

statewatch

monitoring the state and civil liberties in the UK and Europe

vol 8 no 6 November - December 1998

EU: Surveillance extended to internet and satellite phones

The EU is to extend the EU-FBI telecommunications surveillance plan to the Internet and to new generation satellite mobile phones (see *Statewatch*, vol 7 no 1 & 4 & 5; vol 8 no 5). At the same time EU Interior Ministers are seeking to resolve their differences over the legal powers they intend to give the "law enforcement agencies" to intercept all forms of telecommunications under the new Convention on Mutual Legal Assistance. In the US the same issues are being openly discussed - the Federal Communications Commission has deferred a decision on an FBI proposal to extend surveillance to the Internet and invited public comment.

In October 1994 the US Congress passed an FBI-proposed law, the Communications Assistance for Law Enforcement Act. On 17 January 1995 the EU adopted a Resolution on the "Requirements" to be placed on network and service providers to carry out surveillance of all telecommunications. These "Requirements" were exactly the same as those drafted by the FBI. Now these "Requirements" are to be extended from covering traditional phone networks and current GSM mobile phones to cover the Internet and the new satellite-based mobile phones (SPCS) run by multinational companies like Iridium.

Under the plan telecommunications network and service providers would have to give access to communications from "mobile satellite services" (provided by multinationals like Iridium via their "ground station" in Italy, see *Statewatch*, vol 8 no 5) and to e-mail sent and received via ISPs (internet service providers) in addition to phone calls and faxes sent through the traditional system (land and sea lines and microwave towers).

The new draft "Requirements" cover the "realtime" (as it is actually happening) surveillance of phone-calls and e-mails including where messages are redirected, voice-mail and conference calls. They even extend to passing over data when a connection has not been made for both outgoing and incoming calls/messages. All details concerning e-mails accounts have to be handed over by ISP providers. "Realtime" is defined as routing the surveillance in "milliseconds".

Legal powers

In a parallel development the EU Justice and Home Affairs Council is discussing the draft Articles on the "interception of telecommunications" in a new Convention on Mutual Legal Assistance in Criminal Matters. This is intended to extend the application of a 1959 Council of Europe Convention with the same title.

The new "Requirements" and the new legal powers are being presented as being necessary to combat organised crime. However, the scope of the 1959 Council of Europe Convention simply covers any:

offences the punishment of which falls within the competence of the judicial authorities of the requesting Party. Provisions is thus made for minor offences as well as for other, serious, offences.. (Explanatory report on the European Convention on mutual assistance in criminal matters, Council of Europe, 1969, p11)

The issue of police officers and/or judicial authorities being called on to give what will in effect be instantaneous authorisations for intercepts "within minutes" is not addressed by the draft EU Convention.

Nor is the issue of telecommunications surveillance by the security and intelligence services - the new legal powers are only intended to authorise interception for criminal investigations. To the embarrassment of EU Interior Ministers the UK has objected to the draft Convention because in the UK - unlike in other member states - there is a single law covering the Security Service's (MI5) surveillance in connection with national security and its role assisting the police on organised crime.

Neither the first set of "Requirements" nor the proposed revised set of "Requirements" require approval or reference to parliaments, national or European. The new draft Convention, when eventually signed by the 15 EU member states has to be ratified by national parliaments - but they are not allowed to change or amend anything, not even a dot or comma.

See Feature on page 19

IN THIS ISSUE

UK: Pinochet's come-uppence see page 15

N Ireland: Peace process falters? see page 17

Statewatch, PO Box 1516, London N16 0EW, UK

Tel: (00 44) 0181 802 1882 Fax: (00 44) 0181 880 1727 E-mail: statewatch-off@geo2.poptel.org.uk

© Statewatch ISSN 0961-7280. Material in the bulletin may be used if an acknowledgement is given.

EU

Action Plan establishing an “Area of Freedom, security and justice”

The JHA Council on 3-4 December held an “open debate” (where press and public can watch on video screens) on this Action Plan. Ministers read out prepared speeches as is the norm on these occasions. Belgium Justice Minister Van Parijs said that the free movement of persons emphasised the need for: “a European approach for asylum policy and the fight against illegal immigration”. The Greek Minister for Public Order, Mr Petsalnikos said that “freedom can only exist in an area where security prevails and justice reigns”. While for the incoming German Presidency the Justice Minister, Mrs Dable-Gmelin, said that the EU needed to create a European “legal structure” and a “constitution of European law” hand in hand with “the development of Europol”. Italian Interior Minister Mrs Jervolino-Russo said that there must be a “very rapid” implementation of Europol whose mandate should be extended to “all fields of crime”.

The Action Plan is geared to implementing and extending the changes which will be brought about through the Amsterdam Treaty: in particular the new Title IV of the Treaty establishing the European Communities (TEC) and the revised Title VI (police and judicial cooperation) of the Treaty on European Union (TEU). The former transfers, within five years, immigration and asylum from the “third pillar” to the “first pillar” (measures adopted within and after five years will be under the “Community method” as Community law, for example, as Regulations or Directives).

The concepts of “Freedom” and “justice” in the title of the Action Plan are defined simply in relation to “security”, as “freedom to live in a law-abiding environment” and the combating of those who “seek to deny or abuse that freedom”.

As applied to “Immigration and asylum policies” the “Area of freedom” means on the one hand: “ensuring the integration and rights of those third country nationals legally present in the Union..” and on the other “combating illegal immigration” and turning the “soft law” (of the post-Maastricht Resolutions and Recommendations) into Community law. The latter are largely directed to removing rights of entry and restricting the right to stay.

An addition to the areas in the Action Plan on “freedom, security and justice” is “relations with third countries and international organisations”, the “dialogue” with “Interpol, UNHCR, Council of Europe, G8 and the OECD will become even more intense in the future”. The Amsterdam Treaty will “enhance the Union's role as a player and a partner on the international stage, both bilaterally and in multilateral fora”. Particular attention is drawn to the EU exercising “its influence internationally” on asylum and immigration issues (Title IV, TEC) and the signing of “international agreements” (Title VI, TEU). This reference to “international agreements” is interesting because being intergovernmental no reference is required to parliaments, national or European. Article 38 of Title VI, TEU (police cooperation) simply refers to Article 24, under Title V (defence and foreign policy), which allows EU member states to conclude “agreements” with “one or more States or international organisations”.

The Action Plan then sets out specific priorities which include:

- a) replacing “soft law” provisions under the new Title VI with “more effective ones”.
- b) a “Convention on the lawful status of illegal immigrants”

- c) establishing “a coherent EU policy on readmission” (sending people back to countries of origin)

- d) “establishment of a Task Force which will assess countries of origin on an inter-pillar basis”

- e) “start harmonising Member States' laws on carriers' liability” (the fining of airlines, lorry and taxi drivers carrying “illegal immigrants” into the EU)

- f) “improvement of the possibilities for the removal of persons who have been refused the right to stay”

- g) Europol: “set up a European criminal records office”

- h) Europol: “make the fight against illegal immigration one of the priorities of operational cooperation”

- i) to use Article 34.c of the new TEU allowing the adoption of “decisions for any other purpose consistent with the objective of this Title” to mount operations between national police and gendarmeries in collaboration with judicial authorities. “Decisions” under 34.c can be taken by qualified majority, “shall be binding and shall not entail direct effect”.

- j) “Study the feasibility of a European criminal record” (under judicial cooperation in criminal matters)

- k) Under the “approximation of rules on criminal matters” ensuring, within five years, “common procedural standards should be sought that will improve mutual assistance in criminal matters.. Consideration should be begun in the field of telecommunications interception, searches, seizures...”

Action plan on establishing an area of freedom, security and justice, Presidency to K4 Committee, 12028/98 and 12028/1/98, JAI 31.

Presidency migration plan sidelined and resurrected

When the incoming Austrian Presidency circulated a report entitled “Strategy paper on immigration and asylum policy” it came under attack from a wide range of voluntary groups and NGOs. Most EU governments claimed it was “nothing to do with them” and even a revised version circulated at the Informal Justice and Home Affairs Council meeting in Vienna at the end of October was also considered too controversial. The Justice and Home Affairs Council on 3-4 December said it was a “useful contribution”.

In fact, the proposals in the first version were known to EU governments and it was prepared with the help of Directorate-General H (Justice and Home Affairs) in the General Secretariat of the Council. Moreover, the Presidency Troika, then the UK, Austria and Germany, would certainly have seen it.

By the time of the Informal Justice and Home Affairs Council meeting the “problem” was how to rescue the most urgent proposals in the report while appearing publicly to dump it. Along come the “Netherlands proposal” to create a “Task Force on asylum and migration”.

The General Affairs Council on 7-8 December agreed to set up the “Task Force”. This is to be a High Level Working Group on Asylum and Migration comprising of top officials from each EU member state. It is charged with drawing up a list of “countries of origin and transit of asylum seekers and migrants” together with “action plans” on a “cross-pillar approach” by March 1999. The High Level Working Group also has to prepare a final report in time for the planned special justice and home affairs European Summit in Tampere, Finland in October 1999. A “cross-pillar” approach means that instead of just bringing pressure to bear on migration questions (“third pillar”) this will be coupled with diplomatic pressure and the possibility of economic aid to the “problem” country of origin and the neighbouring region.

The General Affairs Council agreed the tasks for the Group proposed by the Netherlands and left its terms of reference to be decided by COREPER (the committee of permanent

representatives from each EU member state).

The Netherlands proposal includes:

a) drawing up a list of "the most important" countries of origin of asylum seekers (a euphemism for the countries which create problems for the EU);

b) establish a plan "to tackle each of these countries" including:

- "causes of the influx" [that is the EU's alleged "influx"];

- the identification of "reception of the displaced persons in the region" [that is, how can the "influx" be contained on the door-step of the originating country rather than the EU's];

- "deepening political/diplomatic consultations with the country of origin and/or neighbouring countries";

- "the inclusion of readmission" clauses in EU association agreements with these countries (that is, tying economic aid to taking back people from their country)

Strategy paper on immigration and asylum policy, Presidency to K4 Committee, 9809/98, CK4 27, Limité, 1.7.98; Strategy paper on migration and asylum policy, Presidency to K4 Committee, 9809/1/98, Limité, 29.9.98; Justice and Home Affairs Council, press release, 4.12.98; General Affairs Council, press release, 8.12.98.

ITALY-TURKEY

The other extradition

The Italian government provoked the wrath of the Turkish government by refusing in November to extradite Abdullah Öcalan to Turkey. Öcalan is the founding leader of the Kurdistan Workers Party (PKK), which has been fighting in the south-east of Turkey for an independent Kurdistan since 1984. At the end of August 1998, Öcalan announced a unilateral ceasefire to take effect on 1 September, the 75th anniversary of the foundation of the Turkish state by Kemal Ataturk. The ceasefire declaration was rebuffed by the Turkish government, which instead put pressure on Syria to expel Öcalan, who has been living in exile there for many years. Syria duly obliged, and Öcalan made his way to Moscow and from there to Italy, where he was arrested on 12 November and claimed political asylum. The Turkish government immediately sought Öcalan's extradition, claiming that he is single-handedly responsible for all of the estimated 30,000 people who have died in the Kurdistan war of liberation. But the Italian court refused extradition on the basis that the Italian constitution forbids extradition to any country which has the death penalty. The Turkish government has threatened a total boycott of Italian goods in reprisal; Italy's hopes of winning a tender for 145 military helicopters receded as Mesut Yilmaz threatened Turkey's eternal enmity on his last day as prime minister. There were reports of mobs setting fire to Italian cars in the streets of western Turkey in the wake of the judicial decision, and even that Juventus had to cancel a fixture in Istanbul owing to fears for the team members' personal safety. European Commission head Jacques Santer has warned Turkey of counter-reprisals against Turkey for breaching the 1963 Ankara Association Agreement and the 1995 Customs Union with its boycott.

