 1990 the office used by the inquiry team investigating alleged collusion between the security forces, including FRU, Special Branch and loyalist paramilitaries, under Sir John Stevens, was burnt down. The office was within a police base at Carrickfergus, Co Antrim and contained documents and statements linked to the murder of solicitor Pat Finucane. Unlike the current incident, the Carrickfergus fire received no publicity at the time, even though it was reported in 1998 that Stevens thought the RUC investigation of the fire was "a travesty and a disgrace" (Sunday Telegraph 29 March 1998). It was strongly suspected that the fire was arson perpetrated by a CME (covert method of entry) unit of FRU (Sunday Times, 21.11.99).

The Castlereagh raid was a huge embarrassment for Chief Constable Sir Ronnie Flanagan, who retired in March, himself a former head of Special Branch, and comes on top of sharp public

criticism from Nuala O'Loan, the Police Ombudsman, of both Special Branch and Flanagan for their handling of the investigation of the "Real IRA" bombing of Omagh in August 1998 which killed 29 people and injured 200.

Room 220 is the main reception point for incoming calls from Special Branch informers. It is known as such because "220" was the telephone extension of the reception point where duty officers verify callers' code names and route information to their Special Branch handlers. It is believed that Room 220 had been relocated to temporary accommodation shortly before the raid. The intruders were able to bluff their way into the complex and to penetrate highly sensitive and secure areas of the complex. Clearly they knew where the new room was and had sufficient knowledge of Castlereagh security systems to move about the complex and escape with relative ease. Apparently there are no video tapes of the incident from the numerous surveillance cameras which cover the complex.

Official sources have released very little information about the raid although unofficial briefings to journalists have provided a multitude of contradictory scenarios, all of which have effectively taken the focus off Special Branch, the Intelligence Services and associated special units such as JSG. PSNI's two press releases to date (mid-April) amounted to less than 250 words in total. It has acknowledged that the duty officer was assaulted and incapacitated and that "some documentation is missing". Detective Chief Superintendent Phil Wright, the head of criminal investigation for the Belfast metropolitan area, is leading the criminal investigation into the raid. PSNI has also set

up "a high level team" to assess "the possible impact" of the missing information. It may be that this team was responsible for initiating a series of aggressive police raids and the arrests of nine people on 31 March and 4 April.

Three days after the break-in, Northern Ireland Secretary of State John Reid announced in the House of Commons a "review to proceed in parallel with the criminal investigation" to be conducted by Sir John Chilcot with the assistance of Colin Smith. In his statement, Reid repeatedly referred to the incident as "a breach of national security" and in the brief debate which followed, claimed that it was "hugely important for the peace process that we get to the bottom of what went on". (Hansard 20 March col. 309) Reid acknowledged that there was *prima facie* evidence that the intruders had "inside knowledge". Trimble linked the raid directly to "the very significant demoralisation among present and particularly former members of the police" and asked for reassurances that "the capacity of the police with regard to special branch is increased".

Sir John Chilcot and Sir Colin Smith

The choice of Chilcot and Smith is significant. Chilcot, a graduate from Cambridge, was, until his retirement in 1997, a 'career' civil servant. In the early 1980s he worked as an adviser to William Whitelaw. In February 1987 he became Deputy Under Secretary of State in charge of the Home Office Police Department succeeding Mr Partridge. He took over the Department only a matter of months into the so-called Stalker/Taylor affair. Stalker was suspended from duty in May 1986 and removed from heading up the Northern Ireland inquiry into the deaths of six men at the hands of the RUC's HMSUs (See *Statewatch* vol. 5 no. 3). The principal allegation against him was that during the 1970s and 1980s he "associated with Kevin Taylor and known criminals in a manner likely to bring discredit upon the Greater Manchester Police". Taylor had been extensively investigated by the police during the previous eighteen months. Many informed observers considered that there was a high-level conspiracy to get rid of Stalker but the official line has always been that there was a coincidence of two parallel sets of events in Northern Ireland and Manchester. There has never been any public inquiry to establish the truth of these two versions of events.

