

## Statewatch bulletin Vol 6 no 2 March-April 1996

### **POLICING**Error! Bookmark not defined.

#### **UK**

##### **Police stop and search**

Since April 1993 all police forces are required to publish annual figures on the ethnic origin of all those stop and searched. The first year's figures, for 1993/94, show:

331,383 stop and searches of white people  
110,522 stop and searches of "ethnic" people

(covering 42 police forces in England and Wales)

The police forces where the number of people of "ethnic origin" stopped and searched was over 10% of the number of white people are:

White people "Ethnic origin"

Met(London) 132,565 95,751  
Gr Manchester 38,376 4,134  
West Midlands 4,098 1,927  
Leicestershire 10,378 1,414  
Thames Valley 3,817 615  
West Yorkshire 2,636 386  
Bedfordshire 1,381 324

The number of people of "ethnic origin" stopped and searched in London constitutes 42%; 86.6% of the total of those of "ethnic origin" in England and Wales and 21.6% of the overall total number of 441,905 stops and searches in 1993/94. Moreover, it should be noted that these figures only refer to stops and searches which are recorded and does not include those who are stopped and questioned but not searched.

##### **Police assault blinds man**

Greater Manchester police threatened to prosecute a 21-year old student, Amer Rafiq, who had his right eye removed by surgeons after being detained by police. The incident, which took place during

celebrations for Eid at the end of February, have led to demonstrations and protests at another act of racist police brutality.

Amer was stopped by police, for a minor driving offence, as he made his way to join friends for Eid - the largest Muslim festival which is similar to New Year - in Rusholme, Greater Manchester. He was dragged from his car and pushed into the back of a police van. By the time he reached the notorious Platt Lane police station he was bloody and bleeding and unable to stand.

A friend, who was arrested with him but taken to the police station separately, described what he saw when Amer arrived: "I heard his voice and looked around. I was stunned by what I saw. Two officers were having to hold him up and there was blood everywhere. He saw me and begged me to help. He was crying but instead of tears he was crying blood. They repeatedly asked his name and he could only mumble. Eventually, one of them said: "He's a goner" and he was taken away...Finally they took him off to hospital."

The assault, which shattered Amer's right eye socket and may also have affected the sight in his left eye, created outrage in the local community. A rapidly convened public meeting the following day, was attended by over 300 people, who called for an independent inquiry and the suspension of the officers involved. A demonstration the following week saw more than 2,000 people march in support of Amer and to express their anger at police brutality; Asian businesses shut-down for the day in solidarity with the protestors.

Recent developments indicate that the police may not proceed with charges against Amer - which involve allegations that he did a U-turn in his car after being told to move it by police officers -due to the 'minor nature of the allegation'. Three members of the Tactical Support Unit have been removed from operational duties pending an internal police inquiry. *Manchester Evening News* 25 & 27.2.96, 2 & 6.3.96

##### **National Crime Squad**

At the Conservative Party Conference in 1995 the Prime Minister announced that the Security Service, MI5, was to have its powers extended to "support" the police in tackling serious crime (the Security Service Bill is going through parliament to effect

this, see *Statewatch* vol 6 no 1). The other two measures planned were to give the National Criminal Intelligence Service (NCIS) operational powers and to set up a National Crime Squad (NCS) and legislation is now being drafted.

It appears that it is intended to set up both the NSC and the NCIS on a statutory basis as "corporate bodies" (ie: agencies) each under a Chief Constable with operational independence and control over resources. Each would be staffed by a seconded police officer and directly employed civilian staff. The remit of both would be regional and national within the UK and international.

Questions of funding and accountability remains to be resolved. However, the Home Office is seeking to maintain the "tripartite" structure - Home Office, the Association of Chief Police Officers (ACPO) and local police authorities - so as to pass on much of the cost to local police authorities. Accountability is being phrased in terms of an "oversight" body with members from police, government, "independent members" and an "independent" chair (appointed by the government).

In a related move the Home Office is expected to create a new Directorate called "Organised and International Crime Directorate" covering terrorism and protection, security and links to the security service (especially on tapping), policing organised crime, drugs, international police cooperation and judicial cooperation.

### **Racism and sexism ingrained**

Within days of a black policeman, Detective Constable Peter Franklin, being awarded £30,000 in damages from the Metropolitan police for racial discrimination, a report by HM Inspectorate of Constabulary found that racism and sexism is entrenched within the police force. The report, which was published in February, was based on a study of 13 police forces in the West Midlands, Greater Manchester, Bedfordshire, Devon & Cornwall, Cambridgeshire, Hertfordshire, Kent, Lincolnshire, Northumbria, North Wales, South Yorkshire, Surrey and Wiltshire.

The report, which claimed 'substantial progress in the development of systems for implementing equal opportunities', presented a picture of a racist and sexist force staffed by bigoted white males. It noted

"evidence of continuing high levels of sexist and racist banter, perhaps more covert and subtle than before" and "harassment of and discrimination against civilian staff." This behaviour was often allowed to go unchallenged by senior officers, the report added.

Statistics for England and Wales (excluding the Metropolitan police) for 1994 showed that 1.4% of police officers were from the "ethnic minorities"; the highest grade attained was chief inspector (0.1%) but none had reached the level of assistant chief constable or above. Women constituted 13.7% of all officers, with 3% at the ranks of assistant chief constable and above.

*Developing diversity in the police service: equal opportunities thematic inspection report 1995*, Home Office (HMSO) 1996.

### **Call for inquiry after record damages**

There were calls for a public inquiry into the running of Streatham police station, in south London, after the Metropolitan police paid record damages of £220,000 to one man and £64,000 to another in March. The damages were awarded to Kenneth Hsu and Terence Wingard, both of whom claimed that they had been seriously assaulted. Scotland Yard have refused to take any disciplinary action against the officers involved and have said that they will appeal against the payments.

The record damages of £220,000 were awarded to Kenneth Hsu after a jury decided that he had been wrongly arrested and assaulted by police officers. Mr Hsu was arrested in 1992 after he declined to allow the police officers, who were investigating a dispute with a tenant, into his house when they failed to produce a warrant. The court was told that he was then thrown into the back of a police van by three constables, Kenneth Watkins, Christopher Smith and Andrew Davies, where he was punched and kicked by them. Pc Watkins, the court heard, thanked him for the overtime payment he would receive and added "You're the first Chinky I've ever arrested."

Mr Hsu was later treated at Kings College hospital where he was found to have extensive bruising to his back and kidneys, cuts to his face and was passing blood in his urine. He suffered post traumatic stress disorder following the attack. The policemen alleged that Mr Hsu had caused a breach of the peace, but

had no explanation for his injuries.

Mr Hsu made a formal complaint about the racist assault to the Police Complaints Authority (PCA). A police surgeon confirmed his injuries but the PCA decided to take no action against the officers. Mr Hsu was left with no alternative but to take a civil action.

In a separate case, also involving officers from Streatham police station, Terence Winyard was awarded £64,000 in damages for assault and malicious prosecution. Mr Winyard was arrested outside his flat and violently assaulted by police officers before being charged. He was acquitted on charges of assault and possession of an offensive weapon in 1992 and then took his civil action.

Following the decisions a Scotland Yard spokeswoman said that no disciplinary action had been taken against any of the officers involved nor would any be taken. She added that an appeal would be lodged against the awards. Neither man has received an apology from the police for their conduct.

#### **[Cost of civil actions against London's police]**

The cost of civil actions taken out against the Metropolitan Police over the last 10 years has been £20 million. £8 million has been awarded in damages to people alleging police misconduct and £12 million has been paid out for police and plaintiff's legal costs. The yearly figures are:

1986	£393,000
1987	£184,000
1988	£388,000
1989	£523,000
1990	£836,000
1991	£471,000
1992	£755,000
1993	£1,589,000
1994	£1,343,000
1995	£1,560,000

Most civil actions are settled by the police agreeing to pay damages without any admission of liability. This has led to great disquiet because rarely is action taken against the police officers involved who continue to patrol London's streets. In 1994, the latest year for which figures are available, the police won outright only 24 of the 304 cases against them, but

no officers were prosecuted and only four disciplined - one was cautioned, another fined and two "given words of advice". Most civil actions concern allegations of brutality and gross misconduct.

Two more civil actions to be heard later this year follow coroners court verdicts of "unlawful killing" by inquest juries against officers involved in the death of two men they were seeking to arrest, Shiji Papite and Richard O'Brien.

*South London Press* 29.3.96, 2.4.96; *Independent* 30.3.96.

## **SPAIN**

### **Secrecy extended to police procedures**

The Spanish Cabinet, meeting on 1 March, passed a resolution empowering it to define as state secrets information relating to the anti-terrorist activities of the police and the Guardia Civil. The secrecy covers "the structure, organisation, means and operational techniques of the state security forces in combating terrorism, along with their sources, and any information or data which could disclose such matters". The files of the prison service relating to terrorism are also classified as secret.

The Data Protection Agency, an official body which protects the privacy of citizens in relation to the use of computers, requested the government to review the decision. The agency warned that adherence to the decision could seriously hinder international co-operation in the fight against terrorism since, if the government ruling covers police files on terrorist offences, Spain would be unable to exchange the data with other European police forces in the Schengen group. The secrecy accorded the files would place them beyond the authority of the agency, and the fact that individuals would have no right to see, correct or delete data was unconstitutional in that it was a restriction on rights without specific legal authority. Moreover the ruling would obstruct legal proceedings in cases related to terrorism, in that the Cabinet would be obliged to declassify information in each case before the courts. The Spanish Ombudsman has also requested information from the government about the ruling.

*Kontrola Kontrolpean*, Euskadi (Spain).

## **EUROPE**

### **Interpol strikes back**

The debate over the Europol Convention has tended to deflect attention from a new European-wide computer database which is already up and running. The Interpol system known as the Automated Search Facility (ASF) in Lyon, France currently holds 6,000 notices of wanted persons and a nominal database with more than 120,000 records. Through Interpol's London office direct links are now being set up for UK police forces to search and download information. One of the first to use ASF is the Sussex police force which covers Gatwick airport: "Tens of thousands of people flow through the airport daily, and it is a very arduous task keeping track of undesirable elements." Previously each check meant making a phone call to Interpol London, now the Lyon's database can be directly consulted.

The system currently only allows access to names and (wanted) notices but this is soon to be extended to: stolen vehicles, arts and antiques, counterfeit currency, stolen passports and identity documents, images and fingerprints. Sussex police say the new link means they are working more closely with Customs and Immigration officials. The ASF Stolen Vehicle Database is expected to grow massively through X.400 communications systems which will allow police forces throughout Europe to search and download details of stolen vehicles and to load data from each country.

### **UK linkup to FBI**

Interpol London is also setting up access for UK police forces to allow them to interrogate the National Crime Information Centre computer in Washington. The link with the NCIC database allows direct searching and automated response to the US property index, stolen vehicle identification numbers, boat hull and stolen aircraft numbers. The link can easily be extended to other databases held at the NCIC if the US Congress agrees.

*PNN Net News*, February 1996.

### **Policing - new material**

**Mythos Sicherheit. Der hilflose Schrei nach dem starken Staat.** (The security myth. The feeble cry for the strong state.), Rolf Goessner (ed), Baden-Baden, NOMOS-Verlag, 1995, pp.512, hb 68,- DM ISBN 3-

7890-396. The contributors - academics, journalists and practitioners - are concerned with questions of internal security and ask if the state itself has not become a threat to "its" citizens. Furthermore, they present alternatives to the prevailing politics of "internal security", such as reform of the police, the criminal law and prison system.

**Polizei im Zwielficht. Geraet der Apparat ausser Kontrolle?** (The police in the twilight. Does the machinery get out of control?), Rolf Goessner, Oliver Ness, Campus, April 1996, pp.260, 29,80 DM, ISBN 3-593-35469-1. Goessner is one of the best informed critics of the German police. He has written this book in cooperation with the Federal Working Group of Critical Police Officers. It is an analysis of the structure of the "police machinery", based on several case studies, which shows more and more characteristics of a secret service organisation.

**Sticks and stones at Wapping**, Paul Cotton. *Police Review* 16.2.96. pp12-13. Interesting, but disingenuous, account of the 1986-87 print workers' dispute at Wapping by a police officer who took part. Interesting because it acknowledges the arbitrary violence meted out by the police; disingenuous, because it locates all of the blame with senior officers.

**Pepper spray madness**, Lynne Wilson. *Covert Action Quarterly* 56 (Spring) 1996, pp 20-22. Examination of police use of 'non-lethal' pepper spray in the United States where it has been a contributory factor in 60 in-custody deaths.

**Nightmare on any street**, Paul Donovan. *Morning Star* 1.3.96. pp6-7. Article on the introduction of the police long handled baton and the deaths - particularly of black people - that followed it.

**What's in a word? "Community" policing in Britain, USA and Canada**, Jayne Seagrave. *Police Journal*, January 1996, pp30-40. Looks at the different concepts of "community policing".

### **Parliamentary debates**

**Policing of London** *Commons* 5.2.96. cols. 28-111

## CIVIL LIBERTIES

### GERMANY

#### Prison for insulting police and army?

The Christian Social Union (CSU) and Christian Democratic Union (CDU), the two main parties forming the ruling conservative-liberal coalition (CDU/CSU/FDP) in Germany, have made proposals which would make it illegal for anyone to describe modern-day German soldiers as "murderers". (A German court recently ruled that it was acceptable to call German soldiers "potential murderers", as long as the statement was clearly identifiable as a literary quotation). The proposed new law envisages a prison sentence of up to 3 years for anyone using the term in the future. The same is to apply for "insulting police officers in a way which is contemptuous of their humanity". Norbert Geis, spokesperson for the CSU, stated that the problem was "that we have an administration of justice at constitutional court level which gives too much preference to freedom of speech as opposed to protecting the honour of individuals".

*Tageszeitung*, 6.2.96; *Berlin Antiracist Information network*, February 1996.

#### In brief

**Schnewsreader**, Justice? ("Brighton's campaign against the Criminal Injustice Act"). This publication is a compilation of the first fifty newsletters from "Justice?," An organisation based in Brighton that was formed initially as a response to the Criminal Justice Act. As is clear from the range of subjects covered by "Schnewsreader" they have expanded their field of interests to take in everything from anti-roads protests to fighting racism. This book is useful as a both as a reference and as a primary source for many of the campaigns that have taken place in Britain. It is also a very good guide to the ideas and attitudes that motivate the new generation of street activists that has emerged in the last ten years.

#### New material

**Big brother goes high-tech**, David Banisar. *Covert Action Quarterly* 56 (Spring) 1996, pp6-10. Looks at the new technologies that promote 'a seamless web of surveillance from cradle to grave, from bankbook to bedroom.'

**Haringey Community Action** 9 (Spring) 1996. *Haringey Solidarity Group*. The latest issue of the Haringey Solidarity Group's newsletter contains pieces on the Asylum and Immigration Bill, the JJ Workers' strike and the Welling 8. Available from HSG, Box 2474, London N8.

**Contraflow** 17 (February-March) 1996. Latest issue of the free broadsheet contains pieces on the Asylum and Immigration Bill, the JJ Fast Food strike and the police killing of Wayne Douglas in south London. Available from: 56a Infoshop, 56 Crampton Street, London SE17.

**Counter Information** 45 (March-May) 1996. Round-up of activities opposing "injustice, oppression and exploitation" with a focus on Scotland. Available from: Counter Information, c/o Transmission, 28 King Street, Glasgow G1 5QP.

#### Parliamentary debates

**Private security industry Commons** 13.2.96. cols. 869-916

**Sexual orientation discrimination Bill Lords** 6.3.96. cols. 386-408

**Women (equal opportunities)** 7.3.96. *Commons* cols. 469-543

**Slavery: legacy Lords** 14.3.96. cols. 1041-1062

*The following are recent publications added to the library of Liberty, 21 Tabard Street, London SE1 4LA. Tel: 0171 403 3888. They are available for reference. Please make an appointment if you want to visit - a small charge is made to non-members.*

Adler, Joanna, **Fear in prisons: a discussion paper**. Prison Reform Trust, 1994, 8pp.

Bridges, Lee et al, **Public Law Project, The applicant's guide to judicial review**. Sweet & Maxwell, 1995.

- Brown, Adam, **Football fans and civil liberties: the case of Istanbul 1993**. Law Working Papers, Manchester Met University.
- Cartwright, Hon. Justice Sylvia, **Principles of the practice: bills of rights at work**. Talk given at Liberty's human rights convention, London, June 1995.
- Collins, Valerie, **Telephone technology and data protection**, in *Computer Law and Practice*, 11(3), 1995, p74-83, 1995, 10pp.
- Crisp, Debbie and Moxon, David, **Case Screening by The Crown Prosecution Service: How and Why Cases are Terminated**. A Home Office Research and Planning Unit Report, Home Office Research Study Note.137, HMSO, 1994, 66pp.
- Ede, Roger et al, **The magistrates' court: a guide to good practice in the preparation of cases**. Law Society, 1996, Edition 2nd.
- Gomien, Donna, **Judgements of the European court of human rights: reference charts**. Council of Europe, 1995.
- Harris, D J, O'Boyle, M, Warbrick, C, **Law of the European convention on human rights**. Butterworths, 1995.
- Harris, David and Joseph, Sarah, eds, **The International Covenant on Civil Rights and United Kingdom Law**. Clarendon Press, 1995.
- Hill, J B, **Weapons law**. Sweet & Maxwell, 1995, Edition 2nd.
- Human Rights Watch, **Human rights watch global report on women's human rights**. Human Rights Watch, 1995.
- Irish commission for prisoners overseas**, Annual report 1994/95, June 1995, 6pp.
- Janis, Mark, Kay, Richard, Bradley, Anthony, **European human rights law: texts and materials**. OUP, 1995.
- King, Stephen J, **The protection of children act 1978: a paper** 1994. On pornography and censorship.
- Law Centres Federation, **Law centre's federation response: Lord Chancellor's department consultation paper: legal aid targeting need: the future of publicly funded help in solving legal problems in England and Wales**. Law Centres Federation, September 1995, 7pp.
- Loucks, Nancy, **"Anything Goes..." the use of the "catch-all" disciplinary rule in prison service establishments : a report for the prison reform trust**. The Prison Reform Trust, 1995, 34pp.
- Marston, John, Tain, Paul, **Public order offences**. Pearson, 1995.
- Posner, Gabrielle Jan, **The teenager's guide to the law**. Cavendish 1995.
- Rose, Lance, **Netlaw: your rights in the online world-the guidebook to the changing legal frontier**. McGraw Hill, 1995.
- Sinn Fein, **Building a permanent peace: Sinn Fein submission to the international body on decommissioning**. Republican Publications, 1995, 29pp.
- Squires, Peter, Measor, Lynda, **Closed circuit TV Surveillance and crime Prevention in Brighton: half yearly report**. Health and Social Policy Research Centre University of Brighton, 1996.
- United Nations committee against torture, **Conclusions and recommendations of the committee against torture: UK of Great Britain and Northern Ireland**. UN, November 1995, 4pp.
- Walker, Clive & Stockdale, Russell, **Forensic evidence and terrorist trials in the United Kingdom**, Cambridge Law Journal 54(1), March 1995, pp69-99.