As Öcalan remains under house arrest in Italy while his asylum claim is processed and the authorities decide what to do with him, the Italian government now blames the German government for his arrest. Öcalan would never have been arrested, they say, if it were not for the international arrest warrant issued by a court in Karlsruhe in 1990 alleging conspiracy to murder Kurdish defectors. The warrant was recently updated to include arson attacks on Turkish businesses in Germany. But at the end of November the new German chancellor, Gerhard Schröder, refused to seek Öcalan's

extradition, saying it would cause too much conflict between the Turkish and Kurdish communities in Germany. The Christian Democrats have accused him of succumbing to blackmail and demand that the PKK leader is put on trial in Germany; Schröder and Italian prime minister Massimo d'Alema prefer an ad hoc European court to try Öcalan.

Meanwhile, the ceasefire offer, like its two predecessors in 1993 and 1995, are ignored by the Turkish generals waging war against the Kurds. According to some official estimates, Turkey has over 300,000 troops in the south-east. All observers, including the US State department and the EU, agree that the army has committed and continues to commit large-scale atrocities including razing thousands of Kurdish villages to the ground and forcibly evacuating over a million people. Torture, extra-judicial execution and "disappearances" remain commonplace: a 1996 EU report described torture as endemic in Turkey. It is still illegal to speak Kurdish in public there, and verbal support for Kurdish self-determination is proscribed as an act of terrorism. The Kurdish parliamentary party, HADEP, is constantly under attack, with hundreds of members arrested in the past few months and its MPs in prison for public speeches supporting the Kurds.

BASQUE COUNTRY

Peace process moves forward

The peace process begun on 17 September with the unilateral ceasefire declaration by the armed Basque grouping ETA has recently been consolidated. Almost three months after the declaration, the Spanish government has come under increasing pressure to respond positively to the new situation. Prime Minister José María Aznar has now publicly called for ETA to open communications.

Meanwhile, on 25 October, elections to the Basque parliament gave a majority of votes to the parties which had signed the Lizarra Accord (see *Statewatch*, vol 8 no 5), the agreement which paved the way for the ceasefire. Consequently the new autonomous Basque government will be formed by Accord parties and will receive the parliamentary support of *Euskal Herriarrok*, the nationalist coalition formed around *Herri Batasuna*. Although the coalition has decided not to join the government, the absence of the Socialist Party (which was in the previous two governments, but rejected the Lizarra Accord) guarantees a significant change of direction. While political discussions continue to aim at securing a consensus on the basis for peace, the Spanish government is facing demands for a radical revision of its penal policy.

In November the Spanish parliament unanimously approved a resolution to that effect. On 28 November a 70,000-strong demonstration in Bilbao called for the immediate repatriation to the Basque Country of prisoners dispersed across the Spanish penal system, and for urgent action to create conditions in which the Basque Country would cease to have political prisoners.

There are at present 586 Basques imprisoned for politically-motivated offences (58 held in the Basque Country, 451 in Spanish prisons, 75 in French prisons, and one each in Mexico and the United States). Around 2,000 Basques live as refugees, and 45 have been subjected to extradition proceedings (37 from France, three from Uruguay, two from Belgium and one each from Germany, Costa Rica and Italy).

EUROPEAN COURT

Police lose blanket immunity

The European Court of Human Rights has ruled that the absolute immunity to being sued for negligence enjoyed by the police is

in breach of article 6(1) of the European Convention on Human Rights (entitlement to an independent tribunal in determination of civil rights). The negligence case, struck out by the UK Court of Appeal on the grounds of police immunity, concerned the failure of the police to provide adequate protection to the Osman family from school teacher, Paul Paget-Lewis. Both the family and the school had reported to the police a series of incidents relating to Paget-Lewis' increasingly psychotic obsession with 15-year-old pupil Ahmet Osman. This had included following Ahmet, harassing and threatening him and his family, vandalism, writing offensive graffiti about Ahmet and ramming a van in which his friend was a passenger.

In March 1988, Paget Lewis broke into the Osmans' home with a shotgun, wounding Ahmet and killing his father Ali. He then went to the home of the deputy-head of the school, wounding him and killing his teenage son. Earlier, the police had taken the decision to arrest Paget-Lewis for the driving offence, but unable to find him at work, they did not follow the arrest up. On his arrest, Paget-Lewis asked the police "Why didn't you stop me before I did it? I gave you all the warning signs".

While the ruling is encouraging, particularly in the light of two recent decisions relating to police trespass and unlawful detention in a public order case, the Osman's solicitor Louise Christian believes it will still be "extremely difficult" to bring a negligence claim against the police to court. The decision will not help the families of Stephen Lawrence, Michael Menson or Ricky Reel in challenging police failure to investigate a racist attack. However, it may provide redress for victims of serial harassment where police protection has been sought.

Legal Action, December 1988

Europe - new material

Economic, social and cultural rights in an international context, Stephen Knafler. *Legal Action* October 1998, pp8-9. Summarises how new rights, soon to be incorporated under the European Convention on Human Rights, relate to wider rights in other international conventions.

Echelon, EU-FBI: Techniken politischer Kontrolle [Technology of political control], *AMI*, no 11, 1998, pp 23-28.

Parliamentary debate

The Schengen Acquis: ECC Report, *Lords* 6.11.98. cols. 454-488

IMMIGRATION

DENMARK

Asylum seekers get "lunch package"

Since 3 July this year a new policy towards asylum-seekers has been in operation. A majority in the Danish parliament voted in favour of tightening the reception procedures for asylum-seekers just before parliament finished its proceedings for the summer break. Under the amended Aliens Law the police were given powers to put an asylum seeker on so-called "motivating measures" (popularly called the "lunch package"). When the police - who are the first authority an asylum-seeker meets when they arrive in Denmark - decide that the individual, when questioned, does not cooperate fully in identifying their travel route, any trafficker, or have identification they are put on the "lunch package".

Being on "the lunch package" means the you don't get the "pocket money" otherwise handed out to an asylum seeker.

Instead, you receive every fortnight a package with different food products. You are supposed to live on this until you understand that you have to cooperate with the authorities and give them information which you are assumed to be withholding.

During the first three months of this new law the police have recommended that the Immigration Service hand out lunch packages to 1,122 persons who arrived at the airport or by other means without the necessary papers. The Immigration Service (which is responsible for handling an asylum application in the first phase of the procedure) accepted the police recommendations in 229 cases, reversed them in 414 cases and the rest (479) and are still being considered. Of the 229 cases, the Immigration Service have taken 34 people off "lunch packages" because, according to the police, they started to cooperate and 27 persons due to ill-health.

What does non-cooperation mean? Questioned in Parliament the Minister of Interior, Mr Thorkild Simonsen, responsible for asylum policy, had to admit that there are no guidelines regulating the criteria according to which the police decide who is cooperating and who is not. This means that it is up to the individual police officer handling the case to decide whether an asylum seeker has shown a willingness to cooperate.

The Danish Refugee Council has received several examples of how the police argue for a recommendation for the lunch packages. In one typical case the asylum seeker was not able to produce ID-papers but said that she could have her identity verified through relatives in Germany and that it would take her a few weeks to contact them. She was immediately recommended to get the "lunch package" due to her non-cooperation.

Under pressure from the opposition in parliament and because of a complaint to the Ombudsman by a jurist at the Danish Centre for Human Rights the Minister of Interior has now decided to formulate guidelines on how to determine what non-cooperation is. The guidelines are currently being reviewed by experts, lawyers and others.

Immigration - in brief

■ **Spain: 25 drowned:** The latest sorry chapter in the clandestine flow of migrants across the Straits of Gibraltar was written on 26 November, when a small boat sank with the loss of 25 people trying to reach Spain. According to official figures, no fewer than 443 boats and other craft were intercepted in September, carrying 2,345 would-be immigrants. The number of sinkings, wrecks and capsizes rose to 13, with 103 people rescued, 45 drowned or lost at sea and 20 bodies recovered.

■ **Norway: DNA testing:** The Norwegian authorities are considering introducing DNA-testing as a means to verify whether immigrants who apply for residence in Norway for family reconciliation reasons, are related to those they claim to be family members. Norway will eventually be following Denmark in this practice, which has used DNA-testing especially for suspected false claims of blood relationships among Somalians. However, the Medical Association says it is unethical to use technology developed to improve people's lives as a tool of control. *NRK Dagsnytt*, 7.11.98.

■ **France: Sans papiers:** The main anti-racist and human rights organisations in France called for a national day of solidarity with the *sans-papiers* on December 10. They also called for a concerted mobilisation for a new immigration policy regime, one which has a greater respect for the Universal Declaration of Human Rights, in this, its 50th anniversary year. At the Green Party Congress on November 14 and 15, Daniel Cohn-Bendit and Dominique Voynet, Minister for planning and the environment, called on Lionel Jospin to regularise the status of the 140,000 *sans-papiers*. Cohn-Bendit said that whilst he was

“no defender of open borders” he was certainly an advocate of a more “hospitable” immigration policy. He described the *sans-papiers* as victims of right-wing policies and appealed to Lionel Jospin to act with the vision of a future president by undertaking a general regularisation. Dominique Voyet alluded to the hunger-strikes undertaken by the *sans-papiers*, and was critical of the government's heavy-handed response to them, citing a case in which about 50 police were sent to deal with 11 hunger-strikers. Francois Hollande, first secretary of the *Parti socialiste*, responded by saying that the *sans-papiers* would be dealt with on a case-by-case basis. *Le Monde* 17 & 27.11.98.

■ **Netherlands: *Koppelingswet* contravenes European Treaty:** Two court cases have shot holes in the *Koppelingswet* (the Dutch “link” law which, in principle, prohibits the provision of social services to “illegal” migrants.) It has now emerged that the law clashes with several European treaties. An “illegal” immigrant from Kurdistan was allowed to keep his benefit support after his lawyer argued that the *Koppelingswet* contradicted sections of the social and medical provisions in the European Treaty on Social Security. Another “illegal” immigrant from Turkey fought against his exclusion from benefit on the grounds that Turkey has signed the Treaty. The judge ruled that this applies to eastern Europeans as well.

■ **Netherlands: *Sans papiers* law before parliament:** In a new attempt to drastically reduce the number of asylum-seekers the Dutch Government has laid a Bill (“*Wet Ongedocumenteerden*” - Law on the undocumented) before parliament which makes it possible to refuse entry, and instantly deport, asylum seekers who are not in possession of a valid passport. Voting in parliament was equally divided (with 68 for and 68 against) but it is expected that, following a minor amendment, there will be a majority supporting the Bill. As a result asylum-seekers will be guilty until proven innocent. If they do not possess valid documents they will have to prove that they lost them “legitimately”, and not intentionally. According to the Ministry of Justice 80% of asylum-seekers enter the Netherlands on false documents.

Immigration - new material

In Exile. The Refugee Council, November 1988. This second issue of the re-launched magazine (previously *Exile*) includes details of a new web site and a summary of the statistics from the latest Home Office statistical bulletin, (see above). Other features include reports on the “housing” of asylum-seekers in tents in Holland; the difficulties confronting refugees who wish to practise medicine, and could make a valuable contribution to addressing the shortage of hospital doctors and GP's in Britain and the coercion of children into fighting in the civil war in Uganda. There is also an interview with Mike O'Brien who asserts his commitment to “restoring integrity” to the asylum system and recognises that this will require tackling the inefficiency which has come to characterise the operation of the Immigration and Nationality Directorate. He also states that the Home Office will no longer refer to asylum-seekers, in the language of the *Daily Mail*, as “bogus”. Instead, lest we drop our collective guard, we should beware of “abusive asylum-seekers”. Where this new, officially-endorsed terminology fails to depart from the perspective of the *Daily Mail* is in adding a prejudicial tag to a category of people whose claims are still under consideration. The Refugee Council, 3 Bondway, London SW8 1SJ. Tel 0171 820 3042.