In September 1986 Taylor began a series of legal actions in an attempt to find out why he was being investigated. Through one of his companies, Taylor brought a summons against James Anderton, the Chief Constable of the Greater Manchester police, and a number of his officers on the charge of conspiracy to pervert the course of justice. Anderton and his fellow officers sought to have the summonses quashed. The hearing, in front of Lord Justice May and Mr Justice Nolan, took place in the same month as Chilcot was appointed to the Police Department. They found in favour of the police.

In July 1987 Taylor took another action this time seeking a judicial review of a Judge's decision in relation to the granting of Access Orders to his bank accounts. This injunction also failed. In September 1987 Taylor was arrested on a conspiracy charge to defraud one of his banks. A successful conviction would show that there was ample evidence to remove Stalker, while his friend was being investigated. Taylor went for trial in October 1989. To the considerable embarrassment of the authorities, the case against him collapsed after the police admitted committing perjury and losing important documents.

Stalker was highly critical of the role of the Special Branch in Northern Ireland and described it as 'a force-within-a-force'. Patten, some thirteen years later, also described it in exactly the same way. Thus notwithstanding Stalker's interim report and Sampson's final report, neither of which were ever published, little appeared to have changed in the RUC.

During the time Chilcot was in the Police Department, the

Sunday Times (22 October, 2000) alleges that he was asked by Michael Palmer, a senior partner in a London law firm, to intervene in a police inquiry into a series of frauds involving one of his clients and from which the police suspected Palmer had benefited. The article alleges that Chilcot took the 'most unusual' step of raising the matter with Her Majesty's Inspector of Constabulary. The inquiry was subsequently dropped. However, it was reopened four years later and resulted in the conviction of Palmer, who had been best man at Chilcot's wedding.

In October 1990 Chilcot was appointed Permanent Under-Secretary of State to the Northern Ireland Office (NIO) and was heavily involved in the Major government's secret talks with the IRA in the early 1990s. His time at the NIO coincided with the widespread allegations of collusion between the security forces and loyalist groups.

In 1993 he travelled to San Francisco to appear as the first witness for the British Government in its attempt to extradite the Maze escaper Jimmy Smyth (*Statewatch* vol 3 no 5). He was asked sixteen times by Karen Snell, Smyth's lawyer, about the contents of the Stalker/Sampson reports into whether the security forces were guilty of shooting to kill suspects. But he refused to answer.

In 1997 Mo Mowlan asked him to investigate a number of leaks over the Drumcree issue which were then highly damaging to the Secretary of State. Once again his report was never made public.

He retired from the NIO in the same year and now works part-time for the Cabinet Office as a 'staff counsellor' for the Security and Intelligence Services. But he appears to be a key resource to draw upon when some aspect of the secret service needs investigating. In 2000 Jack Straw appointed him to carry out a review of existing arrangements of Special Operations 14 (SO14) - the Department responsible for overseeing the 189 royal body guards, costing some £30 million a year. It was later reported in the Daily Telegraph that Sir David Spedding, the head of the Secret Intelligence Service, has been asked to implement his report. Chilcot is also on a number of important bodies including the Lord Chancellor's Advisory Council on Public Records, the Institute of Contemporary British History, and the Police Foundation.

Sir Colin Smith was Chief Constable of Thames Valley police before joining Her Majesty's Inspector of Constabulary in 1991. Appointments to the HMIC are made by the Crown on the recommendation of the Secretary of State. There is no open public competition for the posts. Traditionally, all appointments were drawn from the senior ranks of the police, but since 1993 there have been some non-police officers appointed. Sir Ronnie Flanagan, on his retirement, was the most recent appointment to be made to the HMIC, notwithstanding the Police Ombudsman's criticisms of his judgement as "flawed". The Chief Inspector of the HMIC is the most powerful official in British policing after the Head of the Police Department in the Home Office. The role of the HMIC is to examine and improve the efficiency of the police service. It also has a responsibility for making sure that any recommendations made following an inquiry, such as the Stalker/Sampson inquiry, would be fully implemented. Each of Her Majesty's Inspectors is responsible for a number of police forces. Since his appointment in 1991 Smith has had responsibility for the RUC for at least seven years.