## EUROPE

## **SCHENGEN**

### **Adjusting rules for extradition**

Schengen countries are to agree new rules for the extradition of terrorists. This was the outcome of a meeting called in the Hague to settle the crisis that has arisen between Spain and Belgium following the refusal of a Belgian court to allow the extradition of two Basque separatists accused by Spain of membership of ETA.

The emergency meeting decided to adjust Article 60 which covers extradition of people suspected of terrorist activity. The main aim of the adjustments will be to harmonise the judicial basis for extraditing terrorists. Spain and Belgium have also agreed to bilateral talks aimed at sorting out the particular problem of the Basque duo.

The problems relating to extradition deepened after Spain refused to extradite an Ex-Nazi still active in far-right politics back to Germany where he was to face charges of Holocaust denial. The Spanish appeals court refused to recognise Holocaust denial as a crime in a move seen by some observers as a riposte following Spanish frustration at the Belgian court's decision.

*Gazet van Antwerpen*, 22.2.96.

### **European Court of Human Rights round-up**

Cases declared admissible include:

\* *Andronikou and Constantinou v Cyprus* (25052/94): Applicants are the family of a couple killed by security forces who were called to deal with a domestic dispute. They complain of violations of Art 2 (right to life) and Art 6 (fair trial) because they have no money to take proceedings against the security forces.

Cases referred to the Court by the Commission include:

\* *Nsona v Netherlands*: Detention and deportation of 9-year-old Zairean girl brought to the Netherlands by a relative. Commission held no violation of Art 3 (inhuman or degrading treatment) or of Art 8 (respect for family life). (Press release 498, 12.10.95)

\* *Doorson v Netherlands*: Conviction of alleged drug

dealer by use of anonymous witness statements. Commission held no violation of Art 6 (fair trial). (Press release 524, 24.10.95)

\* *Gregory v UK* (22299/93): Black youth convicted by majority after judge refused to make further inquiries into note by jury alleging racism among them, or to discharge jury. Commission held no breach of Art 6 (fair trial).

\* *Findlay v UK*: Court martial of soldier suffering from post-traumatic stress disorder. Commission found breach of Art 6 (fair trial). (Press release 634, 18.12.95)

\* *Bouchelkia v France*: double jeopardy; An Algerian national in France from age two, deported under 'urgent' procedure 1990 after conviction of rape with violence and theft; returned 1992 illegally. Commission held that his deportation did not violate Art 8 (respect for family life). (Press release 634, 18.12.95)

\* *Domenichini v Italy*: Opening and reading prisoner's correspondence, including letters to lawyers. Commission found breach of Art 8 (respect for correspondence). (Press release 634, 18.12.95)

\* *Laskey, Jaggard and Brown v UK*: Applicants convicted of consensual sado-masochistic activity. Commission found no violation of Art 8 (respect for private life). (Press release 629, 13.12.95)

Cases heard by the Court include:

\* *Somali applicants v France*: Four Somali asylum-seekers detained for three weeks in the 'international zone' of Orly airport, Paris. Commission found (15:10) no violation of Art 5 (liberty). (Migration News Sheet February 1996)

\* *Benham v UK*: Applicant denied legal aid and imprisoned for non-payment of poll tax alleges breaches of Art 5 (liberty) and Art 6 (fair trial). (Press release 589, 22.11.95)

\* *Remli v France*: At trial of Algerian-born French citizen for intentional homicide, the court refused to make official record of racist remark of a juror.

Applicant alleges breach of Art 6 (fair trial). (Press release 583, 21.11.95)

\* Saunders v UK: Ernest Saunders forced to answer questions during Department of Trade and Industry investigation under Companies Act, on pain of imprisonment. He alleges law violates Art 6 (fair trial). Independent 20.2.96

Judgments of European Court of Human Rights include:

\* Ribitsch v Austria: Ill-treatment of Applicant, a criminal suspect, on his arrest by Vienna Federal Police constituted inhuman and degrading treatment in violation of Art 3). Award of damages made. (Press release 608, 4.12.95)

\* Court ruled that power of Home Secretary to detain young persons indefinitely was in breach of Art 5 (liberty). The government will be forced to review the detention of about 230 young people from age ten to eighteen, detained 'at her Majesty's pleasure' after conviction for murder. (Independent 22.2.96)

\* Murray v UK: denial of access to lawyer for 48 hours to person held on suspicion of terrorist offences violated Art 6 (fair trial) but drawing of adverse inference from exercise of right to silence did not. (Independent 9.2.96)

\* Acquaviva v France: four-year delay which frustrated proper investigation of the killing of the Applicant's son, an alleged Corsica National Liberation Front member, was not a violation of Art 6 (fair trial), although Art 6 extended to the investigative stages of trials. (Press release 581, 21.11.95)

\* CR v UK, SW v UK: Applicants' convictions for rape of their wives did not violate Art 7 (ban on retrospective criminalisation) since development of common-law through cases had whittled away marital immunity from rape charge. (Press releases 586, 587, 22.11.95)

\* Gul v Switzerland: refusal to allow seven-year-old son of Turkish couple to join them in Switzerland did not violate Art 8 (family life). The parents were both

sick and dependent on public funds. They have a humanitarian permit to remain in Switzerland. (Migration News Sheet March 1996.)

\* The British government has paid the costs of £38,000 ordered by the European Court of Human Rights in September 1995 to be paid to the families of IRA volunteers Mairead Farrell, Dan McCann and Sean Savage when the court ruled that their shooting in Gibraltar in 1988 violated the right to life (Art 2). Independent 27.12.95

## Europe - new material

**Leben online. Von der Chipkarte bis zum Europol-Netz: Der Mensch unter staendigem Verdacht** (Life online. From the chip-card to the Europol-network: people under permanent suspicion), Beat Leuthard, Hamburg, rororo aktuell 13765, 1996, pp.224, pb 14,90 DM. The permanent day-to-day surveillance of people, from CCTV to information systems and EUROPOL.

**War markets: corporate and organised criminals in Europe**, Vincenzo Ruggiero. *Social & Legal Studies* Vol. 5, No. 1 pp5-20 1996. Uses the arms business as an example of how 'organised crime and corporate crime may act jointly.'

**Whistleblowing, fraud and the European Union.** Public Concern at Work, 1996, £10, pp42. From: Public Concern at Work, Lincoln's Inn House, 42 Kingsway, London WC2B 6EN.

**National Identity cards in the European Union: the British debate**, Adrian Beck and Kate Broadhurst. Centre for the Study of Public Order, University of Leicester, 1995, 60 pages, £4.00.

**Crime at sea: a forgotten issue in police cooperation**, Martin Gill. Centre for the Study of Public Order, University of Leicester, 1995, 36 pages, £5.00.

**EUROPOL - brave new police?** Hearing on Europol in the European Parliament organised by the Green Group on 3 July 1995. Contributions from the eight speakers and the full text of the Convention, 50 pages (A4), in German.



## Parliamentary debates

**Turkey: Human rights** *Lords* 14.2.96. cols. 669-700

**European Convention on Human Rights** *Commons* 6.3.96. cols 308-315

**European Union enlargement proposals** *Lords* 13.3.96. cols. 851-886

## MILITARY

### UK set to join European Armaments Agency

France and Germany have agreed in principle to full UK participation in the future European Armaments Agency (EAA) after a meeting in London on 11 March. Final obstacles were removed when James Arbutnot, the UK procurement minister, convinced his French and German colleagues that the British Army will buy its future light armoured fighting vehicles jointly with France and Germany (an order of 3000 vehicles). It is expected that European defence ministers will decide the final arrangements for the multilateral EAA in November. The EAA will administer co-operative armaments programs and manage the EUCLID European defence research program and common test, research and proving facilities. It would be established by the WEU Council and be responsible to the NATO European defence ministers and National Armaments Directors.

At the moment a bilateral Franco-German structure is being set up as a kind of embryo for the future EAA. It is aimed at improving interoperability and standardization of equipment used by both armies. It will assume all management of the existing common missile, helicopter, armoured fighting vehicle, satellite and drone programs of France and Germany. In the meantime EU industrial affairs commissioner Bangemann proposed to end arms-related customs duties between EU members and suggested that duties on US imports might be increased. From 1988 to 1992 EU members imported almost \$18 billion in arms from the United States while exporting less than \$1 billion to the US. Three-quarters of arms imports came from the US in that period while

intra-European trade amounted to no more than 4% of total procurement of major conventional weapons. *Jane's Defence Weekly*, 7.2.96; 28.2.96; 20.3.96; *International Herald Tribune*, 26.1.1996.

### Latvians and Estonians train for IFOR role

Nearly 200 Latvian and Estonian officers and NCO's have arrived in Denmark to begin integration training with the Danish IFOR battalion. The battalion was due to deploy in April and join US troops in the North-East sector of Bosnia. Contract soldiers known as "commanders cadres" were drawn from the three Baltic states and trained for peace-keeping duties in a former Soviet tank school near Riga from last January. The basic training was organized by UK Royal Marine Commando instructors. The troops were armed with NATO-funded specially procured Chinese Type 56 assault rifles, a version of the AK-47M Kalashnikov that the commanders' cadres had previously used in the Soviet forces.

*Jane's Defence Weekly*, 7.2.1996

### Founder of Belgian Gladio Dies

Baron Fernand Leplage, the founder of the Belgian section of the clandestine Gladio network, died on 16 February. After playing an apparently distinguished role as a spy for the Allies in the Second World War, Leplage was heavily involved in the development of the post-war Belgian and European security system, in particular through his participation in Gladio.

Formed shortly after the end of World War Two, the Gladio network was originally designed to act as a "stay-behind" guerilla force that was to be activated in the event of either revolution or a Warsaw Pact invasion. However, Gladio soon went beyond its original remit becoming a vehicle to counteract general "subversion".

In the case of Belgium this led to links between elements in the Belgian secret police and the neo-Nazi Westland-New Post organisation. These links resulted in a series of robberies and murders, during the mid-1980s, carried out by the so-called "Nijvel Gang" using weapons that originally belonged to the Belgian police.

Leplage's involvement with Gladio did not hinder his later career as he went on to become the chairman of the "Raad Van State", or Belgian

supreme court. According to the "Gazet van Antwerpen" Leplage's funeral was conducted "in the strictest intimacy".

### **Military - new material**

**The Scott inquiry: financing the arms trade**, Steve Dorril. *Lobster* (Dorril) 30 1996, pp3-12. This piece examines the role of organisations - International Military Services, Defence Exports Services Organisation, British Overseas Trade Board and the Overseas Projects Board - and individuals involved in the sale of defence equipment to Iraq.

**Campaigner's guide to the internal repression trade**. *Peace News* March 1996, pp7-10. Useful pull-out feature on the "technology of repression" that focuses on the Covert Operations and Procurement Exhibitions (COPEX) and the intimidatory tactics they use to prevent publicity of their mercenary trade.

**NATO Expansion: Flirting with Disaster**. *Defense Monitor*, Center for Defense Information - Washington DC, November/December 1995.

**Implementing Dayton: Arms Control and intelligence in former Yugoslavia**. BASIC Papers No. 15. 11.3.1996. Analysing Confidence- and Security-Building Measures and US and NATO intelligence operations in Bosnia.

**Tomorrow, a Eurobomb?** *Bulletin of the Atomic Scientists* 1996/1. Proponents of Franco-German talks about nuclear weapons assert that the result will not be co-possession by Germany but a 'nuclear consultative body' similar to NATO's Nuclear Planning Group.

**Spain's view of Maghreb as NATO's southern flank**. *International Defense Review* 1/1996. Support of NATO intelligence and AWACS continues to be vital for Spain in military confrontation with its southern neighbours. However the US has never agreed to undertake the defence of the North African Ceuta and Mellila enclaves who remain Spanish responsibilities.

**NATO Multinational Airmobile Division**. *RAIDS*

no 52, March 1996. Exercise "Cold Grouse" in Denmark marked the operational debut of NATO's multinational air-mobile division as a European rapid intervention force.

**Security in numbers on the OSCE network**. *Jane's Defence Weekly*, 24.1.1996. The expanding 45-nation OSCE computer network could support NATO's Partnership for Peace.

**All change for France: how the big shake-out will shape-up**. *Jane's Defence Weekly*, 15.3.1996. Under the new army system abolishing conscription France will be capable of deploying up to 60.000 troops abroad instead of just 10.000 at present, due to a ban on assigning conscripts to foreign combat duty.

**Die Bundeswehr in Auslands-Einsatz** [Foreign deployment of the Bundeswehr]. *Wehrtechnik* nos 2 & 3, 1996. Description of the role of the new headquarters (Fhringszentrum) of the Bundeswehr and the German land forces in the German foreign military deployments.

**Die Krisenreaktionskrfte der Bundeswehr** [The crisis intervention forces of the Bundeswehr]. *Europische Sicherheit* no 3, 1996. Overview of the units.

**Die Zukunft im Lufttransport** [The future of military airlifts]. *Europische Sicherheit*, no 3, 1996. Crisis situations in Somalia, Ruanda and Yugoslavia have shown the growing importance and the limits of military airlift capabilities.

**NATO's Future: Problems, Threats and US Interests**. Hearings before the Subcommittee on European Affairs of the Committee on Foreign Relations United States Senate. April 27 and May 3, 1996

**The challenges facing the European defence-related industry, a contribution for action at European level**. Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions. No date [received February 1996].

**Framework for Cooperation in the Mediterranean.** Report AM 259 of the Sub-Committee on the Mediterranean Basin of the North Atlantic Assembly. October 1995.

Draft Interim Report AM 311 of the Sub-Committee on the **Proliferation of Military Technology of the North Atlantic Assembly.** October 1995.

**Landmines and Mine Clearance Technologies.** Special Report AM 314 of the North Atlantic Assembly. October 1995.

**The European Union and the United States: Political Aspects of the New Transatlantic Agendas of December 1995.** CRS Report for Congress, January 24, 1996.

**Organising Security in Europe - political aspects.** Document 1509 of the Political Committee of the Assembly of the Western European Union. 26 January 1996.

**Organizing security in Europe - defence aspects.** Document 1510 of the Defence Committee of the Assembly of the Western European Union. 8 February 1996.

**Einsatz in Bosnien** (Deployment in Bosnia), Kritische Europa Information (ed), Vienna, July 1995, pp.31. The deployment of Austrian soldiers in Bosnia has been decided without almost any debate in Austria. This is a critical account of the (future) role of the Austrian army in the light of its deployment in Bosnia.

### **Parliamentary debates**

**Chemical Weapons Bill** *Lords* 30.1.96. cols. 1364-1382

**Reserve Forces Bill** *Lords* 30.1.96. cols. CWH 99-138

**Scott Inquiry** *Lords* 15.2.96. cols. 723-740

**Scott Report** *Commons* 15.2.96. cols. 1139-1163

**Chetwynd barracks, Chilwell** *Commons* 5.3.96. cols. 251-258

**Mr Paul Grecian** *Commons* 7.3.96. cols. 544-550

## **RACISM & FASCISM**

### **UK**

#### **BNP campaign against mosques**

The British National Party (BNP) has stepped up its racist 'Rights for Whites' campaign in the run-up to a general election. They have targeted a proposal to build a mosque on disused land in Beckton in south Newham, east London, and have leafleted local residents urging them to attend a local consultative meeting to oppose the mosque.

The anonymous leaflet contained a farrago of lies and outright racist propaganda and suggested that the mosque will dominate the neighbourhood. It produced a plan of the mosque despite the fact that building plans are at an early stage and the local authority has yet to receive an application for planning permission. The BNPs intention is clearly to whip-up a racist fervour in order to gain support in the forthcoming elections.

Their leafleting campaign was accompanied by the usual intimidatory tactics and have led to complaints by residents who were threatened outside a local school. At a Consultative Committee meeting, packed with fascist supporters, BNP members tape recorded the proceedings and noted the names of those who spoke in favour of the mosque.

The Newham Monitoring Project (NMP), a local group formed after the racist killing of Akhtar Ali Baig in 1980, has launched a campaign to highlight the BNPs divisive and self-interested role in establishing a 'Rights for Whites' campaign. It has been working with the local St. Mark's Church and Community Centre and, while acknowledging that some black and white residents may have legitimate concerns about the building project, insist that any decision "has to be made on what is best for the whole community."

The BNP has also been bringing supporters from across the capital in a campaign to oppose the building of a mosque in Merton, south London. The NMP can be contacted at 382 Katherine Road, Forest Gate, London E7 8NW. Tel. 0181 555 8151. *CARF* no 31 (April/May) 1996

### **SPAIN**

#### **1995 report on racism**

SOS-Racismo has published a report on racist incidents throughout the Spanish State in 1995. The report takes a broad view of the phenomenon of racism and covers 250 cases of people who suffered some form of aggression or injury on account of their immigrant status. The report includes accounts, and specialist analysis, of the discrimination faced by Gypsies; official policy towards foreigners; violence and other abuses by the police; racist attacks by skinheads, and their links with the far right; discrimination against the immigrant population in employment and housing, and the events of last year in the Ceuta enclave (see *Statewatch*, vol 5 nos 3, 4, 5 & 6). The report, however, is by no means a comprehensive record of racist incidents over the year, since SOS-Racismo's Madrid office alone received reports of some 500 assaults and other occurrences. During 1995 recorded xenophobic attacks across the state rose by around 65%.

[Neo-nazi gang broken up]

On 15 March, 33 members of the neo-nazi Centuriones group were arrested in Barcelona. Rifles, pistols, ammunition, cudgels and other offensive weapons were seized, and gang members were charged with assaults, drug dealing and carrying out contract beatings. The group had links with the US Hell's Angels and with neo-nazi groups in several countries.