Fortress Ireland, Maire Nic Suibhne. *Guardian Weekend* 3.10.98., pp32-39. This article documents a number of cases that expose the “unexpected” racism that greets refugees and asylum seekers on their arrival in Ireland.

Parliamentary debate

Immigration and Asylum Commons 27.7.98. cols. 35-53

IRELAND

More Emergency Law

Both the British and Irish parliaments were recalled during the summer recess in order to pass new anti-terrorist measures following the killing of 29 people by a car bomb which exploded in Omagh town centre on a busy Saturday afternoon (15 August). A further 370 were injured. More than 40 people have been arrested on either side of the border since the bombing but all have been released without charge. John O'Donoghue, the Minister for Justice, Equality and Law Reform, led the way with the Offences Against the State (Amendment) Bill. This created five new offences: directing an unlawful organisation; the possession of articles for purposes connected with certain offences; unlawful collection of information; training of persons in the making or use of firearms; and withholding information. Some of these provisions imitate British “emergency” provisions on information gathering, equipment for terrorism and the famous Godfather clause of directing terrorism. Likewise, the new British law mirrors Irish provisions which allow for the opinion of senior police officers to be regarded as evidence, specifically in relation to membership of proscribed organisations. As the Home Office press release acknowledged, “the British and Irish Governments have moved in step with each other in passing legislation to crack down on elements opposed to the peace process”.

The British response to the Omagh bomb was the Criminal Justice (Terrorism and Conspiracy) Act which received Royal Assent on 4 September. The new Act allows a statement of opinion by a police Superintendent (or higher rank) that an accused is a member of a “specified” organisation to be admitted as evidence. Conviction on this basis is possible if the police officer's statement is corroborated by the accused's silence or “their failure to mention, when being questioned or charged, a material fact which he could reasonably have been expected to mention”. This provision has attracted criticism from a number of sources, including senior lawyers and human rights bodies. A few days prior to the publication of the Bill, Amnesty International in conjunction with the Committee on the Administration of Justice, Human Rights Watch, Liberty and British Irish Rights Watch, issued a briefing describing the linking of inferences from silence with RUC officers' opinions as “a blank cheque for the RUC”. Amnesty drew attention to the fact that in July 1995 the UN Human Rights Committee concluded that the Criminal Justice and Public Order Act of 1994 violated various provisions in article 14 of the International Covenant on Civil and Political Rights concerning the presumption of innocence, the right to silence and the right not to be compelled to incriminate oneself. Similarly, in the case of *John Murray v. UK* the European Court stated that future judgements on the drawing of adverse inferences from an accused's silence would depend on “the degree of compulsion inherent in the situation”. The new Act increases the degree of compulsion considerably. Lord Lloyd who produced a report in 1996 on the need for and shape of permanent UK anti-terrorist legislation, attacked the new proposals as follows:

I just do not see how it could work. A police officer's opinion of anything is worth only what his sources will support... His opinion is based on sources - informers and so on - of a kind which he simply cannot disclose in open court... Where does that get the trial? No judge in Northern Ireland - no judge anywhere in the world - will be convinced beyond reasonable doubt on the say-so of a policeman... We can make the evidence admissible by a stroke of the legislative pen... but what matters is whether that evidence will carry any weight on the ground in actual trials in Northern Ireland... it will carry no weight whatever. ... That is why I say that there will not be any convictions as a result of new Section 2A.

However, ...let us suppose that a judge was persuaded beyond reasonable doubt to convict on the basis partly of an opinion expressed by a police officer. Would that conviction have the slightest chance of standing up in Strasbourg? ... It would not have the slightest chance. It certainly would not stand up in our courts once the Human Rights Act comes into force. So we are doing absolutely nothing by this. (House of Lords, debates, 3.9.98, col.37.)

Similarly, the Chair of the Bar Council, Heather Hallett, has expressed concern over the new legislation, telling the Council's annual meeting that it would be a "dreadful irony" if the first challenge to be brought under the Human Rights Act was to the Home Office itself.

The British law includes giving powers to the courts to order the forfeiture of property of people convicted of offences relating to proscribed organisations, something which Lloyd recommends even if he is critical of the drafting of the relevant clause. But most controversy has surrounded clause 5 which deals with conspiracy to commit offences outside of the United Kingdom and has nothing whatsoever to do with the Northern Ireland conflict. This is another of Lord Lloyd's proposals: as he put it, "I welcome that clause. I could hardly do otherwise because it was a provision which I strongly recommended in my report." Lloyd was critical, however, that the clause was extended beyond terrorism to include other offences, including the catch-all charge of conspiracy. As Professor Thomas of Cardiff Law School points out (*Journal of Civil Liberties*, November 1998), clause 5 "catches those who conspire in any act or "other event" which would also be an offence under the law of the foreign country, whether it be a dictatorship or parliamentary democracy".

So far, the new powers have been tested only once in the Irish High Court. Deaglan Lavery was arrested on suspicion of being a member of an unlawful organisation on 30 September. He applied to the Court for habeas corpus after his solicitor had been denied access to Garda interview notes. The solicitor argued that he could not properly advise his client whether he should make a further statement to comply with the new legal obligation to volunteer information, unless he saw the interview notes. Justice Catherine McGuinness agreed and ordered Lavery's release once the Gardai made it clear they would not make the notes available. Because the amended Offences Against the State Act obliged suspects to volunteer information, they were in a "special difficulty" in trying to establish what information must be volunteered. This implied a right for solicitors to review interview notes, but not to have copies, while advising their clients.

BELGIUM

Study indicates bias in Brussels courts

An academic study has revealed that more than half of all cases coming before Brussels courts involve youths of Turkish or Moroccan descent. Only 35% of cases involve youths of Belgian or west-European descent. The study, carried out by Christel Calistri of Louvain University, shows that 65% of all cases in Brussels courts involve youths under twenty-five, most of whom were unemployed. Calistri also exposed the increasingly rough nature of the justice being carried out under the so-called *snelrecht* ("fast law") procedures instituted to speed up the justice process. Calistri claims that "the prosecution policy has become far harsher since the creation of the fast law programme. Cases that used never to reach the courts now end up in the fast law system". One researcher noted that there had been cases of migrant youths receiving jail sentences for stealing sweets or a can of lemonade. Calistri's conclusions cast doubt on the nature of the justice handed out under fast-track procedures. She also questions whether "fast track" procedures actually speed up

justice at all:

one fifth of all those accused faced minor shoplifting charges, whilst the courts were forced to adjourn on average 11 cases at each sitting.. the fast law procedure in will in fact lead to the slowing down of justice in the long term.

Solidaire, 18.11.98.

Trade unionists before court

Trade union organisers Roberto D'Orazio and Silvio Marra are amongst those facing charges following the closure of the Clabecq steel works. In riots following the closure the Belgian *rijkswacht* (gendarmarie) suffered damage to vehicles and 2 water cannon. Although neither D'Orazio or Marra are accused of any criminal damage they are being prosecuted under incitement laws dating back to the 19th century.

The incident began with the threatened closure of Clabecq in December 1996. There were assorted incidents in the year following the closure of the plant that culminated in a riot that closed a nearby motorway and attracted national headlines. It was following these riots that D'Orazio and Marra were charged under common purpose and incitement laws created in the aftermath of riots in the Charleroi area in 1887. Jan Fermon, the lawyer representing D'Orazio, Marra and eleven others, who are now known as the "Clabecq thirteen", has condemned the case against them claiming that "this political trial is a continuation of the campaign against the steel workers of Forges Clabecq".

Solidaire, 25.11.98.

UK

LCD survey of freemasons

Recent surveys by the Lord Chancellor's Department (LCD) have revealed that up to 19% of male magistrates and nearly 5% of judges are freemasons. The voluntary declarations followed an inquiry by the Commons Home Affairs Select Committee, chaired by Labour MP Chris Mullin, which recommended a public register of members of police officers and the judiciary stating whether they are members of the secretive organisation. The results are hardly surprising given surveys in the journal *Labour Research* showing that judges remain overwhelmingly white, male and upper class: about four out of five judges go to public school and on to Oxford or Cambridge. The committee's proposals for a register have led to about 40 members of the United Grand Lodge of England - mainly police officers and local government officials - resigning, according to Grand Lodge spokesman John Hamill. The register will be published by the government next year, but has been criticised as an "unjustified invasion of privacy" by a senior law lord, Lord Saville, who is chairing the inquiry into the Bloody Sunday massacre by British soldiers of 14 Northern Irish civil rights demonstrators in Derry in January 1972. Lord Saville's logic was further undermined when he asked: "What is the difference between asking that question [about membership of the freemasons] and asking whether you are a trade unionist or, in Vichy France, whether you were Jewish?"

Times 29.10.98; *Independent* 11.11.98.

Law - new material

Judgement day, Brian Younger. *Police Review* 6.11.98., pp28-29. This article, by a chief superintendent with the Metropolitan police, proposes a "Ministry of Justice" with a "single minister responsible for the judicial process..."

The right stuff, Frank Waghorn & Phil Butler. *Police Review* 6.11.98., pp25-26. This piece follows on from the authors' "four-month

secondment to the National Crime Faculty at Bramshill” and considers the “far-reaching consequences for the police service” of the Human Rights Act.

Woolf at the door, Vicki Chapman. *Legal Action* October 1998, pp6-7. This article examines aspects of Lord Woolf's investigation into civil justice, “Access to Justice”.

Crime and Disorder Act 1998: introduction and new preventative orders in youth justice, Vera Baird. *Legal Action* October 1998, pp15-18. First in a series of articles to summarise and define the provisions of the Crime and Disorder Act 1998.

Changes in civil litigation: preparing for Woolf day, Charles Blake. *Legal Action* October 1998, pp19-20. On the “timing, impact and significance of the changes to the system of civil litigation which will be introduced on 1 April 1999...”

Safer Society No. 1 (October) 1998. This is the first issue of a magazine produced by the National Association for the Care and Resettlement of Offenders (NACRO) “which will provide a forum for debating practical measures to create a safer society.” There are three main topics in this issue - the Crime and Disorder Act, the government's proposed crime prevention strategy and race. Available from NACRO, 169 Clapham Road, London SW9 0PU.

Union rights or human rights? *Labour Research* Vol. 87, no. 12 (December) 1998, pp19-20. This article examines the impact on trade unionists of the Human Rights Act 1998, which takes effect in the year 2000. It concludes by noting that while “trade unionists will welcome the Human Rights Act for its support for fundamental principles, it is unlikely to mean that workers will gain new collective rights to organise.”

Parliamentary debates

Crime and Disorder Bill *Commons* 28.7.98. cols. 176-211

Criminal Justice (Terrorism and Conspiracy) Bill *Commons* 2.9.98. cols. 714-932

Criminal Justice (Terrorism and Conspiracy) Bill *Lords* 3.9.98. cols. 3-156

MILITARY

Military - in brief

■ **French propose three-way merger**: Aerospatiale chairman Yves Michot has proposed a three-way merger between his company, British Aerospace (BAe) and Daimler Benz Aerospace (Dasa) as a step towards forging a giant European aviation and defence group. This was seen as a bid to head off the risk of a BAe-Dasa alliance being set up behind France's back. Earlier the *Financial Times* had reported that BAe and Dasa were close to announcing a merger. The report was denied by Dasa and BAe, but the French saw it as part of a campaign to pressure their government into fully privatising state-owned Aerospatiale. *Jane's Defence Weekly*, 21.10.98.