Chilcot and Smith's terms of reference are to establish a) how unauthorised access was gained to Castlereagh, b) the extent of any damage caused to national security, c) the adequacy of action subsequently taken to mitigate any such damage and to prevent unauthorised access there and in similar buildings elsewhere, and d) any wider lessons to be learnt. The Chilcot/Smith review will report directly to Reid who is already cautioning that "it is not easy to get answers in Northern Ireland" and that "no one can guarantee anything in Northern Ireland".

The prospects of the report being published are remote. The government has yet to acknowledge the existence of FRU or similar units and Reid himself when at the Defence Ministry refused to answer parliamentary questions on FRU. The last parliamentary question on FRU (13 December 1999) drew the response that the "Force Intelligence Unit" (!) provides "analytical and security advice to assist the RUC in defeating terrorism".

Arrests

At 7.00 am on 30 March armed members of the PSNI forcibly entered the building in which the Pat Finucane Centre is based (The Pat Finucane Centre runs a major website on Northern Ireland policing controversies and can be found at www.serve.com/pfc/). The purpose allegedly was to search the offices of Tar Abhaile, on the floor above the PFC. A private flat on the ground floor was also entered. PFC, when they arrived at work at 9.00 am, were denied access to their office. They contacted two members of the management committee who were also denied access to the building on the grounds that they were "likely to interfere with the search". Later that day it emerged that the offices of Cúnamh, a victims support group which has helped numerous families of those killed or wounded on Bloody Sunday, were also raided and personal and confidential information relating to the families were taken. Other raids were carried out in Belfast leading to the arrest of four men and one woman. One of those arrested was a civilian worker from a loyalist estate in East Belfast. A West Belfast Sinn Féin MLA member immediately condemned the arrests and raids as "ridiculous" and "highly" provocative. There were more arrests on 4 April and PSNI have threatened further raids.

Eight of the nine people detained were subsequently released. One man from the New Lodge area of Belfast was subsequently charged with possessing documents containing information which could be useful to terrorists planning or carry out an act of violence, contrary to the Terrorism Act 2000. For a couple of weeks, no details were given about the documents and police sources briefed that they were not linked to the Castlereagh break-in. This changed when unofficial police briefings said that the documents contained an "IRA hitlist" of Tory politicians (even though one such politician subsequently spent a day wandering around Crossmaglen in order to prove that there were "no no-go areas in the UK".) Following the arrests, a story began to circulate that an American man who previously worked in Castlereagh as a chef had republican connections. He had moved from the US to Belfast several years ago. Initially, he worked in a Belfast restaurant and then was employed as a chef in Antrim Road Police station before moving to the Castlereagh police complex. He returned to the US sometime before the raid and PSNI detectives have travelled to the United States to interview him. According to the Irish Times (10 April 2002) "senior police sources are now following one line of inquiry only and that is one of IRA involvement". Police reportedly told Trimble that the IRA was responsible within 24 hours of the break-in (Irish Times, 10.4.02).

Police demoralisation?

The Castlereagh burglary and subsequent police raids come at a time when great attention is being paid to police reform. On 5 April, the first batch of 44 PSNI trainees, including 13 women, recruited under the 50/50 Protestant/Catholic requirements of the Police Act, graduated from their initial training. On the same day, the new police uniforms and badge were introduced. In the government's eyes, much of the credibility of the re-branding of the RUC rests on attracting Catholics into the PSNI so that the conservative target of the Patten Report can be met. Patten presented a detailed model of RUC downsizing and new recruitment, designed to achieve a 30% Catholic PSNI by 2011.