*Kontrola Kontrolpean*, Euskadi (Spain).

## **SPAIN Melilla**

### **Legionnaires raze Muslim district**

On 10 March 300 troops of the Spanish Foreign Legion, chanting "The Legion, united, will never be defeated", caused extensive damage to commercial premises in a mainly-Muslim district of the Melilla enclave, and assaulted many passers-by. The events followed the death of a legionnaire in a fight with a Muslim soldier in a disco. The legionnaires' officers, far from obstructing the reprisal, positively encouraged it and in some cases joined in. Although local and military police were present, they at no point intervened to halt the destruction. After the events the commander of the Legion and of the guard unit were placed under arrest, and the legionnaires

were confined to barracks. Hundreds of local Muslims took part in a demonstration on the following day, calling for the withdrawal of the Legion from Melilla. SOS-Racismo, moreover, called for the Legion to be disbanded.

*Kontrola Kontrolpean*, Euskadi (Spain).

### **Racism and fascism - new material**

*National Assembly Against Racism Newsletter* No.2 (Spring 1996). The NAAR was launched at a conference in east London in November 1994. Its newsletter is available from PO Box 3782, London N1 0DD.

**European address book against racism.** *United* 1996. This useful publication lists contact addresses and numbers for European anti-racist groups. 'You can use the addresses to organise international campaigns and conferences, to plan multicultural activities and meetings and to exchange progressive ideas and experiences.'

**Racial discrimination and deaths in custody.** *Inquest* 1996, pp21. Inquest is a non-governmental organisation that works with the families of those who have died in custody. This paper is their report to the United Nations Committee on the Elimination of all Forms of Racial Discrimination which expresses concern 'about the UK government's record with regard to deaths of Black and Irish people in all forms of custody.' It is available from: Inquest, Ground floor, Alexandra National House, 330 Seven Sisters Road, London N4 2PJ.

## **IMMIGRATION AND ASYLUM**

### **UK**

#### **Benefits challenge rejected**

A legal challenge to new social security rules denying benefits to asylum-seekers was rejected by the High Court on 26 March. The regulations, announced by social security minister Peter Lilley at the Tory party conference last October and in force since 5 February, remove entitlement to all benefits, including the safety-net benefit of Urgent Cases Payments, to asylum-seekers who don't apply at the

port but wait until they are in the country, and to those whose claims are rejected by the Home Office and who appeal. Zairean asylum-seeker "B", who fled Zaire after her husband was killed and she was raped by security forces, and who claimed asylum at the Home Office on the day of her arrival, joined the Joint Council for the Welfare of Immigrants (JCWI) in a judicial review of the regulations on the grounds that denial of benefits would force asylum-seekers to give up appeal rights and leave the country, and would violate the Geneva Convention on Refugees.

The court upheld the minister's argument that the rules, which were designed to save public funds, did not have to comply with the UK's international obligations under the refugee Convention, which was not part of domestic law. It ruled that the effect of the regulations would be merely to 'remove an incentive' to appeal.

Asylum-seekers who have arrived and claimed in-country since 5 February, or who have been refused asylum since then, have no money whatever for food, clothes, rent, medicines, fares or anything else. In addition, those without children and not in priority need so as to qualify for homeless persons housing are now being given blankets and told to sleep on the streets, as night shelters have filled up. The London boroughs of Westminster and Hammersmith & Fulham withdrew their challenge to the regulations (they complained that with housing benefit withdrawn, they had to pick up the tab by virtue of their duty to house vulnerable asylum-seekers), when the government offered grants covering 80% of their lost housing benefit subsidy. But poorer boroughs like Hackney, Tower Hamlets and Newham, which house many poor asylum-seekers, have no extra funds set aside to make up the difference. The judges, recognising the importance of the issue, refused the minister's request that JCWI pay the costs of the case, and granted leave to appeal to the Court of Appeal.

*R v Secretary of State for Social Security ex parte JCWI, ex parte B*, 26.3.96.

### **Residence test attacked**

The habitual residence test introduced in 1994 to clamp down on so-called 'benefit tourists' has left penniless people who by no stretch of the imagination are benefit tourists, and has proved

expensive, unfair and unworkable, according to a hard-hitting report by the National Association of Citizens' Advice Bureaux (NACAB). The government expected fewer than 6,000 people to fall foul of the regulations each year, but almost 28,000 people, a fifth of them British, have been denied benefit in the first 18 months. The rule has had a disproportionate effect on black and Asian Britons who spend time overseas caring for elderly relatives. People held to be not 'habitually resident' include a British man of Pakistani origin who fought in the British army in the Second World War and had worked in the Yorkshire woollen mills for 31 years. *Failing the test*, NACAB, London N1 9LZ.

### **Masari: danger in Dominica**

Home Secretary Michael Howard's attempt to remove Saudi dissident Mohammed al-Masari in order to safeguard arms deals worth £20 billion with the sensitive Saudi regime was thwarted in March. Chief immigration adjudicator Judge David Pearl ruled that Dominica, an ex-colony which agreed to take Masari off British hands in exchange for increased aid, was not the safe haven portrayed by the Home Office. Its history, said the judge, illustrated political vulnerability which might make it unable to resist pressures to return Masari to Saudi Arabia. The judge was scathing about ministers' unprecedented attempt to circumvent Geneva Convention obligations to refugees for diplomatic and trade reasons. The judge ordered the Home Office to give proper consideration to Masari's asylum claim.

*Independent*, 6.3.96

### **"Safe" countries**

Kenya, Ethiopia and Tanzania were designated safe countries by Home Secretary Michael Howard at the beginning of March. They join Bulgaria, Cyprus, Ghana, India, Pakistan, Poland and Romania, designated earlier in the year. The Bill to which the designation attaches - the Asylum and Immigration Bill - is still making its way through the Lords, and the designations have no legal effect until it is in force. Of the three new countries, Kenya is severely condemned by all Britain's EU partners for the repressive measures, including torture and

extra-judicial killings of opponents, used by the dictatorial regime of Daniel Arap Moi. British companies have investments in Kenya worth several million pounds, and arms are sold there. Ethiopia's human rights record has improved since the overthrow of the Mengistu regime but minority groups such as the Amhara and the Oromo claim persecution. To coincide with the designation, visa requirements were imposed on Kenyan nationals (Tanzanians have required visas since January 1996 and Ethiopian citizens have always required visas).

*Independent*, 8.3.96; *Home Office Press release*, 4.1.96.

## EU

### Surrounded by "safe" third countries

Although the number of people who are forced to flee their homes and countries because of violations of their human rights and political persecution is on the rise world-wide fewer and fewer are gaining access to the European Union under the asylum procedures adopted. Unless asylum-seekers arrive in an EU country directly by plane from their country of origin there will almost certainly be a so-called "safe" third or host country through which they have travelled and to which they can be returned - assuming they could have found or asked for protection there.

The "safe" country of origin list attached to the UK's Asylum and Immigration Bill mirrors measures taken in other EU states, and raises the same questions over the safety of asylum-seekers returned to countries of transit. The recognition of refugees in the European Union now depends more on the route they have travelled than the reasons for their flight.

It was the "Resolution on a harmonized approach regarding host third countries" (adopted by the ministers of the European Communities responsible for immigration at their meeting in London in 1992) which introduced the concept of whether an asylum-seeker could be returned to a third country prior to the examination of the asylum claim on its merits.

In some countries (Portugal, Greece, Belgium, Finland and France) host third country cases are channelled through an accelerated procedure which often lack adequate safeguards. Some countries foresee the possibility of an appeal against the decision to return the person with or without

automatic suspensive effect. This means that there is a possibility for the asylum-seeker or their lawyer to rebut the presumption that a third country is "safe" and that it will allow access to its asylum-procedure upon return. While this appeal is being examined the asylum-seeker is allowed to remain in the country. No suspensive effect of an appeal before removal exists in Germany and Finland and removals can be implemented as soon as the travel route is established - this is what the UK now intends to adopt.

Almost all EU Member States allow for the removal to a third country without obtaining the consent of the authorities of a third country, prior to the return, that they are ready to readmit a person and grant access them to its asylum-procedure. Only the UK has specifically set out in its planned legislation that there is no obligation to consult the authorities of the third country prior to a person's return.

The criteria for determining "safe" third countries also varies among EU Member States. Only three European States have so far established lists of "safe" third countries (Germany, Finland and Switzerland). The current German list (annexed to the asylum bill) consists - besides the (former) 12 EU Member States which are considered "safe" by the Constitution - of Finland, Norway, Austria, Poland, Sweden, Switzerland and the Czech Republic. Under other legislation countries can be considered as "safe" if they have ratified the 1951 Geneva Convention on the Status of Refugees or both the 1951 Geneva Convention and the European Human Rights Convention. The minimum requirement is that, in theory, a country respects the principle of non-refoulement.

Some countries require additionally that a person has not only transited the "safe" third country, but has stayed there for a minimum period. Under Norwegian legislation the minimum is 20 days, in Belgium three months. For most EU states the concept of "safe" third countries, however, applies if only a "foot" has been set on the territory of a third country.

[sub-head]

Pending the decision on the constitutionality of Germany's "safe" third country provisions, which is expected to be taken in April, the administrative

court of Frankfurt (Oder), has - despite the fact that German legislation explicitly prohibits the suspension of return - in a summary procedure recently stopped the return of asylum-seekers to the Czech Republic and Poland. In the case of a stateless Palestinian, the court decided that a danger exists that the person concerned might not have access to an asylum-procedure in the Czech Republic and therefore be in danger of being further deported to Lebanon. The court has asked UNHCR for its position before finally deciding on the case. Contrary to this decision, the constitutional court has, in a recently published decision of 15 December 1996, rejected the appeal of an asylum-seeker against his return to the Czech Republic arguing that, in principle, protection against refoulement could be found in the Czech Republic even outside the asylum-procedure and the applicant had failed to provide reasons why this was not effective and applicable in his case.

## **BELGIUM**

### **Asylum Bill attacked**

The new Belgian Asylum Bill has come under sustained attack from judicial and civil liberties groups while passing through its committee stage. Groups as diverse as the "Orde van Advokaten", the "Centrum voor Gelijkheid van Kansen en Racismebestrijding" [Centre for Equality and against racism] and the League of Human Rights have all attacked the new legislation.

The new legislation has three areas of controversy. The first covers changes in the incarceration of asylum seekers. Until now the only people who were allowed to be locked up pending a decision on their asylum claim were people whose freedom posed a danger to public order or those whose circumstances suggested a serious need for detention. The new bill proposes to make incarceration the rule rather than the exception. At the same time the new bill would allow asylum seekers to be held indefinitely. Johan Leman, director of the Centrum voor Gelijkheid van Kansen, attacked this aspect, stating that the new bill would "allow people to be held for months if not years without having committed any crime whatsoever".

The second area involves students, stating that any foreign student without sufficient funds or dependent

on social security for more than three months would be deported. Leman pointed out that many students have temporary cashflow problems owing to bureaucratic difficulties: "it isn't fair to put them on a plane just for that reason."

A third area of controversy concerns the arrangements covering transport companies such as airlines. The changes make them responsible for insuring that anyone who comes into Belgium not only has all the necessary documents but also that the individual does not pose a threat to Belgian security or relations between Belgium and another Schengen country. The transporters will be liable for any costs if they fail to live up to these requirements. Leman points out that "this turns transport companies into an arm of the civil service".

However the minister responsible for the new Asylum Bill, Johan vande Lanotte, is not completely without supporters. The far-right Vlaams Blok has been very vocal in its support for the new legislation, with its leader Filip De Winter claiming that most of the proposals enshrined in the Asylum Bill can be found in the Blok's notorious Seventy-point programme.

### **Airlines Say New Asylum Bill "Impossible to Implement"**

New asylum legislation currently being proposed by the Belgian government has been condemned by the International Air transport Association (IATA). "The responsibilities that the minister is imposing on transporters of non-EU nationals are impossible to implement" according to a spokesperson for the IATA. The Belgian national airline Sabena has also criticised the new proposals.

Present legislation dictates that any company who transports foreigners who enter the country without proper documents is subject to a fine of up to 750,000 BF (£12,500) and must pay the costs of maintaining the individual for the time he or she is in Belgium, including the housing, healthcare and if necessary the guarding of him or her. Companies are also liable for any repatriation costs. These expenses already cost Sabena 30 million BF a year

The new draft legislation proposes that transport companies should also find out whether the people they are carrying have sufficient means to provide for themselves while in Belgium. Transporters will

furthermore be required to establish whether their passengers pose any threat to Belgian public order, or that of any other Schengen-country. Finally the companies are expected to inquire as to whether any visa held by a passenger was obtained under false pretences.

A spokeswoman for Sabena stated that these new proposals are matters that no airline could possibly carry out: "how can we possibly check whether somebody poses a danger to the state?"

The IATA has pointed out that not only are these proposals virtually impossible to implement but they also directly contradict the treaty of Chicago, signed by Belgium in 1994, which clearly states that transporters who carry out adequate checks on their passenger's travel documents should not be held responsible for their eventual detention.

## GERMANY

### "Asylum card" controversy

Reports of the owners of refugee hostel accommodation in the state of Nordrhein-Westfalen (NRW) issuing computer chip plastic cards to hostel residents have caused controversy in the national press. The cards, issued by the "Soziale Beratungs und Betreuungs-gesellschaft mbH Westfalen-Lippe" (Westfalen-Lippe Social Counselling and Care Company), have to be shown on entering and leaving the hostels and as a precondition to receiving food and other articles such as toothbrushes. According to a spokesperson for the company, the information stored on the card "only serves the protection of the asylum applicant" and "all the data stays in-house".

Data protection expert Thilo Weichert, says the storage of such data is "disturbing", particularly in the light of plans currently being considered by the Federal Interior Ministry to introduce just such an "Asylum-Card" at federal level. Under the Federal Interior Ministry asylum applicants will be required to produce a card for purposes of "identification, access and residency control", as well as for "the receipt of items and work permits". The plan has with mixed reactions at individual state level with a spokesperson for the Brandenburg state Interior Ministry, justifying the administration's rejection of the card with the words: "After all, the majority of refugees don't come here to abuse our asylum

system".

*Junge welt*, 10 & 11.2.96; *Berlin Antiracist Information network*, February 1996.

### Immigration - in brief

**UK: Hong Kong consolation:** Having refused British passports to all but the top 50,000 of the former UK and Colonies citizens of Hong Kong, the government's consolation prize is visa-free travel to Britain for the colony's two million Chinese non-citizens. The generosity of the prime minister during his visit to Hong Kong extended to promising to clear a path to granting British citizenship to 27 wives and widows of soldiers who fought in the British army during the Second World War. *Independent*, 4, 5.3.96.

**UK: Marriage policy change:** The Home Office has severely tightened its policy which allowed deportees with a British husband, wife or children to stay in the country. The new guidelines lay down strict new criteria for the exercise of Home Office discretion - the marriage must have lasted for over two years and the British partner must prove that it would be unreasonable for him or her to live in the deportee's country.

DP/3/96, *Home Office Enforcement Policy Group*, 13.3.96.

**UK: Immigration casework computer system:** the Home Office has awarded the contract to "handle immigration casework" to Siemens Business Services Consortium "under the Private Finance Initiative" (whereby the company gets paid when the system is up and working). The system will start handling cases in the winter of 1997/98 and "Benefits will include enhanced immigration control as well as a significantly better service to the Immigration Department's many customers..." *Home Office press release*, 27.3.96.

**Germany: "social hygiene measure":** The newspaper *tageszeitung* on 3/4 February reported that Berlin immigration authorities had stated the reason for the deportation of an immigrant accused of drug dealing as "a social hygiene measure". The immigration authorities claim that this reasoning, clearly reminiscent of nazi terminology, has only



happened once, but the newspaper claims to have letters proving otherwise. *Berlin Antiracist Information network*, February 1996.

**Germany: ten attempted suicides at airport in 1995:** The Federal Government released alarming figures concerning Frankfurt airport at the beginning of February. At least ten people being held in the transit area of the airport had attempted suicide during 1995. No figures were available for other airports. More than 99 people had been held in the airport transit area for more than 25 days, 34 for more than 40 days and 4 people had been held for over 100 days. The longest period of detention in the airport transit area had been 187 days, more than six months. *Junge welt*, 10 & 11.2.96; *Berlin Antiracist Information network*, February 1996.

### **Immigration - new material**

**Through the borders: how to avoid bureaucratic hurdles when applying for a visa.** *'United' Information Leaflet* no. 7, 1996. This leaflet is designed for organisations, particularly those in central and eastern Europe, and offers advice on how to get visas to travel in western Europe.

**Wrongful detention of asylum-seeker Raghbir Singh.** *Amnesty International* (EUR 45/01/96) February 1996. This report takes up the case of asylum-seeker, Raghbir Singh, who has been detained in Winston Green prison 'without charge or trial' for a year.

**Recent developments in immigration law,** Rick Scannell, Jawaid Luqmani & Chris Randall. *Legal Action* March 1996, pp19-21. Latest update on immigration law.

**The rights of refuge,** Nick Hardwick. *Agenda* No. 16, February 1996, pp6-7. Piece on the Asylum and Immigration Bill that concludes: "Many will be unable to get access to the asylum system. Those who do...will face detention, destitution and disbelief."

**Howard's ignorant acts,** Douglas Coombes & Paul Ward. *The Law* February-April 1996, pp16-17. Discusses the background and main provisions of the

Asylum & Immigration Bill, the Housing Bill and changes in the Social Security regulations.

**National Coalition of Anti-Deportation Campaigns** Newsletter 2 (April-June 1996). Second newsletter from the NCADC contains a round-up of anti-deportation campaigns. Available from: NCADC, 22 Berners Street, Lozells, Birmingham B19 2DR.

**Ports of no entry,** Richard Dunstan. *New Statesman & Society* 23.2.96. pp22-23. This article argues that Parliament has been misled by government ministers who have deployed bogus arguments and statistics to victimise "bogus" refugees.

**We won't be criminalised,** Adil Rehman and Sajda Malik. *Labour Left Briefing* April 1996, p15. On grassroots campaigns against the Asylum and Immigration Bill in the broader context of campaigns against racism.

**Detention of asylum-seekers in Europe.** Vol 1 no 4, October 1995. Regional Bureau for Europe, UNHCR, pp232. Summarises legal standards; state practice and a country-by-country breakdown.