■ **Belgium will not enter Helios 2 project**: Belgium has joined Germany and Italy in pulling out of the French-led \$2 billion Helios 2 project for a military observation (espionage) satellite entering orbit in 2002. This leaves only Spain inside in a scheme that had originally looked like attracting several European partners. Helios 2 should be the follow-up for the Helios 1 project that France launched in 1995. It is of great importance for a European intelligence capacity independent from the US. In response to the German move, France cancelled its participation in the Horus radar satellite that Germany and France had agreed on for 2007. *Jane's Defence Weekly*, 4.11.98.

Military - new material

On the beach, Paolo Valpolini. *Jane's Defence Weekly*, 30.9.98, pp 26-32. Briefing on NATO's amphibious forces in the Mediterranean region.

Die “Neue Deutsche Aussenpolitik” - Zwischen Renationalisierung, europäische Integration und weltpolitische Anspruch [The “New German Foreign Policy” - between renationalisation, European integration and world political ambitions], *AMI*, no 10, 1998. Special issue with articles on US-German relations, armament policy, human rights and immigration, information management.

Sicherheit statt Risiko - an der Aussen - und Sicherheitspolitik wird sich unter Rot-Grün wenig ändern [Safety instead of risk - little will change in the foreign and security policy], *AMI*, no 11, 1998, pp 37-44.

Überlegungen zur europäischen und nationalen Neustrukturierung in der Rüstungsindustrie [Thoughts on the European and national reorganisation in the armaments industry], Gerd Juergen Kreiss. *Europäische Sicherheit*, no 10, 1998.

“I never said there would be an ethical foreign policy” - and other myths dispelled by the foreign secretary, Steve Richards/Robin Cook. *New Statesman* 13.11.98., pp14-15. Interview with UK foreign secretary, Robin Cook, in which he denies advocating an “ethical foreign policy” standing by the more cautious “ethical dimension” to foreign policy. Probably just as well considering Amnesty's latest review of human rights which criticises the Department of Trade and Industry for exporting arms to repressive regimes and the MoD for promoting arms sales without adequate safeguards.

Parliamentary debates

Legg Inquiry *Commons* 27.7.98. cols. 19-34

Kosovo *Lords* 19.10.98. cols. 1201-1214

Kosovo *Commons* 19.10.98 cols. 953-967

Strategic Defence Review *Commons* 19.10.98 cols. 968-1053

Strategic Defence Review *Commons* 20.10.98 cols. 1097-1180

Black Watch *Commons* 28.10.98. cols. 295-302

Army *Commons* 28.10.98. cols. 360-434

Iraq *Lords* 16.11.98. cols. 1017-1031

The Territorial Army *Lords* 17.11.98. cols. 1155-1170

Foreign Affairs and Defence *Commons* 27.11.98. cols. 439-512

Territorial Army (Chorley) *Commons* 2.12.98. cols. 855-864

NORTHERN IRELAND

“RUC Watch” launched

Sinn Fein has launched a “RUC Watch” initiative which will monitor and record police actions “which constitute gross human rights violations against nationalists [which] are occurring daily.” The initiative follows on from the recent United Nations Committee Against Torture report which condemned Royal Ulster Constabulary (RUC) human rights violations concerning interrogations, the use of emergency legislation and the deployment of plastic bullets. In the six months since the signing of the Good Friday Agreement the Sinn Fein newspaper, *An Phoblacht*, has reported over 300 incidents involving sectarian RUC treatment of the nationalist community. These include almost 50 incidents of harassment against peaceful demonstrators; 70 incidents of harassment, intimidation and assault; 30 serious injuries (including eight plastic bullet injuries); 16 cases where the RUC failed to intervene during sectarian attacks; 36 cases of intimidation during recruitment approaches

and over 30 house raids and 70 arbitrary arrests. Speaking of the initiative Sinn Fein spokesman, Fra McCann, commented:

In the past nationalist communities have survived by absorbing rather than highlighting harassment by the RUC...If the hopes of the Irish people are to be realised, the actions of the RUC must be placed on public record. I would urge everyone whose rights are violated by the RUC to contact Sinn Fein's "'RUC Watch" initiative to register their complaint.

Incidents involving the RUC can be put on record by telephoning "RUC Watch" on 01232 326644 or *An Phoblacht* on 01232 600279.

An Phoblacht 26.11.98.

Northern Ireland - new material

Don't cut RUC numbers Patten urged, Police Federation. *Police* November 1998, pp31-32. This is the Police Federation's submission to the Commission into Policing in Northern Ireland, which is chaired by former Conservative Party minister, Chris Patten. Noting - without irony - the "unique qualities" of the notoriously sectarian RUC it hopes the inquiry will "establish...the conditions in which the RUC can come to be seen and accepted as the police service of all the people."

A policing service for a new future, Sinn Fein. *An Phoblacht* 1.10.98. pp10-11. This article gives a precis of Sinn Fein's submission to the Patten Commission on Policing in Northern Ireland. It observes that: "There are currently 13,000 members of the RUC. International experience indicates that in a stable society with a population of 1.5 million around 3,000 police officers are required."

Just News. Committee on the Administration of Justice, Vol. 13 no 7/8 (July/August) 1998. Latest issue contains pieces on "policing public protest", the Patten Commission into policing, the Northern Ireland (Sentences) Act 1998, the preliminary hearing for the Bloody Sunday inquiry and a report on the CAJ/ICCL conference on "incorporating the European Convention on Human Rights into Irish law". Available from: CAJ, 45/47 Donegall Street, Belfast BT1 2FG.

The Assembly must work to bring justice and equality, Martin McGuinness. *An Phoblacht* 17.9.98., pp10-11. This is a transcript of McGuinness's speech to the Northern Ireland/Six County Assembly in which he calls for a decommissioning of "the injustices and inequalities of the past and to decommission all the British and Irish guns."

A new course for the future, Gerry Adams. *An Phoblacht* 1.10.98. p9 & 12. This is the text of a talk by Sinn Fein spokesman, Gerry Adams, to the Tribune rally at the British Labour Party conference. In it Adams points out that: "The current impasse in the peace process and the UUP's [Ulster Unionist Party] refusal to implement the Good Friday Agreement is not about the guns or the decommissioning issue. It is about the unionists' refusal to fully embrace the kind of changes which are required if a genuine peace settlement is to be built."

POLICING

UK

Five suspended after death in custody

In April 1998 a black man, Christopher Alder, died in Hull police station. He had been involved in a minor fracas at a nightclub and was later arrested at the Royal Hull Infirmary. While Christopher's family have received various explanations as to the events that ensued, all they know with any certainty is that "a healthy man got into a police van and ended up dead 15 minutes

later, face down with his arms handcuffed behind his back, on the floor of the police station."

A pathologist's report, which relies on the police account of events, and was unable to discover a cause of death, describes the scenario when Christopher arrived at the police station:

The van door's were opened. Christopher was sitting in the same position as before, but appeared to be asleep. He did not respond to officer's requests to get out, so they took hold of both arms and lifted him out. They had to support his full weight and dragged him head first, face down, with his feet trailing, along a short corridor and into the charge room. In the process, one of his shoes came off and his trousers and underpants got pulled down

In the charge room, as shown on the fixed video recording...[h]e was placed face down on the floor in front of the desk, the left side of his face in contact with the ground and his arms still behind his back, handcuffed. He lay there unresponsive, making regular grunting noises every 10-12 seconds or so. After about 3 minutes the handcuffs were taken off, but he did not move. He remained in exactly the same position for the next 7 minutes...when one of the officers noted that he was no longer breathing.

Five police officers have been suspended on full pay in connection with the death and the Crown Prosecution Service has opened a file on the case. However, the dead man's sister, Janet, has complained that she has been unable to get "a straight version" of what happened. Noting the botched police investigation into the racist murder of Stephen Lawrence, and "how it took a huge campaign and inquiry to show how negligent and racist the police actually were", the family have launched a campaign to uncover the facts behind Christopher's death. The Justice for Christopher Alder Campaign, which has the support of Stephen Lawrence's father, has issued a number of demands that include:

- * The Home Secretary investigate the case urgently
- * An independent pathologist's report into the cause of death
- * An inquest be held as soon as possible

The Campaign has held a number of successful events and is calling for support for its demands and help to publicise their campaign. It can be contacted at: Justice for Christopher Alder Campaign, c/o Red Triangle cafe, St James Street, Burnley. Tel. 01282 832319.

UN committee concerned about deaths in custody

Barely two weeks after the death of another black man in a police cell the United Nations Committee Against Torture has expressed "concern" at the number of "deaths in police custody". The latest victim, a 57-year old man who was arrested for allegedly being drunk and incapable, died at Plumstead police station on November 2.

The Geneva-based Committee Against Torture, whose findings are based on evidence from the UK government as well as civil liberties groups, raised as a "subject of concern":

...the number of deaths in police custody and the apparent failure of the State party [the UK] to provide an effective investigative mechanism to deal with allegations of police and prison authorities' abuse.

The Committee's concerns reflect points made in a joint submission from INQUEST and Liberty, which drew attention to the disproportionate number of black deaths in custody. Their submission also highlighted concerns about the inquest system and the nature of the deaths as well as the lack of training and accountability of officials involved in unlawful killings. The government does not need to respond to the criticisms until it goes before the Committee in 2001, but INQUEST co-director, Helen Shaw, called on the Home Secretary to:

Use this opportunity to initiate an independent review of the entire process of investigation following deaths in custody to examine the role of the police and the prison service, the Police Complaints Authority, the Coroner's inquest system and the Crown Prosecution Service.

Police Complaints Authority press release 3.11.98; INQUEST press release 19.11.98; United Nations Committee Against Torture issues conclusions and recommendations on reports of the United Kingdom and Hungary: press release (HR/CAT/98/42) 19.11.98.

Deaths attributed to CS spray

West Yorkshire police discipline and complaints department is to investigate the death of 53-year-old Eric Smith who died three days after being sprayed with CS gas by police. Smith was arrested by police in Armley, Leeds at the end of October and according to his wife was sprayed three times despite screaming that he couldn't breathe. He fell ill while in custody in Pudsey police station and was seen by a police doctor after complaining about the effects of the gas, but was released after being charged with affray. The next day he went to hospital for treatment and collapsed and died two days later.

The death of 76-year old pensioner Frank Roberts earlier in October has also been attributed to CS gas. He died in hospital ten days after being sprayed by police officers evicting him from his house in Bangor, Gwynned. The case has been referred to the Police Complaints Authority. Two other men have died after being sprayed with CS; Ibrahim Sey died in 1996 at Ilford police station (see *Statewatch* Vol 6, no 3 & 4, Vol 7, nos 4 & 5, 6) and Peter San Pedro walked into the path of a lorry a few hours after being sprayed by Kent police in 1997.

The Police Federation will also be carrying out an investigation into an incident in which a City of London police officer had a heart attack after a CS spray training session. The officer, who is in his forties, was rushed to hospital after taking part in an exercise in which officers walked through CS-gas filled air. There he had a heart attack and is reported to be in a stable but critical condition. A City of London police spokesperson said that there was no reason to link CS with the heart attack.

Doctors from London's Maudsley hospital have demanded a meeting with the Metropolitan police following an incident in which a mentally disturbed patient was sprayed with CS gas to quell him after he barricaded himself into a room. The incident follows an investigation into the police use of CS gas spray on psychiatric patients at National Health Service (NHS) hospitals that concluded that it "poses a serious health risk to the mentally ill." A spokeswoman for the Bethlem and Maudsley NHS Trust said that the Trust "is opposed to the use of CS spray on people with mental health problems."