A private consortium of companies including Deloitte & Touche, Pearn Kandola, AV Browne and BMI Health Services, operating under the name of Consensia, began advertising for new police recruits in February 2001. It has spent over £540,000 on advertising and claims to have received 20,000 requests for application forms, 40% of which have been returned as applications. The selection process takes about five months. Applicants are first of all screened for age and nationality requirements before going through a series of selection tests, including medical, physical competence and firearms handling tests. Those who get through all these tests join a pool of "qualified candidates" and it is from this pool that the 50/50 recruitment takes place. Initially, much publicity was given to the level of interest from Catholics, but the crucial issue is how many Catholics make it to the qualified candidate pool. This is what determines whether the Patten targets can be met or not. In the first recruitment round, 550 applicants made it to the pool (less than 7% of applicants) of whom 154 (or 28%) were described as Catholics. 33% of the total were women. These 154 "Catholics" were joined by 154 Protestants to become trainee police officers. The total of 308 for the first round is in fact 17% below the Patten model of 370 new recruits each year. Of the 47 who began training in November, one was transferred due to injury and two were expelled on disciplinary grounds. This suggests a trainee drop-out rate of 6 per cent.

The second round of recruitment attracted 4,700 applicants, but 1,200 of these were repeats from the first round. 14% of the applications were from people living outside of Northern Ireland, more than three-quarters of whom are said to be "Catholics". This suggests that up to 40% of the "Catholics" who make it to the qualified candidate pool are from outside of Northern Ireland. Although Consensia collects post code information from candidates, it has not revealed what proportion of the qualified candidate pool are Catholics from Northern Ireland or indeed if the recruitment exercise is succeeding in getting significant and proportionate numbers from republican communities into the pool.

Recruitment is one side of the coin. Downsizing is the other. In the past few months, there have been increasing claims that police numbers are falling to "dangerously" low levels. This tends to be associated with the police role in North Belfast where on-street conflict has been a daily feature since loyalists began barring school children and their parents from walking to Holy Cross primary school in September 2001. £26m has been added to the police budget since last August, ostensibly to police North Belfast. Reports of the violence typically begin with the numbers of police officers injured - the Police Federation says that over 800 officers have been injured in the last six months. Certainly, rates of absenteeism through injury and/or sickness have risen substantially in the period since the 1994 ceasefires and there is some anecdotal evidence from the insurance industry and elsewhere that many claims are exaggerated, if not bogus. This is linked in some officers' eyes to the police reform process and the loss of the primary objective of counter-terrorism. For instance, one officer has claimed that,

The morale in this organisation is lower now than it was during the worst days of the Troubles, absolutely rock bottom. Then everyone was completely dedicated in trying to create circumstances in which it was more difficult for terrorists. You had a goal, you had something to work towards. I was slightly injured myself in a bomb attack some years back and I didn't take a day's sick then. The next day I was back at work because I was still able to walk and talk and I didn't want to put any further pressure on my colleagues. That's all changed now. If someone threw a stone at me now I'd take six months on the sick." (Ulster Gazette, 8 November 2001)

Police sickness rates have reached very high levels in Northern Ireland. In 1992, the average days absence through sickness per year per officer was 14 days (almost three working weeks). This

rose to 22 days in 2000 and the current figure is 24 (the figure in Britain is around 12). A "sickness management policy" was introduced for the first time in December 2000 which included a provision barring people from promotion if their sickness level exceeded 14 days per year (the legitimacy of which was recently upheld in a judicial review case, then overturned by the Appeal Court). The management target is to bring the figure down from 24 to 16 days.

On the day the RUC changed its name to PSNI there were 7,173 regular police officers and 2,279 in the full-time reserve - a total of 9,452. These were supplemented by 1,032 part-time reservists. The uniformed officers were supported by a total of 3,465 other staff. As of 6 March, the number of regular PSNI officers had fallen to 7,091 (not including full- and part-time reservists) compared to the Patten target for 2002 of 7,215, but this will be supplemented before the end of the year by the 308 new recruits. Patten projected 2,106 leavers in year one of police reform (the year 2001): the actual number of leavers was 1,069 regulars and 129 full-time reservists. The police continue to be supported by 14,500 troops (2,000 less than in 1998).