**Migration: a threat to European Security?** Roberto Aliboni. *European Brief*, February 1996, pp30-31. Argues that the Euro-Mediterranean Conference in Barcelona last November was primarily initiated because "the most direct security threat comes from migration" and that "with few exceptions, European countries are not prepared to become multicultural societies."

### **Parliamentary debates**

Mr Sodagar Hussain *Commons* 21.2.96. cols. 340-346

Asylum and Immigration Bill *Commons* 21.2.96. cols. 368-466

Asylum and Immigration Bill *Commons* 22.2.96. cols. 522-556

Asylum and Immigration Bill *Lords* 14.3.96. cols. 958-1035

### **LAW**

## UK

### **Kings Cross 2**

The Kings Cross 2, Badrul Miah and Showkat Akbar, were convicted of murder and violent disorder following the death of a white youth, Richard Everett. Badrul received a life sentence and Showkat was jailed for three years. Badrul was convicted under the "joint enterprise" (or common purpose) doctrine which allows people to be prosecuted for their presence at a crime in the absence of any evidence that they actually joined in. (Joint enterprise was used in apartheid South Africa to convict the Sharpeville 6, who were found guilty of murder for attending a protest in which a local councillor was killed.) There is no evidence that Badrul had anything to do with the killing of Richard Everett as the trial judge acknowledged when he told him that he was "carrying the can" for those responsible. The Kings Cross 2 campaign was launched to clear the names of the innocent boys. They are demanding "justice for all, black and white...We don't want to see innocent people murdered, nor people locked up for crimes they did not commit." The Kings Cross 2 campaign is sponsored by Liberty, The Society of Black Lawyers and the Stephen Lawrence Family Campaign and can be contacted by telephone on 0171 388 3259.

### **Law - new material**

*Soundings* Issue 2 (Spring) 1996. The second section of this journal contains a section on Law and Justice including essays by Mike Mansfield on 'Systematic injustice' which argues that "nothing has fundamentally changed for wrongly convicted defendants"; Jonathan Cooper on the 'MOD 4'; John Griffith on 'The case for a constitutional court'; Keith Ewing on 'The law and social rights' and Bill Bowring on theorising the relationship between the law and justice and the law and society.

## NORTHERN IRELAND

### **Mayhew sacks chair of PANI**

The Secretary of State for Northern Ireland has

sacked two members of the Police Authority for Northern Ireland (8 March) including the Authority's Chair, former Alliance Party Lord Mayor of Belfast, David Cook. The other sacked member is Chris Ryder who has written books on both the Ulster Defence Regiment and the RUC. Mayhew moved against Cook and Ryder because they refused to resign following a vote of no confidence in them taken by other members of the Authority in February.

Conflict within the Police Authority has been increasingly evident during the eighteen month ceasefire period. Prior to 1994, the Authority operated in conditions of secrecy on the grounds that members would be IRA targets - two were shot dead in the 1970s. The 20 members are appointed by the Secretary of State but the trade union seat on the Authority has not been taken up since 1980. Similarly the Social Democratic and Labour Party (led by John Hume) does not recognise the Authority. For some time, the government has been planning to change the Authority's responsibilities and to alter its relationship to the chief constable. It published a discussion document to this effect before the ceasefire (*Policing in the Community*) but has postponed issuing a white paper.

The Police Authority was first established in 1970 as part of the Hunt Report reforms which sought both to disarm the RUC (unsuccessfully) and to remove it from the direct political control of the Minister for Home Affairs. The Authority has rarely flexed its muscles even though its formal responsibilities (including finances, personnel, buildings and supplies) appear to permit it to address policing policies - the Authority has standing committees on police/community relations and public order. In practice, the Authority has been unable to have much impact on successive chief constables and, in Ryder's words, has generally behaved like a "performing poodle". There has been growing tension between the present chief constable, Sir Hugh Annesley, and Cook, and Annesley is on record as describing the Authority as "a bunch of well-meaning, good-intentioned amateurs".

Cook and Ryder believed that the Police Authority could become less secretive and attract more support by showing that it was putting pressure on the chief constable over such matters as Catholic recruitment to the RUC. In 1995 Cook launched a consultation exercise in an effort to establish public views on

priorities for policing. Shortly before this, a series of community-based conferences were raising fundamental concerns about the RUC with much of the discussion either echoing Sinn Féin's demand for disbanding the force or calling for radical reform. Meanwhile the Secretary of State was making it clear that in his view there is nothing wrong with the RUC. Cook's modest exercise in public consultation culminated in the publication of a report (Everyone's Police: A Partnership for Change, 26 March), but not before the internal wranglings within the Authority had been resolved. Writing in the *Observer* (10 March), Ryder has explained that two issues were behind the removal of Cook and himself. The first concerns the number of days in the year when the union flag is flown at police barracks - 19 (as opposed to 15 in Britain) including the 12th July, the day on which the Orange Order and tens of thousands of unionists celebrate William of Orange's defeat of Catholic King James at the 1690 Battle of the Boyne. Ryder argues that the sight of the union flag "fluttering over police stations in overwhelmingly Catholic areas ... prejudices the perception of the modern RUC as an impartial, even-handed and apolitical police service and needs to be debated."

The second issue is the oath of allegiance sworn by RUC officers which dates back to the Constabulary Act of 1836. Under this oath, officers pledge to "well and truly serve our Sovereign" and not belong to "any association, society or confederacy formed for or engaged in any seditious purpose ... or in any way disloyal to our Sovereign". Again, just as with the flag, the idea of the Authority raising a debate about the appropriateness of the oath proved too much for the majority. It seems that a dozen members of the Authority threatened to resign facing Mayhew with the choice of losing the majority or sacking Cook and Ryder. It remains to be seen whether Mayhew will now move to give the chief constable responsibility for the RUC budget and personnel, reducing the Police Authority to the status of an advisory committee.

The Authority's report recommends that the RUC should have a "suffix" to be carried on letterheads - "Northern Ireland's Police Service". It suggests that the oath of allegiance to the monarch be changed to an affirmation which makes no reference to the British Queen. On the flags issue, however, the

report says that the Authority will consult with the chief constable and Secretary of State.

### **Irish Go Dutch**

In an operation which has parallels with the "controlled deliveries" recently investigated by the van Traa commission into police involvement in drugs trafficking in the Netherlands, the Republic of Ireland's Garda Síochána appear to have been involved in importing 13 tonnes of cannabis into the state, worth in the region of £130m. The operation took place in West Cork last November. At the time, it was claimed that Gardai had discovered the drugs in a container truck at Urlingford on the Kilkenny/Tipperary border, after keeping the shipment under close surveillance. The *Irish Times* has revealed, however, that the truth maybe more embarrassing.

Armed Gardai detectives did more than mount a surveillance operation. They actively assisted in the shipment of the drugs, it is alleged. According to a police source, the operation "was like something out of *Apocalypse Now*". The detectives went out to sea on a trawler to meet up with a large ship. "The big vessel was all lit up with music booming from it. There were men with balaclavas on the decks with sub-machine guns." The cannabis was loaded onto the trawler which headed back to Castletownbere. It was then transferred to the lorry which took the drugs to Urlingford. The problem was that no-one came to pick up the drugs.

A Garda statement attacked the media for "irresponsible reporting", claiming that the international investigation had been seriously damaged and that lives were now at risk.

*Irish Times*, 11.3.96.

### **Neighbourhood Watch and the IRA**

Derbyshire Constabulary has issued a special notice to neighbourhood watch entitled "Terrorism - the Threat". The leaflet asks people to remain alert and to report suspicious activity such as persons tendering large quantities of high denomination banknotes. One section of the leaflet has been attacked as blatantly racist by the Irish in Britain Representation Group. Derbyshire Constabulary advises: "Persons with Irish accents. They are not all

criminals."  
*Sunday Tribune*, 31.3.96.

### **Northern Ireland - new material**

**Joint Services Group**, Thomas Doherty. *Lobster* (Dorril) No. 30 1996, pp22-24. Doherty claims to have worked for Army Intelligence (Joint Services Group) in northern Ireland where he acquired intelligence on Republicans on both sides of the border. The article includes a useful list of Doherty's commanding officers and contacts, which includes Colonel George Williams who died in the Mull of Kintyre helicopter crash last year.

**The situation of Irish prisoners in England: submission to the Committee Against Torture.** *British Irish Rights Watch & Irish Commission for Prisoners Overseas* September 1995, pp11. This report summarises the following BIRW/ICPO concerns affecting Irish republican prisoners held in English jails: Special Secure Units; strip searching; tariffs for mandatory life sentence prisoners; the transfer of prisoners from Britain to Ireland; security and care following the Woodcock report and the treatment of the six prisoners involved in the attempted escape from Whitemoor prison.

**Where's your peace strategy, John?** Meadhb Gallagher. *An Phoblacht/Republican News* 21.3.96. pp10-11. Interview with Sinn Fein national chairperson Mitchel McLaughlin on the role of the Dublin government in the 'peace process'.

**Report of Fine Gael party delegation to Republican prisoners in Britain.** *Fine Gael* September 1995. Report from a Fine Gael delegation that visited prisoners in Full Sutton, Whitemoor and Belmarsh. It expresses concern over the lack of progress on the re-categorisation of republican prisoners, Review Board hearings and the repatriation of prisoners.

**Just News** Vol 11, no. 3 (March) 1996. *Committee on the Administration of Justice*. This issue has reports on Emergency legislation, the UN Committee on the Elimination of Racial Discrimination and the case of Colin Duffy, who was jailed for life on the word of paid informer and UVF terrorist Lindsay

Robb. Available from: CAJ, 45-47 Donegall Street, Belfast BT1 2FG.

### **Parliamentary debates**

**Northern Ireland Peace Process** *Commons* 12.2.96. cols. 655-673

**Northern Ireland (Emergency Provisions) Bill** *Commons* 19.2.96. cols. 41-108

**Prevention and suppression of terrorism** *Commons* 14.3.96. cols. 1124-1171

### **PRISONS**

#### **UK**

#### **"Prison does not work; it kills"**

A report by the Howard League has confirmed the growing number of suicides in prison, particularly among young people. The report reveals that 301 prisoners committed suicide in England and Wales between 1990 and 1995; almost half of them (48%) had not been found guilty of any offence and were in jail on remand.

A breakdown of the Howard League's figures shows that 56 young people - aged 21 or under - committed suicide. These include three 15-year olds and three 16-year olds. Seven women took their own lives - four of them in Holloway prison where prison inspectors walked out in disgust at the appalling squalor last December.

The report also finds that "newly built prisons and commercially managed prisons have not led to safer prisons" for the vulnerable. There have been 36 suicides in new prisons and 7 in private jails, including four at Doncaster prison.

Frances Crook, director of the Howard League, condemned as scandalous the "desperation and misery" that forced prisoners to commit suicide. She went on: "The Home Secretary's policies of encouraging the profligate use of penal custody is resulting in youngsters and vulnerable people dying."

An additional 11 prisoners - including one who died after being on hunger strike for nearly 100 days - have killed themselves in the first few weeks of 1996. The situation is expected to deteriorate as overcrowding - already at a record high of 53,000 - escalates. Previous Home Secretaries, confronted

with a crisis in overcrowding, have been forced to allow prisoners early release; the current Home Secretary, Michael Howard, has advocated new law and order proposals that are likely to increase the prison population by an estimated 20-30,000.

*Prison death toll grows* Howard League 27.2.96.

## **SPAIN**

### **Basque prisons "light years away from legality"**

This was the forthright conclusion of the Basque Ombudsman in the report on prisons presented to the Basque Parliament on 12 March 1996. There are currently at least 1,541 prisoners in the region, including 340 foreigners, although the proper capacity of the system is half of that, with 842 cells. The report is particularly critical of the isolation and lack of information in the prison system, of its separation from wider society, and of the lack of resources and organisational deficiencies in the prisons and other agencies dealing with prisoners. Two other issues are identified as central to the whole question of the denial or restriction of the basic rights of prisoners: the sharp contrast between the reality of prison and the model envisaged by law, and the combination of widespread drug abuse and poor living conditions, creating high rates of infectious disease within the prisons. In theory all prisoners have the right to work, but in practice only one-fifth are offered work. Only 10% of prisoners detained in the Basque Country are in the lowest-security "grade three" regime, which was intended by law to apply to the majority.

The Ombudsman proposes five strategies to deal with this situation. These include increased use of day release and release on licence; the wider application of alternative sentencing measures provided for in the new Penal Code, such as fines and community service; the reduction of grade one prisoners to the minimum, and a significant reduction in grade two; the creation of small specialist centres or homes outside the prison system, to cater for young offenders, drug abusers and prisoners suffering from illness; giving full effect to the right to work, and the right to study; and a substantial increase in resources, not only in material and staffing terms but in the development of participatory systems involving prisoners, staff, the voluntary sector and welfare networks outside the

penal environment, all of this enhancing the transparency of the prison system and its relationship with the outside world. The overall strategic approach is given practical expression in 57 separate recommendations to the relevant public bodies.

Salhaketa, the long-established group working with social prisoners, gave a guarded welcome to the report. Since the problems set out are precisely those which Salhaketa itself has been denouncing for years, it suspected that the report would merely end up gathering dust. The group added that the underlying message of the report was that prison was becoming ever more an instrument of punishment rather than rehabilitation.

## **SPAIN**

### **International Observatory on Prisons report**

The OIP, a body with consultative status at the United Nations, has after visiting four Spanish prisons reaffirmed the criticisms made in its 1993 report. The Madrid government, denying the original report's claims of a regime of beatings, harassment, humiliation, isolation and frequent transfers, had asked the OIP to reinspect the prisons. The invitation was accepted, but was then withdrawn and subsequently reinstated but with access denied in respect of several prisons. The OIP's report detailed cases of beatings and degrading treatment by prison officers, the torturing of Basque political prisoners, and unjustifiable refusals of release on licence, sometimes as a form of blackmail. The report set out concerns about the work of the specialist judges overseeing the penal system, questioning the impartiality of some judges. It called for the application of Article 60 giving discretionary release to incurably ill prisoners, and for the prison medical service to be taken under the control of the Health Ministry to ensure its impartiality. The report was especially critical of the so-called Register of Special Treatment Prisoners; those on the Register are held in solitary confinement for long periods, which in the view of the OIP could infringe the European Convention against Torture.

[Report of the Committee for the Prevention of Torture]

The Committee for the Prevention of Torture, an

agency of the Council of Europe, concluded in its confidential reports on Spain in 1991 and 1994 that, despite recent improvements, there were still cases of torture and the ill-treatment of prisoners. The new Spanish government, installed after the elections of 3 March, authorised the publication of the reports, Spain having hitherto been the only Council of Europe country, apart from Turkey, to refuse publication. The main recommendations were to reduce to 48 hours the maximum period of detention incommunicado on executive order, and the on-site supervision by judges and public prosecutors of places of detention.

The report of Nigel Rodley, special rapporteur of the UN on matters related to torture and inhuman, cruel or degrading treatment, deals with sixteen cases of torture in the Spanish State. The United Nations Human Rights Committee report, presented to the UN Human Rights Commission in its sessions in late March, was particularly critical of incommunicado detention, special legislation, and the non-prosecution of torturers.

#### **New material**

**The law relating to prisoners**, Simon Creighton & Vicky King. *Legal Action* March 1996, pp16-18. Update on prisoners' rights covering the new differentiated regimes and temporary release on licence'.

**The mandatory life sentence: submission by the Penal Affairs Consortium to the House of Commons Home Affairs Committee in December 1994 and January 1996.** *Penal Affairs Consortium* February 1996, pp8. This PAC submission argues that decisions on the release of life prisoners should not be left to the Home Secretary but should be set by the trial judge; it also argues that decisions on whether to release a prisoner at the end of the minimum period should be made by the Parole Board.

**The poor laws**, Nick Davies. *Guardian* 8.2.96. Article on the increasing number of people (estimated at 22,000 per year - mainly women) jailed for being unable to pay trivial fines.

**Prison Watch press release no. 161.** *Prison Watch*

31.1.96. Covers the inquest of Paul Shaw, who was found hanged in his cell in Walton prison in July 1995. An addict, Shaw was placed on complete drug withdrawal without support which Prison Watch believes 'was a cause of his self-inflicted death'.

**The mentally disturbed in prison - a disgrace**, Dawn Pelle. *The Law* February-April 1996, pp10-11. Examination of the Criminal Justice System and how it fails those with a mental disorder - who constitute up to one third of the prison population.

**Conviction newsletter** No. 15, 1996. The Conviction newsletter campaigns in support of wrongly convicted prisoners. This issue reports the cases of Dave Wood (recently released on appeal), Kevin Armitage, James Ingram and Michael Singh.

## **SECURITY & INTELLIGENCE**

### **Major echo**

John Major told BBC Radio, on his return from the Middle East Summit in Egypt, that: "It may be that the time has come to look at the activities not only of those who actively conspire to commit terrorist acts but also those who from safe havens abroad foster dissent elsewhere in a way which creates a climate in which terrorism can flourish... If people... use the UK as a base from which to conduct their own particular activities against another government, particularly a friendly government, then that is a matter we have to look at very carefully." This clear reference to the case of Muhammad al-Masari, who the government has so far failed to deport to Dominica at the behest of Saudi Arabia. The Home Office is conducting a review of the conspiracy and incitement laws to see if they could be extended to offences committed outside the UK.

This statement by the Prime Minister echoes the views of his officials at the P8 meeting in Ottawa in December 1995 who equated "terrorists" with "political activists who promoted unconstitutional change or destroyed the good relations enjoyed by the UK with other governments."

*Guardian*, 15.3.96; see *Statewatch*, vol 6 no 1, pages 21-22.

## Security & intelligence - new material

**Spooks**, Steve Dorril. *Lobster* (Dorril) 30 1996, pp17-20. Catalogues intelligence and security officers recently named in the media.

**Intelligence Analysis and Assessment**. Special issue of *Intelligence and National Security*, vol 10 no 4. This time deals with current rather than historical issues and includes assessment of US, German and Australian intelligence plus articles on "Intelligence analysis in the age of electronic dissemination" and "Private enterprise intelligence: its potential contribution to national security". This latter article ends with the statement that private enterprise and government can form a "virtual intelligence community" without equal "able simultaneously to inform policymakers, the business community, the academy, and citizens."