SchNews 2.10.98; *Guardian* 26.10.98; *Socialist Worker* 14.11.98; *Big Issue* 30.11.98;

NETHERLANDS

Police want pepper spray

Dutch police are lobbying for pepper spray to be added to their arsenal. After years of seeking to fill the so-called gap between the baton and the gun, the Home Affairs secretary has asked the laboratory of the Dutch Institute for Applied Scientific Research (TNO) to test the suitability of the spray. The TNO's first report, which came out in January, was a study of the literature dealing with experiences of the spray in other countries. It, like many studies since, was predominantly based on research carried out by the FBI at the end of the 1980s; their results led to the introduction of the spray to US police forces. Recently, it emerged that the person in charge of the FBI research had received bribes totalling US \$52,000 from the producer of the

spray. He was convicted in 1996.

Last month a second TNO report came out which looked at the risks of pepper spray for people suffering from asthma. Guinea pigs were thrown into a pool to simulate stress before being given a full blast of the spray; because there were no fatalities the TNO believes there are no special risks associated with the spray. It does, however, believe that strict guidelines covering its use are necessary; spraying should be done from a distance of 2-4 metres and for not longer than 0.5 to 1 second. It appears from the spray's use in other countries that there is a problem with police officers who are inclined to use the spray not as a substitute for the gun or baton but as an addition. In the UK, where CS spray is used (at least for the time being), the Police Complaints Authority found that there was "a tendency for it to be used to ensure an easy arrest". Buro *Jansen & Janssen* plan to publish a dossier with analyses that question the TNO report. Early next year it is expected that the introduction of pepper spray will be discussed in parliament.

WALES

Domestic violence: PC resigns

PC Paul Rolley was "required to resign" and PC Brian Bedford was fined £1000 for failing to help a woman who reported to them that her husband had attacked her. The woman approached the Police Complaints Authority to protest about the attitude of the two constables, who had dismissed her pleas for help. In two and a half years of marriage the woman had been attacked eleven times by her husband and had required hospital treatment 7 times as a result. It was only on one of the occasions on which she was hospitalised that the police finally arrested her husband, who was jailed for 4 years, having pleaded guilty to 5 charges of causing grievous bodily harm and 6 of causing actual bodily harm. Tony Burden, the Chief Constable of South Wales, upheld the case brought against the two constables at a disciplinary hearing. PC Rolley is likely to appeal against the decision. Because crimes of domestic violence are not categorised as such, with different police forces having different ways of categorising crimes of domestic violence, it is extremely difficult to calculate the number of incidents which take place each year. According to a spokeswoman for the Research Centre for Violence at Leeds Metropolitan University, domestic violence constitutes 25-30% of all violence against the person assaults. However, it is estimated that only 20% of incidences of domestic violence are ever reported to the police. Moreover, this is held to be a generous estimate. It underscores the imperative for the police to take seriously and to investigate every report of domestic violence which is made to them.

Independent 26.11.98, *Guardian* 26.11.98

Policing - in brief

■ **UK: Met apologises to Menson family:** At the beginning of December the Metropolitan police formally apologised to the family of black musician, Michael Menson, for mistakes made in their investigation of his death in February 1997. Michael was set alight, in what he described as a racist attack before he died, but the Metropolitan police ignored his information concluding that he had committed suicide. At a meeting between the family and representatives from the Metropolitan police, deputy commissioner John Stevens confirmed that errors that had been made and admitted that Michael had been murdered. John Grieve, of the Met's racial and violent crime task force, promised the family that they would have greater involvement into how the new investigation proceeds. Michael's brother, Kwesi, was cautious in welcoming the move pointing out that: "...it's 22 months since this should have been done." *Guardian* 2.12.98.

Policing - new material

Concern about crime: findings from the 1998 British Crime Survey, Catriona Murrlees-Black and Jonathan Allen. *Research Findings* (Home Office Research, Development and Statistics Directorate) No. 83, 1998 pp6. Survey gathers information on people's attitudes and concerns about crime.

Safe custody, John Cartwright. *Police Review* 16.10.98. pp16-17. This is an edited version of a talk given by the chairman of the Police Complaints Authority (PCA) at a meeting on deaths in custody. Unfortunately, the PCA refused to invite relatives of those who died leading to a picket of the venue until a representative was allowed in following negotiations.

The right to life. The police and the criminal justice system: the case of Lapite, O'Brien and Treadway, Kier Starmer. *Inquest Lawyers Group* 1998, pp12 £5 (ISBN 0 9468 5806 3). This timely pamphlet documents the deaths in police custody of Oluwashijibomi "Shiji" Lapite and Richard O'Brien and the "serious allegations of [police] misconduct" in the case of Derek Treadway, who received substantial High Court damages for "tortious and criminal" police assaults. It concludes that safeguards to protect the right to life and the protection of human rights "are not currently in place in this country."

In the wake of the Lawrence case, the good cop who pledged to stamp out racism in the Met knows he failed, Mary Ridell/Sir Paul Condon. *New Statesman* 30.10.98., pp18-19. Interview with Sir Paul Condon, Commissioner of the Metropolitan police, in which he complains that new recruits to his force only earn £16,000 per annum, thereby "...inviting them to indulge in malpractice." He also complains that "I am working for peanuts"; he earned £95,000 in 1994-95, which would feed a lot of monkeys.

Ground force, Rob Jeacock. *Police Review* 13.11.98. pp19-21. This article follows the "deployment of sophisticated technology and intelligence" at the high profile ("Category C rating") Liverpool v Chelsea football match. Looks at the use of CS gas ("unarmed defence tactics"), CCTV and the role of the football intelligence officer.

Unreasonable terms, Dan Crompton. *Police Review* 30.10.98, p15. The author, an HM Inspector of Constabulary, makes an unhelpful contribution on the subject of institutionalised police racism (raised at the Stephen Lawrence inquiry), by repeating Sir Paul Condon's ill-conceived claim that the term taints the whole police service as racist.

Briefing: the death in police custody of Leon Patterson 1992 (3pp); the death in police custody of Shiji Lapite 1994 (3pp); the death in police custody of Ibrahima Sey 1996 (5pp) and the death in police custody of David Green 1997 (2pp) 1998, £1 each. Series of important briefings on some of the most disturbing deaths in police custody. They tackle controversial areas such as the police use of neckholds, the use of CS gas spray, police investigation and treatment of relatives. Available from Inquest, Ground Floor, Alexandra National House, 330 Seven Sisters Road, London N4 2PJ and web site: www.gn.apc.org/inquest

Press Digest Two. *National Campaign Against CS Spray* 1998. This is the second issue of the very useful digest which collects press cuttings on police (mis)use of CS spray. The campaign welcomes cuttings, articles and information from supporters, which will make the digest even more comprehensive. Copies are available for £3 (to cover costs and post) from the campaign c/o NMP, PO Box 273, London E7 8QA.

Statistics on Race and the Criminal Justice System. Home Office (HMSO) 1998, pp42. This publication, produced under section 95 of the Criminal Justice Act 1991, contains chapters on: developments in ethnic monitoring; the Police and Criminal Evidence Act - stops and searches; arrests and cautions; homicide; persons supervised by the Probation Service; prisons; racial incidents and practitioners in the Criminal Justice system. It is also available on the web: <http://www.homeoffice.gov.uk/rds/Index.htm>

Waving not drowning: Chief Constables and the new configuration of accountability in the provinces, Barry Loveday. *International Journal of Police Science & Management*, vol 1 no 2. Looks at how "managerial accountability" has replaced accountability to local councils

after the 1994 Police Act.

PRISONS

UK: Campaign to free Zoora Shah

Zoora Shah was jailed at Leeds crown court in December 1993 after killing Mohammed Azam, a "friend" who was persistently abusive, in an act of utter desperation. Southall Black Sisters and lawyers for Zoora are making depositions to Jack Straw regarding the 20-year tariff imposed on her by the previous Home Secretary.

Zoora is a non-literate woman from Pakistan who came to Bradford, West Yorkshire, in the early 1970s to enter into an arranged marriage. Her husband was abusive, cruel and violent towards her. He forced her to undergo several abortions to avoid having female children. Eventually he left her and his family threw her onto the streets. Zoora found herself destitute, with three children.

In 1980 she accepted the help of Mohammed Azam in order to try to gain some security for her children. As she was unable to get a mortgage, Azam helped her to buy her own house, in his name. Zoora paid the deposit and the mortgage. But Azam began to demand sex from Zoora. He became abusive and brutal, often forcing her to have sex with him several times a day. This abuse continued for over 10 years, during which time Azam was convicted of dealing heroin.

When she began to suspect that Azam had designs on her daughters, this was the last straw. In April 1992 she gave him a large dose of arsenic, (which she had originally obtained to administer to him in non-lethal doses, in order to render him impotent, in the hope that the sexual abuse would stop). She did not know it, but this time the dose was lethal and Azam died the same day. Zoora was charged with a number of offences, including murder and attempted murder, to which she pleaded guilty.

At her trial she was too frightened and ashamed to give details of her sexual history, fearing that such revelations would endanger her daughters and their future prospects of marriage. She was given a life sentence with a tariff of 20 years. On April 30 1998 Zoora lost her appeal to overturn her conviction. The Court dismissed her testimony, which she gave for the first time, as "not capable of belief" on the grounds that she had originally lied to the police. The Court appeared also to be largely dismissive of the independent evidence of medical and lay witnesses regarding Zoora's mental state at the time of the killing and throughout the course of her relationship with Azam.

The SBS have argued that the proceedings of the appeal have serious implications for civil liberties. Indeed the fact that Zoora was denied the right to put forward a defence at appeal, which was not available to her at her trial due to her traumatised state and her fears for her daughters, implies that a defence to murder which is not raised at trial cannot be raised at any later stage unless there are exceptional circumstances. SBS comment;

There is no indication as to what constitutes exceptional circumstances, but it seems to restrict the term to the narrow condition of severe mental illness.

For more information on the campaign or to make a donation, contact Southall Black Sisters, 52 Norwood Road, Southall, Middlesex. Tel. 0181 571 9595.

Prisons - in brief

■ **UK: More deaths at Parc private prison:** A teenager, Michael Rooke, has become the second prisoner to commit suicide, at the UK's first high-tech private prison, within a week. Delwyn Price, a remand prisoner, was found dead in his cell at

Parc prison a few days earlier. Four prisoners have now died at the south Wales jail since it opened 13 months ago. The prison was heavily fined for its failings earlier this year and the House of Commons Public Accounts Committee also criticised operational failings (see *Statewatch* Vol 8, no 5). *Times* 7.12.98.

Prisons - new material

Age limits for babies in prison: some lessons from abroad, Diane Caddle. *Research Findings* (Home Office Research, Development and Statistics Directorate) No. 80, 1998 pp4. This study is based on a survey of prison provision facilities in various countries.

HIV/AIDS risk behaviour among adult male prisoners, John Strang, Joan Heuston, Michael Gossop and Tony Maden. *Research Findings* (Home Office Research, Development and Statistics Directorate) No. 82, 1998 pp4. Based on a survey of HIV/AIDS "risk behaviour among adult males...undertaken in 13 prisons in England and Wales."

Prison Privatisation Report International. Prison Reform Trust, Nos. 23 and 24 (September & October) 1998. Both issues contain an ongoing debate on private prisons with a round-up of recent news and information focusing on the UK, USA and Australia.

Briefing: the death in prison of Kenneth Severin 1995 (6pp); the death in prison of Dennis Stevens 1995 (6pp); the death in prison of Alton Manning (pp4). Inquest (1998), £1 each. Substantial briefings on the ill-treatment and deaths of Kenneth Severin, Dennis Stevens and Alton Manning, three young black men who died while being restrained in prisons between October and December 1995. Available from Inquest, Ground Floor, Alexandra National House, London N4 2PJ.