While the idea of a numbers crisis is, therefore, less than convincing, there is evidently some division within the police service between traditionalists and modernisers. The former, with considerable political support in Ireland and Britain, seek to maximise the public order and counter terrorist roles. For example, it was revealed in January that the police continued until very recently to purchase vast quantities of plastic bullets. 22 of these were used operationally in the year 2000 while 76,320 were purchased (46,000 in 2001) (Hansard 9 Jan 2002, WA col. 878). At an estimated cost of £6.80 per bullet, this means that the RUC spent over £2.5m on plastic bullets from 1995 to 2001. Regarding counter-terrorism, it is not surprising to find that changes to Special Branch have been minimal. The second report from the Oversight Commissioner (appointed to monitor progress on the implementation of Patten) stated that no systematic plan for the reduction of Special Branch was available, the amalgamation of support units had not begun and that "documentary evidence of administrative progress on issues involving Special Branch was not available as of 1 October, 2001". About 80 out of 850 Special Branch officers are thought to have retired. The latest complaint comes from a group of officers at inspector level who say that Special Branch are taking advantage of the unusual number of vacancies at superintendent level to move their people into senior positions (Irish News 20 March 2002).

IRA or JSG?

Institutional and political tensions over police reform may provide part of the background for the Castlereagh break-in, but they do not provide an immediate explanation. From all the speculation so far, two main scenarios emerge. The first is that the IRA were responsible, although it has denied involvement. The initial police position was that Castlereagh was an "inside job": Flanagan himself said he would be "most surprised" if "paramilitaries or civilians" were responsible for the break-in (Independent 25 March 2002). However it was not long after Flanagan retired that police sources then decided that the IRA were the prime suspects. The Castlereagh documents had been taken to Derry and then across the border, so the story ran. There is no question that the IRA would have an interest in the identities of informers and their handlers, particularly since security sources have, in recent years, played up the role of a "double agent" within the IRA known as "steakknife" (or stakeknife - spellings vary). It would also relish any disruption of Special Branch. There have been reports of up to 250 Special Branch officers being told to move house and of general panic among informers. On the other hand, the house and office raids, which might in some people's minds lend credibility to the idea of IRA responsibility, seem to have been "show raids". Some reports

have pointed out that computer disks were arbitrarily selected, that children's clothes and videos were seized and that the questioning of those detained lacked purpose and seriousness. Unusually, some of the seized property was returned within days. The disinterested nature of the questioning points towards the raids having other purposes, including the planting or removing of listening devices. A Sunday Times article (14 April, 2002) claimed the removal of covert bugs was the motive behind the raids.

The police have pushed the idea that some of those detained had links with the American employed as a chef at the Castlereagh complex, and it is possible that this man was in a position to pass on Castlereagh canteen gossip to republicans. On the other hand, one detainee complained to the Irish News that he was arrested because the police had access to the American's mobile phone records which showed the American had his number. This was because he worked as a voluntary counsellor with an organisation which the American had approached for help. His only contact was over the phone - he never met the man. This account does suggest that police are prepared to carry out raids solely on the basis of telephone billing records. But none of this explains how a chef would have access to, and knowledge of, core Special Branch intelligence facilities within the Castlereagh complex. A further police briefing claimed to the BBC that they were "interested in a number of mobile phones that were being used in west Belfast in the period leading up to the break-in and on the night of the robbery itself", phones which had since gone quiet. Calls to a number of public telephone boxes in west Belfast were also reported to be part of the investigation, suggesting widespread use of telephone taps and connection data monitoring.

The second scenario is that the Castlereagh break-in was designed to remove and conceal documents in order to protect intelligence interests. This would be entirely consistent with past patterns and practice. If FRU could, as has been suggested, set fire to the Stevens Inquiry office once, it could certainly thwart the inquiry again. "Stevens 3" is poised to report, notwithstanding continuing delays caused by "on-going criminal investigations" into the murder of solicitor Pat Finucane and the recent murder of a key loyalist involved in the affair, William Stobie. When Stevens was appointed Metropolitan Police Commissioner in 1999, Hugh Orde was put in charge of the day-to-day running of the Stevens inquiry. Orde is deputy assistant commissioner in the London Metropolitan Police and was one of the detectives who investigated the Stephen Lawrence murder. He has applied for the post of PSNI Chief Constable.