**Ten years later: La Belle disco bombing**, John Goetz. *Covert Action Quarterly* 56 (Spring) 1996, pp58-62. The La Belle discotheque bombing, which killed three and injured 200 in west Berlin in 1985, was attributed to Libya; a new examination casts serious doubts on these claims and questions the role of West German intelligence and the CIA.

## Parliamentary debates

**Security Service Bill** *Commons* 14.2.96. cols. 1016-1072

**Intelligence and security services** *Lords* 13.3.96. cols. 886-917

## BOOKS RECEIVED

**Power in struggle: feminism, sexuality and the state**, Davina Cooper. *Open University Press* (Buckingham) 1995, pp182 £10.99 pk. This book draws on post-structuralist and Marxist theory to conceptualise the state, power and sexuality.

**Gender and crime**, Dobash, Dobash & Noaks (eds). *University of Wales Press* (Cardiff) 1995, pp438 £13.99 pk. Contains analyses of the diverse

experiences of women and men as offenders and victims by criminologists from several countries.

**Let him have justice: the true story of Derek Bentley, hanged for a crime he did not commit**, Iris Bentley (with Penelope Denning). *Sidgwick & Jackson* (London) 1995, pp356 £16.99 hb. This is a biography of Derek Bentley by his sister.

**Contemporary issues in Criminology**, Noaks, Levi & Maguire (eds). *University of Wales Press* (Cardiff) 1995, pp436 £14.95 pk. This volume is divided into 4 sections: international perspectives on criminology and criminal justice; policing and persecution; criminal justice issues and crime, justice and the underclass.

**Social currents in Eastern Europe**, Sabrina Petra Ramet. *Duke University Press* (Durham & London) 1995, pp598 £22.95 pk. This book looks at eight eastern European countries: East Germany, Poland, Czechoslovakia, Hungary, Yugoslavia, Romania, Bulgaria and Albania.

**My five Cambridge friends**, Yuri Modin. *Headline* (London) 1994 pp346 £6.99 pk. Account of the Cambridge spy ring by the man who ran them.

**Sellout: Aldrich Ames, the spy who broke the CIA**, James Adams. *Michael Joseph* (London) 1995 pp322, £16.99. On the CIA double-agent.

**Disarming Patriarchy: feminism and political action at Greenham**, Sasha Roseneil. *Open University Press* (Buckingham) 1995 £12.99 pk. This book uses a sociological study of the Greenham Common Women's Peace Camp to examine "ways in which feminists can resist and transform relations of male domination and female subordination"

**Shifting responsibility: Carriers' liability in the member states of the European Union and North America**, Antonio Cruz. *Trentham Books* (Stoke on Trent) 1995, pp122 £9.95. Examines the incompatibilities of carrier's liability with human rights obligations and international instruments of refugee protection.

**The frontier of national sovereignty: history and**

**theory 1945-1992**, Alan S Milwood et al. *Routledge* 1993, pp234. The authors consider the process of European integration and its future drawing on research into the national archives of the member states of the EU and the USA.

**Blackstone's guide to the Criminal Justice & Public Order Act**, Martin Wasik & Richard Taylor. *Blackstone Press* (London) 1995, pp349 £19.95 pk.

**Free to hate: the rise of the right in post communist eastern Europe**, Paul Hockenos. *Routledge* 1994 pp330. Surveys the far right in Germany, Hungary, Romania, Czech Republic and Poland.

**Immigration and nationality law handbook**. *Joint Council for the Welfare of Immigrants* 1995 pp340, £12.99 pk. Revised and updated edition of the 1992 edition that covers changes in immigration and refugee law since then.

**Pressing problems in the law Volume 1. Criminal justice and human rights**. PBH Birks (ed) *Oxford University Press* 1995 pp155, £25 pk. This volume contains 13 essays on reshaping the criminal justice system, fraud and the criminal law and freedom of expression.

**Racism and migration in western Europe**, John Wrench & John Solomos (eds). *Berg Publishers* (Oxford) 1995, pp293 pk. Contains sixteen essays on various aspects of racism and migration. Includes entries on France, Germany, Italy, Sweden, Holland and Britain and Scandinavia and migrant women.

**Fighting for Ireland: the military strategy of the Irish Republican Movement**, MLR Smith. *Routledge* (London) 1995, pp265 £25 hd. Smith concludes that the Irish Republican Movement is characterised by "a sense of chronic insecurity", an argument that is hardly justified after 25 years of struggle against British military occupation.

**Human rights, human wrongs: the alternative report to the United Nations Human Rights Committee**, Connor Foley (with Liberty). *Rivers Oram Press* (London) 1995, pp464. This work catalogues human rights abuses in England, Wales

and Northern Ireland from 1989 to 1994. It contains chapters on criminal justice, racism, Northern Ireland, womens' rights, lesbians and gays, disabled rights, mental health, migrants and refugees, censorship and rights in the workplace. It provides a useful overview.

**Case law of the European Court of Human Rights, Vol III, 1991-1993**, by Vincent Berger. Dublin, Round Hall Press, May 1995. £47.50. Concise and clear summaries of over 200 cases decided by the court between the relevant dates.

**The best police in the world, an oral history of English policing**, Barbara Weinberger. *Scolar Press* (Aldershot) 1995, pp224, £39.50 hk. Examines, through interviews with police officers, the 'golden age' of policing between the 1930s and the 1960s.

**The Octopus: Europe in the grip of organized crime**, Brian Freemantle. *Orion* (London) 1995, pp422, £16.95 hk. This book presents an EU gripped by organised crime and uncontrolled mafias; the author sees the fledgling Europol as a potential European cavalry, coming to the rescue.

**Immigration, 'race' and ethnicity in contemporary France**, Alec G Hargreaves. *Routledge* 1995, pp267, £13.99. Discusses developments in France since the 'end of immigration' in 1972, mainly in terms of 'integration' and 'assimilation.'

**The Nemesis file: the true story of an SAS execution squad**, Paul Bruce. *Blake* (1995), pp280 £15.99. Among the allegations in this book is the claim that the author took part in SAS executions of unarmed Nationalist civilians and IRA volunteers during the early 1970s.

**The ultimate crime: who betrayed the UN and why**, Linda Malvern. *Allison & Busby* 1995, pp442 £20 hd. This book examines the role of the United Nations since its birth in April 1945 and reveals 'the staggering hypocrisy which exists at the heart of international diplomacy.'

**Criminal Justice: an introduction to the Criminal Justice System in England and Wales**, Davies,



Croall & Tyrer. *Longman* 1995, pp388 £16.99 pk. Includes sections on criminal justice, crime, police, courts and prisons.

**The Oxford history of the prison: the practice of punishment in western society**, Norval Morris & David J Rothman (eds). *Oxford University Press* 1996, pp490 £25 hd. Part 1 of this volume includes eight essays on the history of prisons from the ancient world to the present; Part 2 includes chapters on prison for women (Lucia Zedner), juvenile reform school (Steven Schlossman) and the political prison (WB Carnochan).

**Western European penal systems: a critical anatomy**, Vincenzo Ruggiero, Mick Ryan and Jose Sim (eds). *Sage Publications* 1995, pp241 £12.95 pk. This collection on essays describes the organisation of prisons - and alternatives to custody - in eight European countries. Contributions by van Swaaningen & de Jonge (Holland), Ruggiero (Italy), Gallo (France), Ryan & Sim (England and Wales), Messner & Ruggiero (Germany), Bergalli (Spain), Leander (Sweden) and Tomlinson (Ireland).

**Policing gender, class and family**, Linda Mahood. *UCL Press* 1995, pp215. This is a study of 'juvenile reformatories and the moral regulation of children and adolescents in the period 1850-1940.'

**Eden, Suez and the mass media: propaganda and persuasion during the Suez crisis**, Tony Shaw. *IB Tauris* (London) 1996, pp 256 hk £39.50. This work examines the way in which the media can be used as an instrument of propaganda by focusing on the Eden governments efforts to create a climate of opinion in favour of military action against Egypt.

**The state of the world's refugees: in search of solutions**, United Nations High Commissioner for Refugees. *Oxford University Press* 1995 pp264, pb £9.99. Looks at displaced people around the world and the 'changing response to the problem of forced migration'.

**Fifty years of the International Court of Justice**, Vaughan Lowe & Malgosia Fitzmaurice (eds). *Cambridge University Press* 1996, pp640, hk (no price given). This book marks the fiftieth anniversary

of the ICJ. It contains thirty five chapters - written by judges, practitioners and academics - presented under five headings: the Court; the sources and evidences of international law; the substance of international law; procedural aspects of the Court's work; the Court and the UN.

**In the name of the law: the collapse of criminal justice**, David Rose. *Jonathan Cape* (London) 1996 pp356, hk £17.99. Examines why the criminal justice system isn't working, with chapters on, race, class and justice; crime; organised crime; prosecution; policing and police accountability and the collapse of the criminal justice system.

## FEATURE UK POLICE DEPLOY CS SPRAYS

UK police have shunned calls to abandon CS spray trials, following the death on 16 March of a Ghanaian born asylum seeker, Ibrahim Sey, after he was sprayed with the incapacitant. The six month trials, which involve some 2,500 officers from 16 authorities in England and Wales, began on 1 March, following repeated postponements because of fears about the safety of both the irritant and propellant used. A Metropolitan police inspector suffered eye burns during tests in Northampton (1)

It has also emerged that Dr Jill Tan, the Home Office scientist who gave these devices the all clear, has suffered blisters to her face when sprayed with the CS product during tests. Self-Defence expert Inspector Pete Boatman who was training the instructors when the accident happened has now been banned from training officers outside his region because his Chief Constable is worried about being sued by people injured by the incapacitant. Chief Constable Ted Crew is reported in the Independent as saying, "I am advised that were there to be a civil claim resulting from the use of CS spray, I might find that because we had trained the officers using it, I had some liability." (2)

The introduction of hand held gas sprays yields an offensive as well as a defensive capacity and in the UK, must be governed by existing policy on the introduction of new chemical weapons for domestic control. This policy arose out of a furore in 1969, when despite assurances that CS would only ever be

used in very limited and local circumstances (such as hostage taking by escaped lunatics) it was indiscriminately used on a massive scale against Catholics in the Bogside, in Northern Ireland. Since then the policy of successive governments has been that new chemical weapons should be biomedically assessed more akin to drugs rather than weapons and that all tests on the possible dangers of carcinogenicity or mutagenicity should be published in the open scientific press in full, before any authorisation for police procurement or deployment is given. However, the UK police have admitted that they are deploying CS sprays despite the test programme remaining incomplete.

### Harmless Weapons?

Scientists at the Chemical Defence Establishment at Porton Down have always pointed out the possible dangers of new chemical weapons for public order control. "As with other foreign chemicals to which man may be exposed, no matter how detailed, extensive and carefully effected are the pre-clinical toxicity investigations and observations in controlled human exposures, there can be no complete guarantee from such studies that there is absolute safety in use for a given chemical." (3)

Such caution is well founded. There is evidence that CS can cause permanent but non-lethal lung damage at comparatively low doses (4). Earlier inhalation toxicology studies indicate that at high levels of CS exposure can cause chemical pneumonitis and fatal pulmonary edoema (5) as well as second degree burns with blistering and severe dermatitis (6)

In situations where high exposure to CS has occurred, heart failure, hepatocellular damage and death have been reported (Himsworth-Committee Report). Some evidence also exists that people subject to repeated doses of CS develop tolerance, further increasing their level of exposure. The development of tolerance to CS has been reported by Porton researchers in studies on human volunteers. (7) Used on those with asthma, taking other drugs, or subject to restraining techniques which restrict the breathing passages, there is a risk of death.

### Sub-Lethal Weapons - The Next Generation

US multinationals are currently marketing a new

generation of sub-lethal weapons for internal security, control and restraint and are actively seeking new markets. This technology includes kinetic impact weapons, new chemical disabling weapons based on CN, CS and OC (Peppergas); remote control electrical shocking systems (the REACT belt); electronic shock sticks and riot shields. Indeed, UK Police were weeks away from beginning trials on pepper rather than CS gas, when a police superintendent suffered a highly publicised dramatic negative reaction to its effects.

OC as an incapacitating agent has a long history. Porton Down began researching analogues of capsicum after it was used as a military harassing agent in World War I in the form of acylated vanillylamide and its more potent homologues such as VAN as a possible replacement for the riot agent CN (8). In fact the effects of pepper-gas are far more severe than CS, including temporary blindness which last from 15-30 minutes, a burning sensation of the skin which last from 45 to 60 minutes, upper body spasms which force a person to bend forward and uncontrollable coughing making it difficult to breathe or speak for between 3 to 15 minutes. For those with asthma, taking other drugs, or subject to restraining techniques which restrict the breathing passages, there is a risk of death. The *Los Angeles Times* has reporting at least 61 deaths associated with police use of pepper spray since 1990 in the USA (9) and the ACLU has documented 27 deaths in custody of people sprayed with peppergas in California alone since 1993 (10).

The US Army concluded in a 1993 Aberdeen Proving Ground study that pepper spray could cause "Mutagenic effects, carcinogenic effects, sensitization, cardiovascular and pulmonary toxicity, neurotoxicity, as well as possible human fatalities...There is a risk in using this product on a large and varied population." However, the pepper spray got the go ahead despite the reservations of US military scientists after FBI tests gave it the all clear. It has subsequently emerged that the head of the FBI's Less than Lethal Weapon's Programme, Special Agent Thomas WW Ward took a \$57,000 bribe from a pepper spray manufacturer, Capstun, to OK the weapon. Allan Parachini, Public Affairs Director of ACLU has said the "Ward Scandal" in some way exceeds the Rodney King beatings in terms of its potential impact on law enforcement, since FBI

research helped convince police departments across the country that pepper spray was a safe and effective way to subdue suspects. In fact the breach of trust is much more serious since many other countries as disparate as Australia and India have subsequently adopted Peppergas on the back of US research.

#### Future Prospects.

All chemical sprays hold potential risks for at least some targets. One study has concluded that a single exposure to high level of respiratory irritants similar to CS has led to the development of "reactive airways disease syndrome" in some individuals, characterised by prolonged cough and shortness of breath (11). New restraint tactics used alongside gas sprays and their use in an enclosed space are especially dangerous. Where Chemical Sprays are used, any death certificate marked 'positional asphyxia' should be thoroughly investigated.

In November 1995, the Secretary of State For the Home Office, Mr Maclean, confirmed that: "The Prison Service have no proposals to use products containing oleoresin capsicum at this time." However, prison riot and restraint weapons in the UK tend to mirror what is available to the police, particularly during times of staffing shortages.

(1) *Statewatch*, Vol 5, No 2 & 3, 1995.

(2) *Independent*, 16.2.95.

(3) Ballantyne B, "Riot Control Agents - Biomedical and Health Aspects of the Use of Chemicals in Civil Disturbances", *Medical Annual* (1977), pp.7-41.

(4) See Leonard Jason-Lloyd, "CS gas - an indiscriminate weapon?", *New Law Journal*, 26.7.91, p1043-1045.

(5) Ballantyne B, Callaway S, "Inhalation toxicology and Pathology of animals exposed to o-chloro-benzylidene malonitrile (CS)", *Med. Sci. & Law*, 1972; 12:43-65; Kacmarek B, Gaszynski W., Ultrastructure of the rabbits lung tissue after administration of CS preparation. *Acta Med Pol.* 1977; 18:327-328.

(6) A Parneix-Spake et al, "Severe Cutaneous Reactions to Self Defence Sprays", *Arch Dermatol* Vol 129, July 1993, p913.

(7) Beswick F W, Holland P, Kemp K H, "Acute effects of exposure to orthochloro-benzylidene malonitrile (CS) and the development of

tolerance", *British. J. Ind. Medicine.* 1972; 29: 298-306.

(8) SIPRI, *The problem of Chemical and Biological Warfare*, Vol 1, 1971, p64.

(9) *Los Angeles Times*, 18.6.95.

(10) ACLU, "Oleoresin Capsicum, - Pepper Spray Update, More Fatalities", *More Questions*, June 1995, p27.

(11) Hu H, Fine J, Epstein P, Kelsey K, Reynolds P, Walker B, "Tear gas - Harassing Agent or Toxic Chemical Weapon", *JAMA*, August 4, 1989 - Vol 262, No 5.

#### **Council of Justice and Home Affairs Ministers, Brussels, 19-20 March, 1996**

The Council did not tackle the controversial issue of the data to be stored on the Europol computer nor, yet again did it resolve the role of the European Court of Justice in the Europol Convention (see Europol feature).

But it did finally adopt the Joint Action on racism and xenophobia; the Italian Presidency took the EURODAC project to fingerprint all asylum-seekers a step further by starting work on a draft Eurodac Convention; and two more draft Conventions emerged on the serving of legal papers and on corruption of EU and national officials.

[Conventions in the pipeline]

The three new Conventions being drafted brings the total number of "third pillar" Conventions to 13:

*Conventions signed by governments but not ratified by national parliaments yet*

Convention determining the state responsible for examining applications for asylum lodged in one of member states of the European Communities (known as the "Dublin Convention". Ratified by 10 of the 12 EU states which signed it in June 1990. Ireland and the Netherlands have yet to complete ratification).

Convention on simplified extradition (signed by the 15 governments on 9 March 1995. Known as the "voluntary" extradition measure)

Europol Convention (signed by COREPER, the body of representatives of the 15 national governments, on 26 July 1995. The ratification process is being held up over the role of the European Court of Justice)

Convention on the uses of information technology for customs purposes (CIS) (signed by COREPER, the body of representatives of the 15 national governments, on 26 July 1995. Known as the Customs Information System Convention)

Convention on the protection of the Communities financial interests (signed by COREPER, the body of representatives of the 15 national governments, on 26 July 1995)

Convention on bankruptcy (signed by the last three states - Ireland, Netherlands and UK on 19 March 1996)

*Draft Conventions awaiting agreement and signing by governments*

Draft Convention on the crossing of the external frontiers (awaiting agreement since 1990, see below. Known as the External Borders Convention)

Draft Convention setting up a European Information System (EIS) (contingent on agreement on the External Borders Convention)

Draft Convention on extradition between the Member States of the European Union (see below)

Draft Convention on the scope, jurisdiction and the enforcement of judgements in matrimonial matters (Brussels Convention II)

Draft Convention on the service in the States of the European Union of Judicial and Extrajudicial Documents in Civil or Commercial Matters

Draft Convention on EURODAC (see below)

Draft Convention on corruption of officials in the EU (see below)

[Joint Action concerning action to combat racism and xenophobia]

The Council finally agreed on the text of the Joint Action to combat racism and xenophobia which had been blocked by objections from the UK at its last meeting in November 1995. By being allowed to add a "Declaration", which has the effect of ensuring there is no need for changes in UK law, Mr Howard withdrew his objection. Joint Actions, under Article K.3.2(b) of the Maastricht Treaty, are usually intended to be binding but this one has four Declarations attached to it - by Greece, France, Denmark and the UK.