Parliamentary debate

Prison expenditure *Lords* 20.10.98. cols. 1409-1432

RACISM & FASCISM

UK

Fascist march stopped in Dover

Anti-fascists stopped a march by members of the fascist National Front (NF) at the port of Dover, Kent, in December. The NF had hoped to capitalise on hostility towards asylum-seekers that had been whipped-up by a racist campaign in the local press. Asylum-seekers, many of them Roma fleeing well documented persecution from racist skinheads, police and government agencies in Slovakia and the Czech Republic, began arriving at the port in the autumn of 1997. Most were immediately returned to France or Belgium. Some were allowed to make asylum claims, but many of these are now imprisoned in detention centres while their cases are considered. Those who remain in Dover have had to contend with an onslaught of abuse culminating in a series of racist attacks since the last NF march in February (see *Statewatch* Vol 7, no 6).

Under Blackham's stewardship about 40 NF supporters were bussed into Dover from the West Midlands to hold a march against asylum-seekers in November 1997. The march was abandoned when it was confronted by 200 anti-fascists, notwithstanding efforts by the police to clear a path with dogs and officers in riot gear. The police operation ("Operation York") involved 140 officers and two helicopters and, Kent police informed local media, cost £35,000. While it protected the racists it offered little comfort to those asylum-seekers who fled Dover in fear of the march. They sought refuge in London but Westminster council forced them to return to Dover.

The NF mobilised again in February 1998, although this time fewer than 40 NF supporters were brought in from the West

Midlands accompanied by police. An even heavier police operation saw officers in riot gear and dogs sent in to break up an anti-fascist demonstration. Snatch squads were deployed and 24 anti-fascists were arrested - all subsequently had their charges dropped by the police or dismissed in court. The NF held a token march and rally before being taken back to their coach to leave Dover under police escort.

The policing of the two NF marches raised a number of important public order issues including the scale and manner of police stop and search operations against anti-fascists; the scale and manner of police intelligence gathering (which included noting personal details and videoing of demonstrators) and the failure by the police to act over the NF's verbal and written (on leaflets and placards) incitements to racial hatred.

While mobilising to counter the latest NF march, which was scheduled for December 5, anti-fascists had to take into account the inevitable police operation to protect the fascists. Kent anti-fascists decided to lobby the bus company, Newbury Travel, which had brought the NF to Dover before. Their successful campaign - supported by seven trade-union branches in the Birmingham area who passed resolutions condemning Newbury Travel for transporting the fascists - got the NF's booking cancelled. When the fascist march was abandoned, 200 anti-fascists from London and the south east marched along the seafront in solidarity with asylum-seekers.

However, victory over the NF is only the tip of a much bigger problem facing asylum-seekers. Between February and December the Dover Residents Against Racism (DRAR) have monitored a rising level of hostility that has seen asylum-seekers being abused, physically assaulted and subjected to arson attacks in their homes. If racists find the climate in Dover conducive to violence it is largely due to a persistent local press campaign denigrating "bogus" asylum-seekers, "economic" refugees and "scroungers".

The *Dover Express*, for example, ran an editorial entitled "We want to wash dross down the drain", comparing asylum-seekers with "the scum of the earth" (Oct 1). It is, unfortunately, not atypical.

The theme has also been eagerly taken up by some of the national press, with the *Daily Mail* expressing similar themes, although with less hyperbole in a series of articles in October. One of these articles, entitled "The Good Life on Asylum Alley", focused on Dover to highlight what the authors perceive as the abuse of the UK's "generous" benefits system by opportunistic "economic" migrants posing as asylum-seekers. In their view whatever appalling situations asylum seekers have left behind becomes irrelevant once it becomes necessary to provide them with a minimum of support to live on while they pursue their claims: they "are a problem which we cannot afford."

What these arguments omit is the simple fact that there is a right to seek asylum. The UK is a signatory to the Geneva Convention which established this right. Therefore, the UK has a duty to enable people to seek asylum from persecution and to provide them with the basic means of subsistence in order to be able to do so. It also has a duty to ensure that they are able to do so without being persecuted by the press, assaulted by racists and hounded by the fascists of the NF.

Dover Residents Against Racism, c/o Refugee Link, PO Box 417, Folkestone, Kent CT19 4GT. See also Campaign Against the National Front in Dover homepage: <http://www.canterbury.u-net.com/Dover.html>

FRANCE

Le Pen and Megret: the last act?

In December the Front National (FN) was brought to the brink of self-destruction by the culmination of the rivalry between Jean-Marie Le Pen and the now former delegate general, Bruno

Megret. The events of the meeting of the national council and a subsequent radio broadcast by Le Pen threw the party's factionalism into sharp relief. A series of expulsions of pro-Megret party members, the sacking of Megret from his post as deputy leader and the eventual suspension of the membership of Megret and four of his closest allies has indelibly drawn the battle lines for the conflict to come.

Le Pen effectively lost control of the meeting of the National Council on December 5th, when Natalie Debaille, a pro-Megret official who had been banned from the meeting by Le Pen nevertheless found her way in, to cheers and applause from many other delegates. The meeting was suspended whilst the political bureau convened, but this appeared to resolve nothing. When Le Pen came back into the meeting, he began hurling homophobic abuse at some of the delegates. During a radio broadcast the following day, he set out a paranoid conspiracy theory with regard to the events of the meeting. He said he had anticipated trouble from a small but noisy faction who were opposed to his choice of Jean-Claude Martinez over Megret as coordinator of the European election campaign. He also, bizarrely, referred to a minority faction of "extremists, racists I would go so far as to say", on whose support Megret was drawing, this resulting in the further demonisation of the party. This, ironically, is the first time that Le Pen has conceded the existence of racism and extremism within his party.

On the pro-Megret side, Pierre Vial, leader of a "paganist" faction within the party, likened Le Pen to the oblivious Louis XIV during the storming of the Bastille, speaking of "a personality cult in a state of atrophy". He also predicted that "Saturday was only the beginning of a process of questioning the way in which the FN is made to function". He was later expelled from the party.

The sacking and eventual suspension of Megret was prompted by the latter's calls on December 9th for an extraordinary party congress. His demand was based on article 24 of the party's statutes, which allows for an exceptional congress with the backing of 20% of the party members. Megret claimed that any expulsions or suspensions, including his own, will have no force until such a congress had been convened and that this was a "logical" initiative aimed at resolving internal differences, not the "putsch", to which Le Pen had alluded to in various interviews. It is also an initiative which has the backing of Le Pen's eldest daughter, Marie-Caroline. Le Pen, of course, did not see things this way. In a press statement on 11 December, he denied taking action against Megret because of the latter's call for a congress. Megret, Le Gallou, Olivier, (Serge) Martinez and Timmermans had been suspended "for disobedience and public calls for disobedience whilst they were in positions of responsibility within the movement".

These events have perhaps two possible outcomes; that Le Pen may be ousted as the leader of western Europe's most successful fascist party by a party largely united behind Megret, or that the party will dissolve into several factions and in so doing, clear the way for the "traditional" right to begin its electoral re-establishment. Whatever the outcome it is only necessary to remember that Le Pen and Megret in fact share exactly the same beliefs and that it is those beliefs which must continue to be opposed, no matter what the eventual fate of the FN might be.

Times 7.12.98, 10.12.98, 12.12.98 Guardian 7.12.98, 10.12.98 Independent 9.12.98 Liberation 10.12.98, Conference de presse de Jean-Marie Le Pen du 11 decembre 1998, Le Monde 13-14.12.98.

In court with Le Pen

France's most notorious "politician" has been keeping the French courts busy over the past few weeks. Following his conviction for assaulting a female socialist candidate during an election campaign last year, he was fined the equivalent of £529 and

banned from French politics for a year, but is appealing against this. The ban is suspended whilst the appeal is pending, making it possible that Le Pen will be able to head the FN list in next years European elections. He has moreover affirmed that in the event that he is unable to participate, his wife will head the list in his place. When a *France-Soir* journalist pointed out to Le Pen that by her own admission, his wife knows nothing about politics, his view was that this did not matter; she would be a "standard-bearer", not a spokesperson. He is also insisting, in spite of Megret's obvious ambitions, that he will head the list for the French presidential elections in 2002.

On November 25, a Nanterre court fined both Le Pen and his deputy, Megret, ordering each man to pay the equivalent of £1,050 to the French Union of Jewish Students, (UEJF). Le Pen had affirmed at an FN summer school in 1996 that he believed in the inequality of races. In February 1997, Megret affirmed his belief in a hierarchy of races. The Nanterre tribunal ruled that the men, in the light of their status as public figures with public duties, had committed an abuse of freedom of expression. With regard to Catherine Megret's comments to the *Berliner Zeitung*, in which she evoked the notion of genetic differences between races, the court could not find grounds upon which to fine her, but noted that the notion of human races was highly contestable.

Le Pen was also happy to reaffirm for *France-Soir* his notorious view on the gas chambers in the nazi concentration camps; they remain, in his opinion, a "detail" of history. When asked in the same interview whether the UK extradition case against former Chilean dictator General Augusto Pinochet should be pursued, Le Pen replied that he hadn't seen anyone going after the former leaders of the former Soviet Union: the key reason for this appears to be beyond his comprehension.

France-Soir 5.11.98; Independent 21.11.98; Le Monde 30.10.98, 10 & 27.11.98; International Herald Tribune 21 & 22.11.98.

FN unwelcome in church

Front National (FN) activist, Joel David, has been refused baptism by Monseigneur Albert Rouet, bishop of Poitiers. The bishop's opinion is that the racial policies of the FN are contrary to the values of Christianity and that if David wishes to be baptised, he will have to choose between his faith and his racist political beliefs. Msgr Rouet's stance has unfortunately not received the unambiguous support it merits within the French Catholic establishment. Msgr Bille, president of the French Conference of Bishops, stated that every French Catholic was free to belong to the party of their choosing, although he accepted that individual bishops may find aspects of certain political commitments incompatible with access to communion. Abbe Bouchacourt, a Lefebvriste priest, challenged Rouet, and those who support his stance, to state how the FN is in breach of the ten commandments, adding explicitly that "There is nothing in the catechism which forbids national preference" (the ensemble of the FN's racist policies towards immigrants). Demonstrating a more enlightened perspective than Abbe Bouchacourt and Msgr. Bille, French bishops meeting at their annual assembly in Lourdes adopted a document resolutely welcoming Islam and seeking to ward off hostility towards France's second religion. It stressed that religious pluralism was not only an irreversible fact but was something which enriched the community. It further demanded equal rights for Moslems and Christians to practice their faith. Outside the meeting a small group of FN activists gathered to demand a dialogue with the bishops.

Independent 26.11.98; Le Monde 10.11.98.

Racism and fascism - in brief

■ **Netherlands: prosecutor wants CP'86 Banned** A public prosecutor has called for the *CP'86/Nationale Volkspartij* to be

wound up. The public prosecutors office has come to the conclusion that the activities of the CP'86 are contrary to good public order. This would be the third time that a far-right party has been banned in the Netherlands, following the winding up of the *Nationaal Socialistisch Bond*, war-time collaborators with Hitler, and the *Nationale Volks Unie*, the creation of seventies would-be fuhrer Joop Glimmerveen. *NRC Handelsblad*, 20.10.98.

Racism & fascism - new material

Review: Discourses of Antiracism in France. Catherine Lloyd. *Ashgate* (Aldershot) 1998, 277pp £39.95hb. In this distinctive and important contribution to the analysis of French anti-racism Cathy Lloyd makes a significant epistemological departure from existing literature in the field. In a clearly structured and thorough account of the roots and the growth of anti-racism, she adopts the standpoint that it is, or ought to be, more than the antithesis to racism. She is critical of literature which has ignored the need for specific contextualisation and which has tended instead towards either over-abstractation or empiricism.

Having clearly set out her theoretical standpoint Lloyd pursues the themes of discrimination, representation, solidarity and hegemony through, firstly, an analysis of four historical references (the Enlightenment and revolution; the Dreyfus legacy; antifascism and the traditions of the resistance and anti-colonialism) for anti-racism, and secondly, through an analysis of the building of French anti-racism since 1945. Throughout this two part analysis she maintains an emphasis on the positive projects and on the attempts by anti-racists "to define themselves as the norm and racism as the aberrant".