Orde is reportedly waiting to interview Brigadier Gordon Kerr, currently the British military attaché in Beijing. Kerr was head of FRU at the time of the Finucane murder which involved British Army agent Brian Nelson. Stevens' first collusion inquiry netted Nelson and Kerr gave evidence at Nelson's trial in camera as "Colonel J". Kerr's evidence was that Nelson's ten year service as an agent had saved many lives.

There is little doubt that British intelligence has been fighting hard to prevent an independent public inquiry into Finucane's murder. An example of this appeared in the Dublin-based Sunday Tribune recently when the newspaper published extracts of an affidavit to the London High Court sworn by Brigadier Arundell David Leakey, Director of Military Operations in the MoD (from 1997) and in overall charge of all military operations in Northern Ireland including covert intelligence gathering and the work of Joint Support Group (formerly known as the Force Research Unit) (Sunday Tribune 14 April, 2002). The affidavit was presented as part of a court hearing held in camera in February 1998 to consider an application by MoD for an injunction to prevent the publication of Nicolas Davies' book "Ten-Thirty-Three: the inside story of Britain's secret killing machine in Northern Ireland" (Mainstream

Publishing 1999). The book, whose title comes from Brian Nelson's code number, confirms collusion between British Army intelligence units and loyalist paramilitaries at the highest level, including two attempts to assassinate Alex Maskey (Sinn Fein MLA and leader of the SF local councillors in Belfast). It also confirms what many observers strongly suspected was an official policy of withdrawing police and army patrols from areas prior to the entry of loyalist murder squads, using "restriction orders" (see for example Amnesty International's Report on Political Killings in Northern Ireland).

In the High Court challenge the MoD succeeded in getting control of the manuscript and Davies' computer, deleting around 10,000 words before allowing the heavily censored version to be published.

The Sunday Tribune story was written by Ed Moloney and Lin Solomon. Moloney is the journalist to whom UDA activist William Stobie gave details of loyalist collaboration with Special Branch and military intelligence at the time of Finucane's murder. Stobie was arrested soon after the murder but charges were dropped. He told his story to Moloney as a safeguard against further arrest. Moloney was instructed to keep the testimony secret unless Stobie found himself in court again over Finucane, which he did last year as a result of further investigations by the Stevens inquiry. Moloney released the testimony and the RUC responded by pursuing Moloney through the courts for his original notes. They were not successful on this occasion. A key witness for the new Stobie trial withdrew evidence on grounds of ill-health and the trial collapsed. Shortly after his release and call for an independent inquiry, Stobie himself was murdered (12 December 2001). Although claimed by the "Red Hand Defenders" it is widely assumed that ulterior motives of Special Branch and British intelligence are not far in the background. Shortly after Stobie's murder another senior loyalist, Ken Barrett, disappeared and is now thought to be under the protective custody of the Stevens team. Barrett is alleged to have confessed to shooting Finucane, a confession which was taped by two CID officers in 1991 but he was never charged because Special Branch intervened and subsequently "lost" the tape.

Leakey's affidavit provides direct evidence of how military intelligence views any possible inquiry into the work of Brian Nelson and the murder of Pat Finucane. It is based on a doctrine of total secrecy: "the effectiveness of the unit would be seriously damaged if the confidence of serving personnel and current agents in the complete secrecy which surrounds their operations were in any way impaired". The affidavit goes on: "the fact that Nelson pleaded guilty prevented the disclosure of large quantities of highly sensitive information in the course of the trial" [since many charges were dropped and no cross examination of witnesses occurred]. The Davies book, based on the experience of one of Nelson's former handlers, threatened to reveal what was prevented from coming out by Nelson's guilty plea. Leakey states:

the disclosure of such information would be extremely damaging to national security and to the public interest as well as to the security of Nelson and his family. it could seriously damage the confidence which agents or potential agents have or would have in the ability of the Army and the Government to protect their identity and thus their safety. (Sunday Tribune 14 April, 2002, p. 12.)