The measure seeks to make it a criminal offence, under Title IA throughout the EU for: a) public incitement of discrimination, violence or racial hatred; b) "public condoning, for a racist or xenophobic purpose, of crimes against humanity and human rights violations"; c) public denial of crimes defined in the postwar London Agreement of 1945 (such as the Holocaust); d) public dissemination of material "containing expressions of racism and xenophobia"; e) "Participation in the activities of groups, organisations or associations, which involve discrimination, violence, or racial, ethnic or religious hatred." Title IB calls for improved "judicial cooperation" on a) the seizure and confiscation of material offered in public; b) that behaviour in IA "should not be regarded as political offences justifying refusal to comply with requests for mutual legal assistance"; c) to provide to other member states with evidence that racist material is being stored for distribution in another member state; d) to establish contact points to collect information for legal proceedings. Title II says, in part, that there will be an assessment of what member states have done by June 1998.

The UK Declaration attached to the Joint Action says it will "apply Title I, paragraph A, points (a) to (e) [see above] ... where the relevant behaviour is threatening, abusive or insulting and is carried out with the intention of stirring up racial hatred or is likely to do so." 4) Denmark: also in reference to Title 1, paragraph A, points (a) to (e) will apply "where the behaviour is threatening, insulting or degrading."

It is not expected that the Joint Action will be applied to racist actions or practices emanating from state agencies like the police, courts or prisons.

#### [External Borders Convention]

The draft of the External Borders Convention was first put on the table in 1990 and has remained unsigned by the Council since. The Italian Presidency said that three questions remain to be resolved: 1) whether voting by the Member states should be unanimous or by a two-thirds majority (Article 26); 2) whether or not the European Court of Justice is to have a role (Article 29); and 3) the territorial application of the Convention raised by the status of Gibraltar - a long-standing dispute between the UK and Spain. The Presidency said that if this last question is not resolved "it is impossible to imagine that the work on the draft Convention will be concluded".

The draft Convention sets out measures for the control of the external borders of the EU and is seen as the prerequisite for the full removal of internal border controls. It also paves the way for the creation of the European Information System (EIS) which will take over from the Schengen Information System (SIS).

#### [EURODAC]

Following the report to the Council meeting in November 1995 stating that it was technically feasible to create a computerised database of the fingerprints of asylum seekers which could be accessed by all EU member states the Italian Presidency announced that work is now underway on a draft EURODAC Convention. The rationale for the creation of the database is, the Presidency noted, based on Article 15 of the Dublin Convention which allows for the determination of the responsible member state for an asylum application. The Dublin Convention, signed in June 1990, still has to be ratified by 2 of the 12 member states who signed it - Ireland and the Netherlands. The three member states who have joined since it was signed - Sweden, Finland and Austria - are automatically assumed to be bound by it under the terms of their accession to the EU.

#### [Extradition Convention]

The draft Extradition Convention was discussed and sent back to the K4 Committee to resolve

outstanding questions (see *Statewatch*, vol 6 no 1 on its provisions). Mr Vincenzo Caianiello, the Italian Minister of Justice, said on behalf of the Presidency that two questions were outstanding on the inclusion of "criminal conspiracy" (Article 3) and "criminal organisations" and that of the extradition of nationals (Article 5).

Article 3 of the draft Extradition Convention says that extradition cannot be refused on the grounds that a person is wanted for a "political offence". The discussion now is about widening the terms on which extradition cannot be refused on the grounds that it is a "political offence" (as defined in Article 3 of the 1957 Council of Europe Convention on Extradition) to cover taking hostages, and the use of bombs, grenades, rockets or automatic firearms. The Spanish delegation want it widened further to cover people taking part in a conspiracy or a criminal organisation leading to an act defined in the 1997 European Convention on the Suppression of Terrorism. The judicial working group is also being asked to consider whether conspiracy and criminal associations *not* linked with terrorist activities could be included.

The second question on the extradition of nationals (Article 5). The extradition of nationals would require constitutional amendments in Germany, Austria, Finland, Greece, Portugal and Sweden. In addition the definition of a "national" in Denmark, Sweden and Finland covered anyone "domiciled" (living) there and the Council is trying to find a formulation which would stop "terrorists" finding refuge in these countries. One compromise proposal is that member states would be allowed to sign a reservation on "nationals" for an initial five years, renewable.

#### [Draft Conventions on serving legal papers and on corruption]

Two more draft Conventions - in addition to that on EURODAC - formally surfaced at the meeting. The first is the Convention on the Service and Notification of Judicial Acts. Mr Vincenzo Caianiello, the Italian Minister of Justice, said the "point is to simplify the exchange of judicial documents so that the 1965 Hague Convention - which has complicated stages - would no longer be applicable in EU and only used by non-EU states."

The intention is to "establish a modern transmission system" to "accelerate" legal cases and to *directly* notify tribunals or legal authorities by-passing the central authorities (Justice or Foreign Affairs Ministries) as laid down in the Hague Convention. There are a number of alternative solutions being discussed.

The second draft Convention on Corruption is intended to cover "active and passive corruption by Community or national civil servants (fonctionnaires) or member of European institutions." It will cover "all acts" by these groups "during the execution of their tasks".

These draft Conventions raise, yet again, the process of decision-making through this Council of Ministers. Both will effect the civil liberties of thousands of EU citizens yet no-one outside the Council and its officials will formally see the drafts before they are signed and are thus not open to amendment.

[Other decisions]

*Annual report on organised crime*: the Council agreed the "Rome Declaration" discussed at the informal meeting of Justice and Home Affairs Ministers in Rome on 26 January. It says organised crime "can have a transnational character.. represent a threat to the security of the member states..". The Declaration lays particular emphasis on the need to encourage and protect "collaborators" who are prepared to give evidence in court. *Andean Pact*: the Ministerial meeting between the EU and the Andean states (Bolivia, Columbia, Ecuador, Peru and Venezuela) in September 1995 was followed up by a meeting of senior officials on 11 March 1996 to discuss drug trafficking. *Seminar on Islamic Fundamentalism*: was held in Rome, 4-6 March 1996 to discuss the "terrorist activities of islamic fundamentalist groups" and in addition to EU member states was attended by the Commission and anti-terrorist experts from Egypt and the Palestinian National Authority. *Biannual work programme*: The meeting discussed the draft two year work programme which took into account the concerns of the next four Presidencies (Ireland, the Netherlands, Luxembourg and the UK). However the programme covered 51 objectives - which was considered far too many - and it was referred back to the K4 Committee to establish clearer priorities. These will include:

"strengthening external controls" and "the fight against immigration and illegal employment..." The work programme will also include budgetary allocations: the available credits from the Community budget in 1996 is ECU 14,369,000 (just under £12 million) of which ECU 9,250,000 is being held in reserve by the European Parliament to ensure it is allocated to "areas of priority". Meanwhile the Committee of Permanent Representatives (COREPER) is being asked to "solve" questions on the "legal basis" of these use of these credits. *Joint Action concerning the Exchange of Liaison Magistrates*: under this Joint Action which the Council adopted there will exchanges of magistrates, civil servants and legal experts to encourage better judicial cooperation on criminal and civil cases. *Recommendation on hooliganism in football*: this was agreed following a UK initiative in the runup to the European football championships in June. Plans include the prior notification of likely troublemakers arriving by plane, train and boat from police and internal security services; "spotters" and undercover officers from other EU police forces; and the use of a high-tec "photo-phone" to transmit pictures.

*Press conference given by the Italian Presidency*, Brussels, 19.3.96; *Press release*, 5727/96, 20.3.96; *Provisional Working Programme for the structured dialogue with the CCEEs*, established following the meeting of 20.3.96; *Joint Action concerning action to combat racism and xenophobia*, JUSTPEN 37, ref: 5853/96, Confidential, 15.3.96; *Project for common action against racism and xenophobia*, K4 Committee, ref: 11337/95, 8.11.95; *European*, 30.3.96; *Background: Council of Justice and Home Affairs Ministers*, 15.3.96; *Report of the Federal Government on the Council of Justice and Home Affairs on 19/20 March 1996*, 13.3.96 (in German).

## FEATURE

### The Langdon report

At the Essen Summit in December 1994, marking the end of the German Presidency of the European Council, it was agreed there should be cooperation with the countries of central and eastern Europe (CEEC) to "fight all forms of organised crime" covering drugs, nuclear trafficking, illegal

immigration networks and stolen motor vehicles. The Conclusions of the Council meeting also referred to: 1) bringing justice and home affairs into the "structured dialogue" (coded language for: discussions between the respective Justice and Home Affairs Ministers on measures to be adhered to by countries applying to join the EU), and 2) making available the PHARE programme to fund activities under the "third pillar".

This decision caused some concern as the PHARE programme's purpose is primarily to help these countries develop democratic institutions and practices, not to further the political priorities of the EU. This concern was confirmed when a consultant's report appeared in October 1995 entitled: "Justice and Home Affairs Cooperation with Associated Countries" by Mr A J Langdon who was asked to:

"identify appropriate measures to promote integration through cooperation in the field of justice and home affairs, especially those necessary to prepare the countries concerned for accession to the EU.."

Mr A J Langdon, who "became available for outside work on retiring from UK government service in June" 1995, had been one of the top UK Home Office officials directly involved in running the "third pillar" under the Council and Justice and Home Affairs Ministers. The European Commission took on the project proposed by the Essen Summit, but it appears that the Langdon project was taken over from the PHARE programme, by whom he was employed and which paid for travel, by Directorate F (Cooperation in the fields of Justice and Internal Affairs).

[The report]

Mr Langdon visited the 9 applicant countries with whom there are Association Agreements - Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia - and Slovenia where an Agreement was imminent. Meetings were held with interior ministry officials and ministers. His overall conclusion was that there was extensive bilateral (eg: between Germany and Poland) work going on but in an uncoordinated way and very little under the PHARE programme.

The ideology of the Langdon report is firmly within the perspective of restricting with a view to eliminating the "threats" posed by the central and eastern European countries to the EU. The Members States and the Associated countries, he writes, have an:

"immediate and shared concern to deal with the pressures of unauthorised migration and serious crime that have arisen as an unwelcome concomitant of the freedoms of the democratic transition process."

He goes on to set out the "priority issues" as: "combatting unauthorised immigration, including border control regimes in particular; asylum procedures; combatting drug-related and other serious crime, and police training and equipment." Thus:

"action against illegal immigration networks could be seen as combatting either serious crime or illegal immigration."

These countries, the report says, "wish to become an integral part of the EU's defences against illegal immigration and organised crime rather than being seen as transit countries." However, this is followed by a comment from a diplomatic representative of an EU member state in "one of the more developed Associated countries" who told him that he: "saw no risk of over-training here" to which Mr Langdon adds "and that was a shrewd comment."

The logic of "structured dialogue" is that there is a definable *acquis* (list of measures) which applicant states are expected to meet. At present there is no such formal *acquis* being "pursued by the central and eastern European countries" because it does not exist. Langdon recommends that "at some stage along the pre-accession route there could be a more authoritative statement". One area where there is no agreement yet within the EU is on the External Borders Convention and the European Information System Convention and,

"The matter is further complicated by the fact that, while the Easternmost border that would be established if all 10 Associated countries acceded to the EU simultaneously would be an external frontier

on any footing, it is not possible to say in advance where the external frontier might lie if accessions were not simultaneous."

The report points to gaps in the EU's current policy in these countries which in relation to immigration and drugs is centred on border controls at ports, airports, and "recognised crossing-points" but neglects "the intervening 'green border' or coastline which has to be patrolled."

Mr Langdon thus recommends that "an acceding state would be expected to show that it could adequately regulate its external frontier against the pressures of unauthorised migration and illegal trafficking and that its control methods were in conformity with general EU practice."

[Police cooperation]

Many of the Associated countries emphasised their need not just for technical know-how but for "on-going advice in transforming their structures and mind-set of their police forces". Langdon reports that there is, on policing, "a very great deal of activity, virtually all at the bilateral level and so far as one can see, not coordinated in any way." A number of countries have taken the policing lead in central and eastern Europe - Germany gave DM55 million in 1992-4, France and the UK have provided a lot of training and the UK has been involved in a "full review of procedures and advice and re-orientation and motivation of the police function as a public service".

The US FBI has established the International Law Enforcement Academy (ILEA) in Budapest jointly with the Hungarian government and the Central European Police Academy (CEPA) is a joint Austro-Hungarian project involving Germany, Poland, Slovakia, Slovenia and the Czech Republic. In the latter the courses are conducted in German only "and are directed at specific policing issues such as drug-related crime and illegal immigration" - and a "deliberate effort" is made "to encourage [future] contacts" between those attending courses.

[Phare]

For the Phare programme to embrace Langdon's recommendations would require a fundamental shift

in its purpose. As Mr Langdon says justice and home affairs is "an unfamiliar field for Phare" and would require "significant new orientation" including the "mobilisation of expert resources to help manage Title VI proposals" and Phare would have to move away from "the facilitation of transit towards the regulatory aspect of transit."

["Buffer states"]

The EU-centric view of migration following the withdrawal of Soviet forces in these countries predicated "a massive wave of West-bound migration" which "in the event did not happen." Despite all the measures taken to exclude migrants from the EU "several of the Associated countries refer to themselves" as "waiting rooms" where refugees are "trapped". The report notes that a new phenomena is emerging for the "more economically active Associated countries" whereby they are not just countries of transit but "are becoming destination target countries themselves".

A similar picture emerges on drug trafficking. The more efficient the controls are at the borders of the EU then the "worst scenario is that the whole region could become a vast consumption area as well as a transit highway."

There is an obvious contradiction in this whole argument which is not mentioned in the report. If the EU does grant full membership to these countries with free movement within the boundaries of an enlarged Community a whole new series of countries will become the "buffer states" and "transit countries". It is hard to see where, in the longterm, this process stops short of a global solution which insulates the Western power blocs from countries posing external "threats" or which seals off the problem countries.

[Conclusion]

The Langdon Report was put out by the Commission on 18 January and by the Council on 30 January. The proposals for action included: 1) the need to "obtain an overview of the total aid these countries get on either bilateral or multilateral levels"; 2) the need to respond to requests for training so that these countries could:



"reform their administrative infrastructure in such a way that they can regulate questions under the Third Pillar in a way that is compatible with membership of the EU."

The Langdon report may not lead to a complete reorientation of the Commission's Phare programme but it has already influenced the work of the Council. By agreement Mr Langdon kept the "K4 Committee informed" and "made an oral presentation to them on 12 September..". At the meeting of the Council of Justice and Home Affairs Ministers on 20 March the agreed "Working Programme" included "reaching a full understanding of the existing and evolving *acquis*" and "fives areas of major concern: drugs, asylum, border controls, judicial cooperation and police cooperation."

[BOX]

"Structured dialogue" takes place in meetings at ministerial level between the applicant countries and the Justice and Home Affairs Council - these twice yearly meeting began last year. Meetings are preceded by meetings of "experts" (K4 Committee and COREPER II). The purpose is to discuss matters of "common interest" in relation to the "integration process". More formal negotiations take place at meetings of the Associations Councils (ministerial plus the Commission), the Association Committees (officials) and sub-committees. It is perhaps indicative of the expectation of these countries joining the EU that Association meetings are only just starting to take place.

*Justice and Home Affairs Cooperation with Associated Countries*, Report by A J Langdon, October 1995 included in European Commission report, SEK (96) 86, 18.1.96; *Working Document of the Commission Departments - preparation of the associated Central-European countries for EU membership: Justice and Home Affairs - the Langdon Report*, CK4 5, Confidential, ref: 4660/96, 30.1.96; *Provisional working programme for the structured dialogue with the CCEEs*, established at the meeting on 20.3.96, in Brussels.

### **Statewatch application divides EU Council**

Denmark and the UK vote for more documents to be released and the Danish delegation thought "all the documents" could have been given

An application for access to documents on the "third pillar" by Statewatch's Editor, Tony Bunyan, has caused a split in the ranks of the Council of Ministers. The application followed-up the request for documents by John Carvel of the *Guardian* which covered the meeting of the Council of Justice and Home Affairs Ministers in November 1993. Tony Bunyan's application requested access to the reports agreed at the next two main meetings of this Council in June and November 1994. The application was made in order to establish what policies had been agreed in 1994 on policing, immigration and asylum, and judicial cooperation. The request covered 65 reports and access was eventually given to 39 and refused for 28 of them.

The first application was made on 16 December 1995. The Council replied on 5 February 1996 agreeing to give access to 27 documents and refusing access to 38. On 11 February Tony Bunyan exercise the right to make a "confirmatory application" under the Code of access agreed in 1993.

The divergence of opinion among the 15 member states over how many documents to release first emerged at a meeting of the Working Party on Information, comprised of the Press Officers of the Permanent Delegations in Brussels ("confirmatory applications" used to be handle by the General Affairs Group, with the unfortunate acronym the "GAG" group). The representatives from Denmark, UK, Sweden and Finland said they were unhappy with the restrictive approach in the draft response to Tony Bunyan's application. Failure to agree at this level meant the matter had to be passed right up to the top for COREPER to resolve - COREPER is the body of permanent representatives of the 15 governments in the European Union who hold ambassadorial status, and its job is to try and reach a consensus view to put before the Council of Ministers.

COREPER discussed the issue on 6 March when a number of countries expressed the view that more documents should be released. Denmark and the UK opposed the draft reply from the Council's Secretariat as being too restrictive. Denmark went further not

only wanting more documents released but stating its intention to make its position public by making a Declaration. The Council's Legal Service attempted to head off this move by saying that it could lead to a court case against the Council because the Danish Declaration implied they were wrongly applying the Code of Access - however a majority of countries supported the Danish determination to publish its Declaration while a majority also supported the proposed reply.