In conclusion, Lloyd posits anti-racism as "the centre of our hopes for a more tolerant society for the next millennium", again ascribing a project and rationale to anti-racism which in theory and in practice must go further than an opposition to manifestations of racism. This book will provide an important resource for the study of anti-racisms in France; one which clearly demonstrates the importance of a critical approach to social-scientific study.

European Race Bulletin (Institute of Race Relations) Bulletin No. 28 (October) 1998, pp38. Latest issue of the bulletin covers the period February to July 1998. Available from IRR, 2-6 Leeke Street, London WC1X 9HS.

Racial harassment support pack: a guide for victims. The Monitoring Group, 1998. This useful pack contains 8 leaflets covering the following areas: 1. Facts and figures about racial harassment; 2. What constitutes racial harassment; 3. Information about the Monitoring Group...; 4. Guidance in dealing with the police; 5. Guidance to seek support from the local authority; 6. Instructions for recording incidents; 7. Independent action you can take, and 8. Simple steps you can take to deal with emergencies. Available from: The manager, TMG, 14 Featherstone Road, Southall, Middlesex. Tel. 0181 843 2333.

UK race laws need fresh impetus. *Labour Research* Vol. 87, no. 11 (November) 1998, pp17-18. This piece considers the Race Relations Act 1968 which was the first piece of legislation to outlaw race discrimination in employment. It observes that "little has changed" since its introduction and argues that "fresh legislation is urgently needed."

destroyed 175,000 files in the period between its formation in 1909 and the early 1970s. File destruction then ceased because of concerns that investigations into espionage cases had been impeded. But the file destruction programme was resumed following the end of the cold war in the early 1990s. Since then, more than 110,000 files have either been destroyed or earmarked for destruction. The latest revelations follow Straw's announcement in February 1998 that he was allowing MI5 to decide for itself which files to destroy, and which to keep for operational, statutory or historical reasons (see *Statewatch*, vol 8 no 2).

The destruction figures suggest that MI5 has, since 1909, compiled over 925,000 files on individuals and organisations for one purpose or another, a figure which is equivalent to 1.6 per cent of the current UK population. The Police National Computer currently holds information on 5.7 million individuals, or about ten per cent of the population. MI5's present file holdings are said to be "about 440,000", of which 230,000 are "closed", meaning that "Security Service officers may use them where necessary in the course of their current work, but may not make inquiries about the subjects of the files". Around 35,000 files relate to matters internal to the Service, including personnel. Another 75,000 files relate to people or groups who have received protective security advice but have never been the subject of direct investigation by the Service. The remaining 100,000 files consist of 40,000 subject/organisation files and 40,000 files which have been reduced to microfilm and placed in a "restricted" category "to which Security Service staff have access only for specific research purposes". This leaves 20,000 "live" files relating to individuals who "may be under current investigation". The table below indicates that the majority of these files concern "terrorists":

Category	Number of files
<i>Foreign nationals, mainly foreign intelligence personnel and terrorist groups</i>	7,000
<i>UK citizens, terrorist suspects</i>	7,000
<i>UK citizens, espionage, nuclear proliferation and serious crime</i>	6,000

Replying to Julian Lewis' questions concerning the preservation of MI5 records on the 1926 General Strike and the 1984-5 miners' strike, Straw has stated that it is not in the national interest to reveal whether the Security Service holds records on any particular individuals or organisations. In July, Straw revealed that he had asked the Lord Chancellor's Advisory Council on Public Records to review the criteria used by MI5 to select material for historical preservation or destruction.

Further concerns about the lack of accountability of MI5 have been voiced by Labour MP Yvette Cooper who is a member of the Intelligence and Security Committee (ISC, appointed by the Prime Minister under the 1994 Intelligence Services Act). Cooper publicly complained in November that the ISC cannot do its job because the intelligence agencies (and Ministers) themselves decide what information to give the Committee: "how can we have proper oversight if the very people whom we are supposed to be overseeing are determining what information we get?". The ISC has specifically recommended that personal files which the agencies wish to destroy should be checked (for historical interest) by an independent body but it appears the government has rejected the idea. Cooper argues that "if the only objection to independent checks is that they are too bureaucratic, we should keep all the

SECURITY & INTELLIGENCE

UK

MI5: "file destruction programme"

Home Secretary Jack Straw announced in July that MI5

files. They should be put in a vault or microfiched; we must not destroy those old subversive files for good on the say-so of the Security Service... We have all heard the allegations about the monitoring of so-called subversives in the 1970s and 1980s... all sorts of outrageous things may have happened. The point is that future generations have a right to know what happened and how the organs of the state behaved”.

Prior to the 1997 general election, both John Major and Tony Blair were advised by MI5 that nine MPs or potential MPs, including Joan Ruddock, were threats to national security and should not therefore have positions in government.

House of Commons, debates, 2.11.98, col 612; Julian Lewis MP, House of Commons, written answers, 20 January 1998, col. 519.

SWEDEN

Spying on the left

On 2 December the board for controlling military intelligence released their report on military intelligence activities up to 1981. It shows that military intelligence focused extensively on Swedish citizens, and that many different kinds of “dissidents” were presumed to be communists or covert-communists and therefore “security risks”. Many Swedish people were regarded as security-risks, including bishops, journalists and politicians. The main surveillance was by the Social Democratic Party and the military intelligence, where the latter used the unions to gather intelligence on “suspects”. The Social Democratic Party used about 200-800 willing “spies” and up to 22,000 people who they gathered information from but who were unaware they were being used to gather intelligence.

On 30 November, two days before the release of the report of the board, it was revealed that the Security Police had tried to prevent people they did not like - for example, critics of the Security Police - from becoming journalists and executives for the Swedish Radio and Television. This had previously been denied but is revealed on a secret tape recording by a journalist (Goran Elwin) in 1981 when he was discussing the matter with the head of the National Police Force (Romander) and the head of the Security Police was broadcast on Swedish radio.

On 23 December the Registration Board will release its report on the Swedish security police which will reveal how many more “Leander cases” there were during the period October 1969 to June 1986 - it is believed there are more than a thousand (see *Statewatch*, vol 7 no 6).

BELGIUM

Report shows “intelligence is a European Issue”

In its fifth annual report the Belgian Permanent Intelligence Oversight Commission, also known as “Committee R” demonstrates that in at least 2 concrete cases within the EU, intelligence has become a Europe-wide issue rather than a specifically national affair. On space observation, the 1998 report says US intelligence would not hand over its pictures to the *Service General de Renseignement* (SGR, Belgian military intelligence) but merely “showed” them before removing them after the meeting; the US also only provided its own analysis of the imagery. In addition, said a Committee R spokesperson,

the Gulf war in 1990-91, Bosnia in 1995 and surveillance of the Kurdish region in Iraq in 1996-97 made it clear the US reserved the right to cut or censor the satellite information it turned over to its allies.

The committee also revealed that a breakdown in the Schengen Information System (SIS), that led to data leaks in Belgium between 1995-97, was due to a security lapse that has yet to be rectified. The Dutch underworld, using the services of a young lawyer employed by the Belgian “Sirene” Committee - the control point for data downloaded into the SIS computer system by each country in the Schengen zone - managed to get its hands on the case-notes of various people that had been circulated across the European community. The lawyer, who was arrested in November 1997, had only been subject to a check as to whether he had a criminal record or was known to the domestic security agency *Surete de l'etat*. This could be due to a poor translation of the rules implementing the SIS that leaves it unclear whether a government can opt for a mere security check (French-language version) or a full-scale inquiry (German and Dutch version).

Intelligence Newsletter 15.10.98

NETHERLANDS

Informer uncovered

The Dutch secret service (BVD) deployed an agent to infiltrate the movement against the expansion of the national airport at Schiphol. In an attempt to counter radical protests the man was provided with a social background in order to give him credibility. “Marc Witteveen” was given a job with a company in the suburbs of Amsterdam, financed by the BVD, as well as an address, a phone number and a history as a student of political science in San Diego, USA. In the autumn of 1996 he became active in the *Milieudefensie* [Environmental Defence] organisation, which campaigned against, among other things, the expansion of Schiphol. He made friends with members of the organisation and after a year became a member of the “Climb Group”, a group of activists which hangs banners in eye-catching places. He also wrote radical, even provocative, articles in the journal *Ravage*, in which he expressed disappointment at the organisation of the radical left in the Netherlands. He flirted with Earth First! and asked whether it was not time to adopt the Mexican Zapatistas' slogan “Ya Basta!”, (“Enough is Enough!”). “Witteveen” also wrote an article on his visit to an Earth First! activity camp in Scotland in the summer of 1997. In mid-November 1997 he vanished back to the US, according to his account.

Milieudefensie is appalled by this infiltration. After a previous incident the BVD confirmed in writing that *Milieudefensie* was not under investigation. The big question is: where is “Marc Witteveen” now? *Buro Jansen & Janssen* will continue its research and would be grateful for any information about “Marc Witteveen”.

See website “<http://www.xs4all.nl/~respub/marcw>” for the latest news.

Wider powers in Intelligence Bill

A new Intelligence and Security Services Bill, introduced in the wake of successive scandals, will lead to wider powers for the intelligence services. This is the conclusion reached by the research group AMOK. Increased powers include the right to hack into computer databases, to open letters, to tap phones and bug houses, to run criminal informants and create front companies. All of these new powers will come from legislation that was originally designed to increase the amount of political control over the intelligence services.

The need for new legislation followed a series of scandals. In 1984 the anti-militarist group *Onkruit* revealed that the *Binnenlands Veiligheids Dienst* (Internal Security service, BVD) regularly spied on a great number of Dutch citizens. This

eventually led to the Dutch state being condemned by the European Court of Human Rights, which ruled that not enough attention had been given to defending the privacy of the individual. In the 1990s a series of financial scandals led to the winding up of the *Inlichtingen Dienst Buitenland* (Foreign Intelligence Service, IDB), whilst a recent parliamentary report concluded that there was no control over the way information gathered by the BVD eventually found its way into the judicial process.

It would now appear that the government has decided to make a virtue out of necessity by vastly increasing the rights and powers of the intelligence services. Furthermore, the promised political supervision, (which created the need for new legislation in the first place), appears to have been reduced almost to an afterthought. The BVD's original mission statement, which allowed it to gather information, has now been widened to "carrying out investigations". AMOK claims that the explanation given by the government - "the exploitation of discoveries made during investigation" - effectively means that the new legislation allows covert operations.

The new law also effectively recreates a foreign intelligence service. The *Militaire Inlichtingen Dienst* (Military Intelligence Service), hitherto the BVD's little brother, will now see its role expanded to include overseas operations. It too will have legal authority to carry out secret activity.

Whilst the new bill allows a dramatic increase in powers to bug and burgle, activities carried out by the BVD without any legal sanction up till now, there is hardly any new restriction on its power. The criteria for being investigated by the intelligence

service including one's political persuasion remains unchanged. The only new supervision over the intelligence service comes from an "advisory oversight committee" whose reports will be classified.

In short, a Bill whose original intention was to restrict the powers of the BVD has led to a massive expansion of those powers without any real increase in transparency or accountability. It is therefore questionable whether this Bill could stand up to a fresh challenge by the European courts.

AMOK 4/1998

Security & Intelligence - in brief

UK: More business for Forensic Science Service: Jack Straw has announced that the Forensic Science Service (FSS) is to be converted to a trading fund. He cited "the interests of the improved efficiency and effectiveness of the management of the FSS". In practise this decentralisation in the financial management of the FSS will allow it to make long-term investments in research and development; to further enhance its links with private IT companies and promote the sale of its technology and services. The FSS is custodian of the national DNA database, the system architecture of which the FBI has recently announced plans to replicate. Touting itself as a "world renowned research and development facility", the FSS may do rather well out of their DNA profiling technology. In April, a UK Presidency report of the Police Cooperation Working Group to the EU's Justice and Home Affairs Council on the implementation of the 1997 resolution.