Another example of planning for cover-ups concerned the civil action threatened by the families of victims of the Dublin/Monaghan bombings of 1974 around which allegations of collusion are currently under investigation by Justice Henry Barron on behalf of the Irish government. A letter from the Treasury Solicitor dated 24 September 1999 showed that the British government considered a defence of "sovereign immunity" (Sunday Tribune 21 April 2002).

If one possibility is that the break-in was in some way concerned with damaging Stevens 3 and preventing an independent inquiry into Pat Finucane's murder, another is that

the raid was designed to remove very specific evidence concerning an informer or contact records. An intriguing report in the Sunday Tribune (24 March 2002) by Sunday Herald journalist Neil Mackay suggested the Castlereagh raid was about removing evidence of agent "Stakeknife's" existence. The immediate threat comes from disaffected agents and informers (some linked to the "mole" group) who have been seeking better treatment from the government. One of these, "Kevin Fulton" an agent planted inside the Real IRA, has threatened to name Stakeknife (an IRA member turned informer). Fulton has irritated his former handlers by alleging in the Sunday People that information supplied by himself could have prevented the Omagh bombing. It was these reports which led to O'Loan's embarrassing investigation. So a further possibility is that the break-in was designed to remove material relating to the Omagh bombing, notably concerning an alleged second informer (in addition to Fulton) who may have been part of the bomb team.

The weekend of the Castlereagh raid, rumours flew through the intelligence community that Fulton's true identity was to be revealed in the Sunday Tribune, which had told distributors that it was doubling the normal print run (because of a paedophile story, in fact). Fulton was not "outed" but the raid went ahead as a precautionary measure in any event. Mackay further alleges that Stevens has been "sniffing around" Stakeknife, to the annoyance of military intelligence.

When Stevens reports, the political case for a full-blown independent judicial inquiry into collusion between security forces and loyalists, involving targeted murders, may become irresistible. The latest attempts to stall such an inquiry - the appointment of a judge (not yet named) to look into whether or not an inquiry is merited (!), and the insulting offer of £10,000 to Geraldine Finucane (Pat Finucane's widow) - have not impressed the UN's Human Rights Committee, lawyers within Britain, Ireland and the US, and the United Nations Special Rapporteur on the Independence of Judges and Lawyers. Whatever the outcome of the Castlereagh break-in, the pressure is on Special Branch and the intelligence services.

During April and following the Castlereagh break-in, the number of unattributed, unsubstantiated stories claiming that the IRA had broken the cease fire, was re-arming (with Russian guns) and was engaged in training "narco-terrorists" in Colombia and even helping Palestinians to make crude pipe bombs, reached fever pitch. Coinciding with congressional hearings on the IRA and Colombia, commentators began to report that "leaking and spinning" from anti-Agreement, anti-police reform Special Branch and intelligence sources was getting out of hand and worrying the government. It had accelerated since Flanagan's departure and, as the Guardian and Independent speculated, appeared increasingly to be aimed at damaging Sinn Fein's election efforts in the May general election in the Irish Republic. This pattern of leak and spin has many historical precedents.

From a broader perspective, the break-in provides another incident which appears to suggest that the Special Branch and sections of the security services operate outside of the law. Notwithstanding numerous internal police inquiries - Stalker, Sampson, Stevens 1, Stevens 2, Stevens 3 - and one major external enquiry by the Ombudsman, the secret services appear to have been able to thwart all these and continue to operate as a fifth column with their own agenda within British and Irish politics. The establishment of an internal police inquiry into the raid, whose report, like all the other reports, will never be made public, will not increase the public's confidence in the police service. Similarly, the Chilcot/Smith inquiry will do little to enhance public accountability. Both men are far too closely associated with these services over many years and, if there is evidence that intelligence personnel have acted beyond the law, this is unlikely to be made public. The Labour government will no doubt continue to make sure that state secrets are never revealed. The intriguing question is why?

The activities and development of Europol: 1993-2001

by Ben Hayes

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