Denmark was asked to consider its position by COREPER. Its view had not changed by the time of the next meeting of a Council of Ministers which happened to be the Council of Economic and Financial Ministers. When this Council met on 11 March it agreed on the reply to be sent to Tony Bunyan with Denmark (represented by Ms Marianne Jelved, Minister for Economic Affairs) and the UK (represented by Kenneth Clarke, Chancellor of the Exchequer) voting against. The Danish Declaration supported the release of all the documents to Tony Bunyan after blanking out the opinions of Member states and references to third countries (see box). The Swedish and Finnish governments also issued Declarations in favour of greater openness.

[What was refused and why]

The Council replied to Tony Bunyan on 12 March 1996, three months after the first application. The overall result was:

First application: total 65: access given to 27 reports, refused for 38.

Confirmatory application: total 38: access given to 12, refused for 26.

The grounds on which access to 26 documents refused were three-fold. Three documents were refused for the "protection of the public interest (international relations)" covering "Relations with third countries" (2) and "Police cooperation with the Central and East Eastern countries". Four documents were refused for the "protection of the public interest (public security)" covering a report on the Europol Drugs Unit between 1 January and 30 June 1994; measures to combat drug-related crime and organized crime; Draft interim report on cooperation

in the campaign against international organized crime; Implementation of the Berlin Declaration of 8 September 1994 (concerning central and eastern Europe).

But it is the category covering most of the refused documents - 19 in all - which is the most questionable. It starts with what is now known as the "Carvel" clause and reads in full:

"the consideration of your request involved balancing, for each one of these documents concerned, of your interest in gaining access to those documents against the interest of the Council in maintaining the confidentiality of its deliberations. Those documents include detailed national positions on conventions or other legal instruments still under discussion or very recently adopted and on budgetary matters in the JHA field, draft progress reports on some of those instruments and information concerning internal procedures for the selection of consultants."

As the grounds for refusal of 19 documents have been grouped together it is hard to establish which particular reasons attach to each particular document in most instances. The primary concern seems to be the protection of "national positions" on different issues which many national parliaments would argue are of legitimate interest to them and their electorates. The second concern is embarrassment which might be caused to a "third country" (a non-EU country) if it were known how it was cooperating with the EU. The refused documents included the following subjects: arrangements for data protection in the EIS, CIS and Europol Conventions; laying down a uniform format for visas; Draft Resolution on minimum guarantees for asylum procedures; and burden-sharing with regard to the admission and residence of displaced persons

Only 4 of the 26 documents refused were classified as "confidential", the rest were "restricted". In the hierarchy of EU classification which runs as: Top Secret, Secret and Confidential, Restricted, most were on the lowest level.

While some of the refused documents have the appearance of subjects which on the face of it might properly be withheld readers of *Statewatch* will be aware that each of these areas (and those below) has been covered over the past year. They all concern

far-reaching policy decisions taken on behalf of the citizens of the EU by their governments. Taken together the 26 refused documents cover issues which affect the rights of people not just in the EU but in central and eastern Europe and those of asylum seekers wanting to enter the EU. The responsibility of serious researchers is to establish exactly what has been decided through the legislative mechanism of the Council of Ministers and not to rely simply on press handouts and the often sparse coverage in the newspapers.

Tony Bunyan commented:

"I set out to find out the policies agreed under the "third pillar" in 1994 and after three months was given access to 39 out of the 65 reports requested. Given "access" meant that I was allowed to "consult" the reports "on the spot" at the Council building in Brussels. So, having gained access I had to go to Brussels and photocopy the reports myself, some 386 pages. So having been granted access there then is the time and expense of going to Brussels and since 14 April they have introduced charges for the photocopying too. It is hardly a process favouring freedom of information."

The Secretary-General of the Council of the European Union, Jürgen Trumpf, decided on 27 February, to sign a Decision introducing charges for "administrative costs.. relating to fees in the context of public access to documents" (96/C 74/02). The Decision, which covers requests to the Council and the Commission, sets a "fee of ECU 10 plus ECU 0,036 per sheet of paper" for documents "exceeding 30 pages". Charges for "other formats" are to be set on "a case-by-case basis but shall not exceed what is reasonable."

The case taken by John Carvel of the *Guardian* in the European Court of Justice has been followed by another case taken out by *Tidningen Journalisten*, the newspaper of the Swedish Journalists Union. In this latter case the paper had applied to the Swedish government for a set of 20 reports and were given 16 (some with deleted passages). A request to the Council for the same set of documents led to 2 out of 20 be given at first, then a further 2 after the "confirmatory application", giving access to only 4 out of 20 documents. The response to *Journalisten's*

confirmatory application was also the subject of division at COREPER with 10 EU governments approving the response and five abstaining (Denmark, Finland, Ireland, the Netherlands and Sweden).

### **Public access to information**

The Council agreed, with Denmark and the United Kingdom voting against, to the reply to be given to a request for Council documents from Mr Tony Bunyan. The Danish, Swedish and Finnish delegations gave the following explanations for their votes:

#### **Danish delegation**

"Denmark considers it positive that the answer to Mr Bunyan's request for access to information in doc. 5599/96 specifies concrete reasons for denying access to certain documents. However, according to the Danish Government, the possibility to blank specific Member States' opinions and reference to third countries, leads in general to the release of more documents, and would have led - in this particular case - to the release of all documents. Against this background Denmark votes against the answer in doc. 5599/96. At the same time Denmark requests that the result of the vote and this statement be made public."

#### **Swedish delegation**

"Sweden wishes to emphasize the importance of public access to the documents which form the basis for the discussions and the deliberations within the Union. It is not sufficient that the institutions give comprehensive information about their work. The public must also have the right to obtain information according to its own will, independently of the information given on the initiative of the institutions.

Furthermore, Sweden wishes to underline that the Council's decisions on public access must be based on a careful case by case examination of the individual documents concerned. Sweden is of the opinion that for the examination of future requests of this kind, consideration should be given to making greater use of the possibility of releasing documents in which, after case by case examination, the confidential passages have

been deleted. Steps in this direction should be taken as soon as possible.

In the present case there are several documents which include Member States' positions. Sweden cannot accept that these positions are revealed without consent from the Member States concerned. Furthermore, it involves some documents which should not be made public because they concern relations with third countries, specific actions against crime or an ongoing budget procedure.

Against this background, Sweden accepts the draft reply to the confirmatory application for documents submitted by Mr Bunyan even though, in the view of Sweden as submitted during the preparation of this draft, some further documents could have been released.

Sweden requests that the result of the vote and this statement be made public."

### **Finnish delegation**

"Finland accepts the draft reply by the Secretariat of the Council to the confirmatory application for documents submitted by Mr Tony Bunyan.

However, Finland wants to underline the principle of openness and an individual's widest possible right of access to information contained in the Council's documents.

Finland notes that, as far as specific requests for documents are concerned, an improvement of the working methods of the Council is under consideration on a request by Finland. In that respect the Working Party on Information is studying whether it would be possible to expand the Council's publicity of documents by considering, as the case may be, the release of specific documents with the confidential parts in them crossed out. Finland underlines that this account must be made as soon as possible.

Finland emphasizes the fact that documents which include Member States' positions should not be published without the explicit consent of these Member States."

*Press release*, Council of Economic and Finance Minister, Brussels, 11 March 1996.

### **FEATURE**

#### **EUROPOL will not be ready until year 2000**

The best "experts" assessment for the date when the Europol computer systems will be ready is "mid-1999" according to a report agreed by the General Affairs Council on 26-27 February - just three weeks before the scheduled meeting of the Council of Justice and Home Affairs Ministers on 19-20 March. The two reports agreed by the General Affairs Council set an additional budget for 1996 of ECU 1.4 million to start work on the Europol computer systems, and agreed the new Group "Europol" could set up a series of working groups.

The first report, on "The Europol Computer System", says:

"the Europol computer system is, in fact, a system, or rather an ensemble of systems, that includes the national units of the 15 member states as well as Europol itself."

It goes on to say the Europol's own computer system has "to be defined" in a way that will allow it to "link" up with "the systems of national units" and:

"It is also advisable to take into account other national and international systems, such as the Schengen Information System and that of Interpol.."

As to the timing it would be realistic "to aim for the end of 1998" but allowing for "delay from the side of the supplier" and "the making of key decisions.. could postpone the completion of the project until mid-1999."

The report sets out the new working groups being set up to effect the computer system:

*Group "Europol"*: in charge of the "strategic direction" including experts from member states.

*Project committee*: headed by the Director of Europol with "police and information technology experts" from the 15 member states and the Commission.

*Project units*: a) "project coordination" unit; b) "quality assurance" unit; c) "project support" unit.

"*permanent committees*" and "*ad hoc sub-groups*: covering areas such as data protection, the needs of the users, the security of the data, communications, implementation and training, the management of the system and the support of users.

The second report empowers the Group "Europol" to set up "one or several working sub-groups" working to a mandate and deadline set by the Group "Europol".

Immediately following this Council meeting the tender

for the Europol computer system was posted on 27 February:

“Europol will be a centre of information and intelligence for the Member States of the European Union in accordance with the Europol Convention. Operational, strategic, technical and other information will be made available from information stored in Europol databases or it will be obtained by Europol from the sources in Europe and worldwide.”

The tender notice that “the service provider, the subcontractors, the personnel and all persons concerned with the performance of the contract shall be subject to prior and ongoing security checks and bound by the statutory provisions regarding professional secrecy”

### **Europol debate in European Parliament**

At its plenary session in Strasbourg on 14 March the European Parliament urged national parliaments not to ratify the Europol Convention until the issue of the European Court of Justice had been settled. The parliament adopted a report from the Civil Liberties and Internal Affairs Committee by a majority (213 for, 44 against and 32 abstentions). The report was considerably amended in the session with the parliament insisting that the knowledge acquired via data processing on the basis of the Europol Convention must be monitored by the European Parliament;

information concerning the political opinions, religious beliefs and other personal data communicated by a State or a third party or another organisation must not be placed into a Europol file. An amendment by Mmes Roth and Lindholm (Greens) asks the Council to eliminate all reference to such data and the parliament wants better protection by extending individual rights concerning information and verification.

### **Row over data**

The row over the data to be held under the Europol Convention was not discussed at the Council of Justice and Home Affairs Ministers on 19-20 March (see *Statewatch*, vol 5 no 6 & vol 6 no 1). The issue surfaced when MEPs from Sweden and Denmark confronted the Italian Deputy Foreign Minister, Walter Gardini, with plans to include data on a person's political views, ethnic origin and sexual orientation on the Europol files. He told parliament that the proposal had been dropped. National parliaments are being asked to ratify the main Europol Convention (without amendment) but not the 18 sets of Rules and Regulations detailing its activities.

However, a later draft from the Italian Presidency showed the question had simply been pushed under the carpet for now. The first proposal had been put forward by the previous Spanish Presidency in September 1995. This was amended by the Italian Presidency in a revised draft set of regulations on 4 January and a further revision on 15 January.

The 4 January version says safeguarding privacy “cannot exclude a link with the provisions on State secrets and on official secrets”. It changes the grounds for Europol holding sensitive personal data from “the extent strictly necessary” to saying it can be held only if it “supplement[s] other personal data”. In addition, the 15 January version introduces the idea of a “handbook” setting out details of personal data to be stored - this section of the draft rules already says personal data can include “appearance and physical features”, “general personal data”, “life style and habits” and information held on “other data banks”.

### **The Convention**

The role of the European Court of Justice (ECJ) in the Europol Convention was again discussed at the Council meeting on 19-20 March without resolution. Mr Vincenzo Caianiello, the Italian Minister for Justice, told the press conference that the issue had to be resolved by the next Council meeting in June “otherwise it will be the UK's responsibility for the delay in this Convention.” The UK is alone in refusing to agree to give the ECJ a role in the Convention, the other 14 states have already signed a declaration saying they want to refer cases to it. The question has to be resolved by the Summit due to be held at the end of the Italian Presidency of the EU at the end of June.

The UK position is holding up other governments asking their parliaments to ratify the Convention. Mr Howard told the Council meeting that the UK was ratifying the Convention (the completion of this process is now a mere formality requiring the Royal Assent). But he could not even agree that the other 14 states could refer questions to the ECJ for preliminary rulings - even this decision has to be taken unanimously.

*The Europol Computer System and Draft of the additional budget for 1996 for the post-convention phase of Europol*, report to the Council of Ministers, agreed at the General Affairs Council on 26-27 February 1996, ref: 12869/95; *Control of EDU's activities*, agreed at the General Affairs Council on 26-27 February 1996, ref: 4808/96; *Tenders Electronic Daily*, 27. 2. 1996; *Agence Europe*, 14.03.1996; *EP News*, 11-15.3.96; *Proposal for rules applicable to analysis files*, report from the Presidency to the Europol Working Group, Limite,

EUROPOL 2, ref: 4038/96, 4.1.96 and Limite, EUROPOL 2 REV 1, 4038/1/96, 15.1.96; *General principles regarding protection of secrecy regulations*, Limite, EUROPOL 8, 4253/96, 12.1.96; *Press conference in Brussels*, 19.3.96.

## UK POLICE DEPLOY CS SPRAYS

UK police have shunned calls to abandon CS spray trials, following the death on 16 March of a Gambian born asylum seeker, Ibrahima Sey, after he was sprayed with the incapacitant. The six month trials, which involve some 2,500 officers from 16 authorities in England and Wales, began on 1 March, following repeated postponements because of fears about the safety of both the irritant and propellant used. A Metropolitan police inspector suffered eye burns during tests in Northampton (1)

It has also emerged that Dr Jill Tan, the Home Office scientist who gave these devices the all clear, has suffered blisters to her face when sprayed with the CS product during tests. Self-Defence expert Inspector Pete Boatman who was training the instructors when the accident happened has now been banned from training officers outside his region because his Chief Constable is worried about being sued by people injured by the incapacitant. Chief Constable Ted Crew is reported in the Independent as saying, "I am advised that were there to be a civil claim resulting from the use of CS spray, I might find that because we had trained the officers using it, I had some liability." (2)

The introduction of hand held gas sprays yields an offensive as well as a defensive capacity and in the UK, must be governed by existing policy on the introduction of new chemical weapons for domestic control. This policy arose out of a furore in 1969, when despite assurances that CS would only ever be used in very limited and local circumstances it was indiscriminately used on a massive scale against Catholics in the Bogside, in Northern Ireland. Since then the policy of successive governments has been that new chemical weapons should be biomedically assessed more akin to drugs rather than weapons and that all tests on the possible dangers of carcinogenicity or mutagenicity should be published in the open scientific press in full, before any authorisation for police procurement or deployment is given. However, the UK police have admitted that they are deploying CS sprays despite the test programme remaining incomplete.

## Harmless Weapons?

Scientists at the Chemical Defence Establishment at

Porton Down have always pointed out the possible dangers of new chemical weapons for public order control. "As with other foreign chemicals to which man may be exposed, no matter how detailed, extensive and carefully effected are the pre-clinical toxicity investigations and observations in controlled human exposures, there can be no complete guarantee from such studies that there is absolute safety in use for a given chemical." (3)

Such caution is well founded. There is evidence that CS can cause permanent but non-lethal lung damage at comparatively low doses (4). Earlier inhalation toxicology studies indicate that at high levels of exposure CS can cause chemical pneumonitis and fatal pulmonary edoema (5) as well as second degree burns with blistering and severe dermatitis (6)

In situations where high exposure to CS has occurred, heart failure, hepatocellular damage and death have been reported (Himsworth-Committee Report). Some evidence also exists that people subject to repeated doses of CS develop tolerance, further increasing their level of exposure. The development of tolerance to CS has been reported by Porton researchers in studies on human volunteers. (7) Used on those with asthma, taking other drugs, or subject to restraining techniques which restrict the breathing passages, there is a risk of death.

## Sub-Lethal Weapons - The Next Generation

US multinationals are currently marketing a new generation of sub-lethal weapons for internal security, control and restraint and are actively seeking new markets. This technology includes kinetic impact weapons, new chemical disabling weapons based on CN, CS and OC (Peppergas); remote control electrical shocking systems (the REACT belt); electronic shock sticks and riot shields. Indeed, UK Police were weeks away from beginning trials on pepper rather than CS gas, when a police superintendent suffered a highly publicised dramatic negative reaction to its effects.

OC as an incapacitating agent has a long history. Porton Down began researching analogues of capsicum after it was used as a military harassing agent in World War I in the form of acylated vanillylamide and its more potent homologues such as VAN, as a possible replacement for the riot agent CN (8). In fact the effects of pepper-gas are far more severe than CS, including temporary blindness which last from 15-30 minutes, a burning sensation of the skin which last from 45 to 60 minutes, upper body spasms which force a person to bend forward and uncontrollable coughing making it difficult to breathe or speak for between 3 to 15 minutes. For those with asthma, taking other drugs, or subject to restraining

techniques which restrict the breathing passages, there is a risk of death. The *Los Angeles Times* has reporting at least 61 deaths associated with police use of pepper spray since 1990 in the USA (9) and the ACLU has documented 27 deaths in custody of people sprayed with peppergas in California alone since 1993 (10).

The US Army concluded in a 1993 Aberdeen Proving Ground study that pepper spray could cause "Mutagenic effects, carcinogenic effects, sensitization, cardiovascular and pulmonary toxicity, neurotoxicity, as well as possible human fatalities...There is a risk in using this product on a large and varied population." However, the pepper spray got the go ahead despite the reservations of US military scientists after FBI tests gave it the all clear. It has subsequently emerged that the head of the FBI's Less than Lethal Weapon's Programme, Special Agent Thomas WW Ward took a \$57,000 bribe from a pepper spray manufacturer, Capstun, to approve the weapon. Allan Parachini, Public Affairs Director of ACLU has said the "Ward Scandal" in some way exceeds the Rodney King beatings in terms of its potential impact on law enforcement, since FBI research helped convince police departments across the country that pepper spray was a safe and effective way to subdue suspects. In fact the breach of trust is much more serious since many other countries as disparate as Australia and India have subsequently adopted Peppergas on the back of US research.

#### Future Prospects.

All chemical sprays hold potential risks for at least some targets. One study has concluded that a single exposure to high level of respiratory irritants similar to CS has led to the development of "reactive airways disease syndrome" in some individuals, characterised by prolonged cough and shortness of breath (11). New restraint tactics used alongside gas sprays and their use in an enclosed space are especially dangerous. Where Chemical Sprays are used, any death certificate marked 'positional asphyxia' should be thoroughly investigated.

In November 1995, the Secretary of State For the Home Office, Mr Maclean, confirmed that: "The Prison Service have no proposals to use products containing oleoresin capsicum at this time." However, prison riot and restraint weapons in the UK tend to mirror what is available to the police, particularly during times of staffing shortages.

(1) *Statewatch*, Vol 5, No 2 & 3, 1995.

(2) *Independent*, 16.2.95.

(3) Ballantyne B, "Riot Control Agents - Biomedical and Health Aspects of the Use of Chemicals in Civil Disturbances", *Medical Annual* (1977), pp.7-41.

(4) See Leonard Jason-Lloyd, "CS gas - an indiscriminate

weapon?", *New Law Journal*, 26.7.91, p1043-1045.

(5) Ballantyne B, Callaway S, "Inhalation toxicology and Pathology of animals exposed to o-chloro-benzylidene malononitrile (CS)", *Med. Sci. & Law*, 1972; 12:43-65; Kacmarek B, Gaszynski W., Ultrastructure of the rabbits lung tissue after administration of CS preparation. *Acta Med Pol.* 1977; 18:327-328.

(6) A Parneix-Spake et al, "Severe Cutaneous Reactions to Self Defence Sprays", *Arch Dermatol* Vol 129, July 1993, p913.

(7) Beswick F W, Holland P, Kemp K H, "Acute effects of exposure to orthochloro-benzylidene malononitrile (CS) and the development of tolerance", *British. J. Ind. Medicine.* 1972; 29: 298-306.

(8) SIPRI, *The problem of Chemical and Biological Warfare*, Vol 1, 1971, p64.

(9) *Los Angeles Times*, 18.6.95.

(10) ACLU, "Oleoresin Capsicum, - Pepper Spray Update, More Fatalities", *More Questions*, June 1995, p27.

(11) Hu H, Fine J, Epstein P, Kelsey K, Reynolds P, Walker B, "Tear gas - Harassing Agent or Toxic Chemical Weapon", *JAMA*, August 4, 1989 - Vol 262, No 5.

#### Panic PTA expansion

Before Parliament broke for the Easter recess, the Government rushed through Parliament, allowing no time for any informed debate or proper consideration, the highly controversial Prevention of Terrorism (Additional Powers) Act. This gives the police substantial and unprecedented new powers. Michael Howard described the changes as "essentially practical and technical measures", while Kevin McNamara, the Labour Party's former Northern Ireland spokesperson, considered them to be "an outrageous incursion into civil liberties". A guillotine motion was successfully passed by 261 votes to 47 to restrict the debate on the Bill to a mere six hours. The Labour Party agreed to support the fasttrack legislation after apparently receiving a confidential security briefing. Kevin McNamara claimed that Labour was being taken for a ride "by the Home Secretary. Once Labour changed its position on the PTA and conceded the point without debate, it was patently obvious that something like this would happen. We are easy pushovers for other powers that the government might seek to introduce".

The Bill was far from straightforward and the extraordinary speed with which it became law must raise questions about how many MPs fully understood what was being enacted and its implications. The Act extends,

amends or repeals certain sections of the Prevention of Terrorism Act (PTA) 1989, which itself had been extended and amended by sections of the Criminal Justice and Public Order Act, 1994. It was therefore necessary for Parliament to examine three separate pieces of legislation to appreciate fully the changes which were being proposed. In addition, very little information was made available to MPs on the use of existing police powers either under the ordinary criminal law or under the PTA. Max Madden asked for some details and in reply the Home Secretary admitted that he was unable to provide any figures for Northern Ireland and the figures he presented for the use of certain powers by the Metropolitan Police were at best confusing and at worst contradictory.

The Act provides new police powers in a number of areas. It extends police powers of stop and search of pedestrians, non-residential property, and unaccompanied freight at ports. In addition, it provides the police with new powers to cordon off areas under certain circumstances. Finally, it gives the police the power to impose temporary parking restrictions on roads or parts of roads. The focus on this piece will be on the first and fourth of these new powers.

#### Policing the streets: stop and search

The Criminal Justice and Public Order Act, 1994 introduced a new section - section 13a - to the Prevention of Terrorism Act 1989. It gave the police new powers to stop and search vehicles and items carried by people for the purpose of preventing terrorism. They were exercisable anywhere within a police force area or at a specified locality within the area. The authorisation of a police officer of at least Assistant Chief Constable rank was required. It had to specify the area and was valid for up to 28 days. Under the provisions police officers could stop and search any vehicle or its occupants and could also stop pedestrians in the specified area or locality and search any thing carried by them for articles of a kind which could be used for the purpose connected with the commission, preparation or instigation of acts of terrorism. The police were able to exercise these powers whether or not they had any grounds for suspecting the presence of the particular articles.

The Prevention of Terrorism ( Additional Powers) Act introduces another new section - section 13b - to the PTA 1989. Under Clause 1 it further extends the power to stop and search to permit the actual search of the person and not just what they are carrying. A police officer may now stop any pedestrian and search them for any articles which could be used for terrorism. As any number of perfectly harmless items in normal life such as adhesive

tape, plastic drums, bell-pushers, coffee grinders, kitchen scales, rubber gloves and nylon fishing line are used for making bombs, this gives the police power to search people for virtually anything. In any event, the police need not have any suspicion whatsoever that the person may be carrying anything which could be of use. Once someone has been stopped, the police officer can require that the person removes any headgear, footwear, outercoat, jacket or gloves.

This new power goes well beyond the existing stop and search power which is available under the Police and Criminal Evidence Act 1984 where the power to search a person is strictly limited to cases where there is both reasonable grounds for suspicion and the target of that suspicion is strictly limited to a stolen or a prohibited article.

This new exceptional power to search people also goes well beyond the PACE stop and search power in another respect. Under PACE there is no power to require a person to remove headgear or footwear in public. Where on reasonable grounds it is considered necessary to conduct a more thorough search by requiring someone to take off, for example, headgear, this should be done out of public view. Under this new power this restriction does not apply.

In practice these searches under the new power will be considerably more humiliating, embarrassing and much more invasive of people's privacy than under the ordinary criminal law power. People, for example, may be required, in full view of others, to take off their jacket, empty their handbags, take off their shoes and socks or have the searcher run their fingers through their hair.

The new power is very similar to the extensive stop and search power which has been available to both the army and the police in Northern Ireland for many years. Thus once again a piece of criminal law introduced to deal with the exceptional circumstances in Northern Ireland is introduced into the rest of the United Kingdom. Under the Northern Ireland (Emergency Provisions) Acts the security forces have had the power to stop and search any person in a public place looking for munitions or radio equipment and no suspicion is required. Interestingly, the target of the stop and search power, on paper at least, is less wide than under the new law in Britain which relates to virtually any article. In practice, however, this legal distinction is irrelevant as no reasonable suspicion is required to carry out a stop and search in either jurisdiction and therefore the target of the search is superfluous.

#### PACE stop and search powers in Britain

Although the PACE stop and search power is



considerably more restrictive than the new stop and search power, its use has been highly contentious. There is now much evidence to suggest that it is frequently exercised disproportionately against ethnic minorities. The number of people of "ethnic origin", for example, stopped and searched in London between April 1993 and April 1994 constituted 42% of all those stopped and searched in London (see *Statewatch*, vol 5, no 4 pp18-21 and this issue). As John Wadham, the Director of Liberty, has pointed out "The exercise of such powers increases the potential conflict between the police and innocent members of the public". Such powers, he went on, "too readily permit the possibility of harassment and their exercise against a minority is likely to be perceived as such".

### The use of PTA powers

The use of other PTA powers has also been highly contentious creating widespread resentment within the Irish community in Britain. Since 1974 the police have arrested over 7400 people and over 85 per cent have not been charged with any offence or served with an exclusion order. It means that nearly one person has been detained for every day the legislation has been in force and the vast majority have been released without any further action after spending some period between a few hours or 7 days in custody. The new powers are apparently urgent and necessary now, but were judged not to be when the IRA was planting and setting off bombs at the rate of one a week in the early 1990s (*Statewatch*, vol 3, no 3).

There have been numerous examples of Irish people being in the wrong place at the wrong time and arrested because of their accents or because something else suggested that they were Irish. What is abundantly clear is that most people who have been drawn into the criminal justice system under the PTA are not suspects in the sense that they are thought to have committed or are about to commit some offence. On the contrary they are suspects because they are Irish and they belong to a suspect community. And, under the PTA port examination and detention powers Irish people have experienced at best inconvenience and at worst systematic harassment as they travel between Britain and Ireland.

If the new stop and search powers are used in a similar way to police the Irish community, it will not be subject to any official monitoring. Although the Criminal Justice Act 1991 places a requirement on the Home Secretary to publish information to help prevent persons working in the criminal justice system from discriminating against people on the "ground of race or sex or any other

improper ground", the Irish are not considered to be an ethnic minority. Stops and searches of Irish people will therefore continue to be included in the composite figure for "whites" thereby hiding the extent of discrimination against Irish people and artificially reducing the extent to which minorities as a whole appear to be discriminated against in the criminal justice system.

### Stop and search under the EPA in NI

Northern Ireland provides ample evidence of the problems which arise from the use of exceptional stop and search powers. It has created widespread resentment particularly among the nationalist community. Even Lord Colville, who until recently carried out reviews of the emergency legislation for the government (and is known to be a supporter of exceptional measures) has noted that "personal searches of people stopped in the street are amongst the most contentious issues in Northern Ireland".

The Committee on the Administration of Justice (CAJ) has received constant complaints about the use of the powers. They report that people may be stopped and searched numerous times in a short period of time. They have also received complaints which detail searches involving the removal of shoes and socks in wet conditions. Some complaints involved the footwear being thrown away by searchers in order to increase the discomfort and annoyance. In 1994 CAJ published a report entitled "It's part of life here...": The security forces and harassment in Northern Ireland, which was based on a survey of young people. Twenty-six per cent of young people reported having been stopped and searched and of these, 40% claimed that they had been harassed.

### Police cordons

The other particularly controversial aspect of the new Act is the power to impose a police cordon where a police officer of at least the rank of a superintendent "considers it expedient" to do so. Even a police constable may impose a cordon if he thinks that it is necessary to do so in a "matter of great urgency". Michael Howard in introducing the Bill informed the House that this power would be available "to restrict access while the police looked for a bomb or while they were collecting forensic evidence following an explosion or following the discovery of a bomb".

Yet the Bill itself provides for police cordons under much wider circumstances. The police need only to be conducting what is termed a "terrorist investigation". This is defined in very broad terms in the PTA 1989 and

includes any investigations into the commission, preparation or instigation of acts of terrorism. It is therefore not confined to a bomb being discovered or actually going off. In addition, it also includes any investigation into an act which appears to "constitute" one of a number of offences under the PTA. This could include an investigation into someone who is thought to be providing financial support for a proscribed organisation. In such circumstances the police could impose a police cordon in the area.

The implications of this new power are considerable because once authorisation has been given, a whole range of other powers noted in a new Schedule, come into play. Schedule 6a provides that a person who is in the area or in premises in the area must immediately leave if ordered to do so by a constable. It also provides for vehicles to be removed or prohibited from entering the area.

More importantly, it provides for extensive new search powers. Paragraph 7 allows the police to search without a warrant all properties in the area, not just non-residential properties as in clause 2 of the Act. In addition, the police can search any person found there and seize and retain anything found there or on any such person, other than items subject to legal privilege. It is an offence punishable by up to three months imprisonment to obstruct the police in the exercise of these powers. Unlike the Clause 2 stop and search power the police need to have reasonable suspicion that there is material which is likely to be of substantial value (whether by itself or together with other material) to a terrorist investigation to be found on the premises.

The police did have a power under the PTA 1989 to search premises and any person found there during a terrorist investigation but they first had to make an application to a justice of the peace. In addition, there were certain conditions which had to be fulfilled - such as it not being practicable to communicate with any person entitled to grant entry to the premises - before a search could be carried out. This new power removes not only the need for approval of a JP (magistrate) but also the conditions. The police have therefore been given virtually unfettered power to cordon off areas and carry out blanket searches of houses and people.

## Conclusions

From a broader perspective a number of points can be made about these new powers. As with all the previous exceptional powers they are likely to be used almost exclusively against the Irish community living in Britain. Its civil liberties have therefore been further eroded by this very rushed and ill-considered legislation which the Labour Party was not prepared to oppose. It readily

accepted the validity of a security briefing which indicated that the powers were needed quickly, notwithstanding that the same source totally failed to forecast the ending of the cease-fire.

Secondly, the legislation further blurs the distinction between the ordinary criminal law powers and the extraordinary powers considered necessary to deal with terrorism. The failure to enact separate legislation to amend and repeal certain parts of the PTA in 1994 but instead to include the changes in a statute covering the ordinary criminal law has been further compounded by amending and repealing these changes through extraordinary legislation, thus cementing the ordinary law and the exceptional law even closer together. The PTA is in reality now permanent.

Thirdly, the introduction of the concept of cordoning off an area in which even more exceptional police powers may be used further shifts the focus of policing away from an individual to areas. The geography of risk will increasingly define police priorities and, no doubt, it will not be long before this exceptional power to cordon off areas will be available to deal with ordinary crime with all the implications for other ethnic minority communities in Britain.

Finally, the new powers are a clear reflection of the failure of the existing legislation: the Prevention of Terrorism Acts have not prevented terrorism. Yet the police requested even more powers which both Government and Opposition conceded and they have been granted with even less restrictions. Gone is the need for reasonable suspicion and gone too is the need for some independent check, such as the authority of a JP. If a "police state" is one in which the police define and implement the law without any checks and balances in the use of the law then this legislation takes Britain closer to one.

## CONFERENCES

**World Congress on Violence and Human Coexistence:** Dublin, Ireland. 17-21 August 1997. Theme: Violence and the Future of Society. Suggested topics include: Organised crime; recidivist violence; violence and juvenile imprisonment; official and state violence and resistance to; domestic violence. Details from: Jessica Bates, Congress Secretary, University College Dublin, Belfield, Dublin 4, Ireland. Fax: 00 353 1 7061125. e-mail:Jess.Bates@ucd.ie

**People's diplomacy, non-violence and migration,** Conference, Roverto, Italy, 25 August-14 September 1996. Sessions on: The human cost of migration (2-3 September); Legal aspects of migration (4 September); The economics of migration (5-6 September). Details:

International University of Peoples' Institutions for Peace, Secretary's Office, Fondazione "Opera Campana dei Caduti", Colle di Miravalle, 38068 Roverto (TN), Italy. Tel: 00 39 464 434412.

**International Refugee Day**, 16 June 1996. Both organised by UNITED, Postbus 413, NL-1000 AK, Netherlands. Tel: 00 31 20 6834778. Fax: 00 31 6834582.

**Regulating Europe: criminology, care and control:** 24th Annual Conference of the European Group for the Study of Deviance and Social Control, University of Wales, Bangor. Thurs 12 September - Sunday 15 September. Papers are invited on the following themes: The criminological enterprise in Europe; The new European order; Constructing policies and problems; Institutional violence. Contact: Chris Powell, University of Wales, School of Sociology and Social Policy, Bangor, Gwynedd LL57 2DG, Wales.

**Translators needed:** *Statewatch* is building up a group of translators prepared to help with the translation of articles and reports from German, French, Spanish and Italian. Please contact: *Statewatch*, PO Box 1516, London N16 0EW or ring (00 44) 0181 802 1882 or fax (00 44) 0181 880 1727.

**Statewatch database on the World Wide Web updates include:**

1. MI5 Director's speech: "National Security and International Understanding" speech by Stella Rimmington, Director-General of MI5, the Security Service, to the English Speaking union on 4 October 1995.

2. Title VI of the Maastricht Treaty: Full text: Cooperation in the fields of Justice and Home Affairs

3. Two measures agreed at the meeting of the Council of Justice and Home Affairs Ministers on 25 September 1995 at their meeting in Brussels. Full text: JOINT ACTION "adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on measures implementing Article K.1 of the Treaty" AND a COUNCIL DECISION of 25 September 1995 "concerning the implementation of the joint Action on measures implementing Article K.1 of the Treaty on European Union" (95/402/JHA). This allows the Council to fund its own seminars and research from the EC Community budget.

4. Common visa list, Regulation. COUNCIL REGULATION (EC) No 2317/95 of 25 September 1995 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States.

FULL TEXT including list of countries.

5. EU Convention on "Simplified extradition"

Comment: This Convention was signed by the EU Council of Justice and Home Affairs Ministers in Brussels on 10 March 1995. It has to be ratified by each national parliament. One novel feature of this Convention is that it can come into operation BEFORE all 15 parliaments have ratified it between any two or more Member States (see Article 16.3). Full text.

Described as a Convention covering "voluntary extradition".

6. Article by Phil Scraton "Community Policing in Britain: Context and Critique" (full text)

7. Western European Union draft report on: THE SECURITY IMPLICATIONS OF THE OPENING OF BORDERS Sub-Committee on the organisation for security and cooperation in Europe (AM 86 CC/OSCE (95) 4)

8. Paper: Comments by the Standing committee of experts on international Immigration, refugee and Criminal Law, Utrecht, Netherlands on the Draft Convention on Europol (full text)

9. Press release from: the Cabinet Office, 15 February 1996 "Changes in intelligence after Scott inquiry" (full text)

10. Police mutual aid. Circular to: The Chief Officer of Police The Clerk to the Police Authority. Home Office Circular 1986 "THE MUTUAL AID CO-ORDINATION CENTRE, MUTUAL AID AND POLICE SUPPORT UNITS" (full text)

11. The Europol Convention: Full text of the Convention adopted on 26 July 1995 by the 15 governments of the Members States

12. EU: combating illegal immigration. Council Recommendation finally adopted on 22 December 1995: On harmonizing means of combating illegal immigration

and illegal employment and improving the relevant means of control (full text)

13. IGC: European Council's position on "third pillar".

Source: Report of the Council of Ministers on the functioning of the Treaty of European Union - adopted by the EU's Foreign Ministers at their meeting in Luxembourg on 10 April 1995. (Published in UK as Cm 2866, HMSO, £9.10). Full text of: Section VI: COOPERATION IN THE FIELDS OF JUSTICE AND HOME AFFAIRS

14. Customs information Convention - full text. European Council of 26 July 1995 drawing up the Convention on the use of information technology for customs purposes AND Customs information system: provisional application - this Agreement allows for the "rolling ratification" of the Customs information system (CIS) Convention allowing two or more states to put it into operation.

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