UK-CHILE: Pinochet's come-uppence

22 September 1998 was the day Augusto Pinochet Ugarte, ex-Commander-in-Chief of the Chilean armed forces, ex-head of the military junta, ex-President and now life senator, arrived in Britain on one of his regular visits. Twenty-five years to the day earlier, the British government had recognised Pinochet as head of state, just eleven days after his deployment of British Hawker Hunter jets to bombard the presidential palace in a coup d'etat which saw Salvador Allende's suicide and the beginning of a seventeen-year reign of terror. He stepped down from the presidency in 1990 after securing himself a lifetime amnesty.

Ironically, his visit to Britain turned into a blessing for international human rights and the rule of law, thanks to an indefatigable Spanish judge and some persistent human rights campaigners and Chilean exiles. There had been attempts before to bring a private prosecution against Pinochet in Britain, but the attorney-general's consent - necessary for charges of torture, genocide and hostage-taking - was not forthcoming. Without such consent, and without any police initiative to arrest him, Pinochet was untouchable.

This time, however, on 16 October the Spanish judge, Baltasar Garzon Real, sent an international warrant for Pinochet's arrest on charges of murder of Spanish citizens in Chile between 11 September 1973 and 31 December 1983. Pinochet was arrested at the London Clinic on a provisional warrant from a London stipendiary magistrate, Nicholas Evans, acting on the international warrant. Two days later a second international warrant was issued by the Spanish judge, conscious that there were legal problems with the first. This time, the allegations were of genocide and terrorism. Specific charges of torture, hostage-taking and conspiracy to murder were brought. The second Spanish warrant outlined Pinochet's plans for "the elimination, disappearance or kidnapping of thousands of people, who were also systematically subjected to torture". Seventy-nine cases were described in detail. Also outlined was

Operation Condor, a collaboration between the Chilean junta and the governments of Argentina, Paraguay, Spain and Portugal to abduct or assassinate opponents abroad. On 22 October, another stipendiary magistrate issued a second provisional extradition warrant against Pinochet, as his lawyers prepared a habeas corpus application for the High Court. They claimed defects in the first warrant, procedural irregularities in the issue of the second, and state immunity. They also sought judicial review against the Home Secretary for his failure to intervene to cancel the provisional warrants.

On 28 October, after two tense days of legal argument, the Divisional Court, led by Lord Chief Justice Thomas Bingham, acceded to Pinochet's counsel's arguments of state immunity. They accepted that, but for state immunity, Pinochet could be extradited for crimes of torture, genocide and hostage-taking committed in Chile and elsewhere, since these were all crimes of universal jurisdiction in international and domestic law. But the combined effect of the 1978 State Immunity Act and the 1964 Diplomatic Privileges Act meant that a head of state was immune from any legal action, and a former head of state retained immunity for acts he had done as head of state. Pinochet's crimes, the judges said, were committed as head of state and so he could not be brought before a court in Britain. Torture and extermination of enemies were regrettably what states and their heads did. The judgment was a frank and defeatist manifestation of the executive-friendly doctrine of "judicial restraint"; a judicial shrug of bent shoulders.

The Divisional Court agreed that their decision turned on a point of law of general public importance which needed final endorsement by the House of Lords. They asked the Law Lords what was "the proper interpretation and scope of the immunity enjoyed by a former head of state from arrest and extradition proceedings in the UK in respect of acts committed while he was head of state".

The parties to the case so far were Pinochet himself, represented by a clutch of silks instructed by solicitors Kingsley Napley; the Crown Prosecution Service on behalf of the Kingdom of Spain, sporting an extradition expert; and a studiously neutral representative of the Home Secretary. Sitting anxiously on the sidelines watching the proceedings were representatives of Chilean refugee groups such as Chile Democratico and the Association of Relatives of the Disappeared, as well as relatives of William Beausire, the Englishman who was abducted, tortured and disappeared by Pinochet's secret police DINA in 1974-5; Dr Sheila Cassidy, who was detained and tortured for giving medical assistance to an opponent of the regime, and countless Chilean survivors of the terror.

After the High Court debacle, a number of these interested parties decided to make an intervention in the House of Lords, to ensure that Pinochet's arguments on immunity were defeated. Amnesty International, the Medical Foundation for the Care of Victims of Torture and the Redress Trust, and other groups, and Dr Cassidy and the Beausire family, sought the House of Lords' permission to intervene in the proceedings as a voice of the victims presenting a human rights perspective - and the Lords agreed they could speak, and that Human Rights Watch and others could make written representations. The intervention of Amnesty was to cause controversy later, when it was revealed that one of the law lords, Lord Hoffmann, was an unpaid director of an Amnesty charity.

For the hearing, a committee room in the House of Lords was used. It became, for six days in early November, the venue for the most intensive, gripping and well-attended debate on international law. The topic was the development of international human rights and criminal law and the relationship between this and the doctrine of state immunity since 1848, when the Duke of Brunswick tried to bring the King of Hanover to justice in an English court (and failed). The issue: could a former head of state be brought to book for a policy of torture which he implemented while in power? The five law lords, in lounge suits, engaged in at times sharp debate with the eminent international lawyers who addressed them. Lloyd (the national security expert), in favour of broad immunity, the interpretation favoured by the Lord Chief Justice; Steyn bemused and angered by the anachronism of sovereign immunity; Hoffman passionately against an interpretation which allowed mass murderers and torturers to claim blanket immunity; Slynn at times visibly balking at the enormity of the challenge, the idea of reversing 150 years of precedent and seizing the moral high ground against executive high crimes; Nicholls alone quiet, measured, giving little away.

And behind the ranks of lawyers, the law lords faced the public gallery: a packed and orderly crowd hanging on to every word.

The lords had thousands of pages of documents to look at, too: documents revealing the tragic impact of Pinochet on Chile - "decree law No 1 of 11 September 1973", which announced the overthrow, in the "national interest" of course, of the democratically elected government and of the 1925 Constitution, the self-amnesty of 1978, the 1980 Constitution, and extracts from the 1991 Truth and Reconciliation Commission, which brought partial truth (detailed accounts of the atrocities but no mention of who was responsible) and no reconciliation.

The legal authorities relied on by the parties ranged from the Mary Queen of Scots case of 1568 to the war crimes tribunals on the former Yugoslavia and the statute of the International Criminal Court (not yet set up), proceedings against Noriega and Marcos in the United States in the 1980s and the unsuccessful torture case against the government of Kuwait in the Court of Appeal in 1996. Barristers for the CPS, the human rights and victims' groups and the amicus curiae appointed by the court

itself to assist on the international law aspects of the case were, by the end, ranged in a united front against Pinochet's lawyers. All told the lords they should no longer feel bound by the medieval doctrine of sovereign immunity in an age of international accountability for crimes against humanity. They all pointed out that sovereign immunity was quietly removed in 1977 for commercial transactions, because of the impossibility of doing business with a state which reneged on its contracts; how could such a double standard be allowed to continue, whereby a former head of state, or even a current one, could be sued for non-payment of commercial debts but not for mass murder? It could no longer be said that torture and genocide were aspects of a head of state's official functions and therefore acts for which a former head of state could claim civil or criminal immunity. But by the end of the arguments only one thing was clear: that the law lords' decision would not be unanimous.

The narrow and dramatically delivered 3-2 decision, representing as it did the majority's acceptance of the invitation to bring the law on sovereign immunity into the twentieth century, is of huge symbolic significance. As one commentator said, human rights declarations and conventions are not supposed to mean anything in the real world: it's a shock when they are given reality and acted on. The law lords told the world that even for former heads of state, "be you ever so high, the law is above you".

In the wake of the decision, the most surprising advocates of compassion have come forward to plead with home secretary Jack Straw for the old dictator's release. The reptilian tendency of the Tory party has discovered it has warm blood as it sees the sacrifice of a soulmate, one who put his (or the CIA's) perception of the national interest before the lives of so many individuals, and was prepared to root out communism wherever it was found, even in children as young as eight. All Pinochet's virtues - as a friend, an ally, someone who came to Britain's aid in her darkest hour, when Mrs Thatcher looked like losing the Falklands to the brutal Argentinian dictator Galtieri - were ceaselessly trumpeted in the wake of the judgment. Norman Lamont repeated calumnies about the conduct of socialist president Salvador Allende, making the novel suggestion that Allende too was guilty of mass murder. All the terrible stress and illness Pinochet has suffered as a result of these proceedings (not least the stress caused by his summary eviction from the psychiatric hospital in north London to which he had moved after the London Clinic got fed up with him) were emphasised. All the public disorder the lords' "interference"; has caused in Chile (with distant threats of another military intervention, and the support of the well-heeled matrons who banged their saucy pans in 1973 to Pinochet's and the CIA's tune). Promises of domestic trials - after 25 years of impunity and without any of the requisite changes in the Pinochet-drafted 1980 Constitution - alternated with denunciations of Lord Hoffman's "bias" in favour of human rights, because of his and his wife's work for Amnesty International. Pressure was brought to bear by the United States government, which also changed its mind about releasing classified communications relating to the time of the coup.

During the nerve-racking fortnight between the law lords' decision and Jack Straw's grant of the authority to proceed, work continued to build on the lords' judgment and to try to prevent (and if not, pre-empt) a disastrous decision by Straw. The other extradition warrants in the pipeline, from Switzerland, Sweden, France and Belgium, were firmed up and dusted off. Attempts to launch a private prosecution on behalf of some of Pinochet's torture and abduction victims, stymied by the Divisional Court decision and by attorney-general John Morris' refusal of consent to prosecute at the end of October, were revived. Straw was forcibly reminded of the UK's international obligation to Spain (about which little has been heard in the hullabaloo) to extradite Pinochet in accordance with the European Convention on

Extradition, and the more compelling duty under international law to prosecute or extradite perpetrators of torture wherever they are found. On the afternoon of Straw's announcement, 9 December, lawyers for Amnesty International, fearing the worst, rushed to the High Court in an attempt to persuade a judge there to prohibit Straw from releasing Pinochet prematurely. The judge refused - but meanwhile, the statement was going out from the Home Office that this panic was uncalled for; Straw was in agreement that the extradition was right and proper in form and content and that there were no good reasons not to proceed with it. He rejected the suggestion that the law lords' judgement was tainted by bias; rejected the argument that Pinochet could be tried in Chile, pointing out that if the Chilean government wished to try him it should, like the Spanish government, request his extradition. He rejected the suggestion that the offences were political (and thus unextraditable) or that the passage of time prevented a fair trial. And he dismissed the suggestion that

Pinochet was unfit for trial, while referring to the second opportunity he will have to present compassionate arguments against extradition, at the end of the procedure.

From being acknowledged as a theoretical possibility, the prosecution of Pinochet is fast becoming a reality. And after Pinochet? There is talk of Haitian exiles in France launching proceedings against Baby Doc Duvalier. Kissinger will not be prosecuted tomorrow or the next day for his role in Vietnam, Cambodia or even Chile - but the day after?

The abiding importance of the law lords' decision and its endorsement by Jack Straw is in its recognition that domestic law must march with developing international human rights law, and is to be interpreted in the light of compelling international obligations, such as the duty to protect against and punish crimes against humanity. Human rights have been given priority over the claims of trade, diplomacy, realpolitik. That's something to celebrate.

NORTHERN IRELAND

Peace process falters?

One of the few deadlines in the Belfast Agreement (the multi-party agreement of 10 April 1998) has passed with little to show by way of progress on the implementation of the all-Ireland structures specified under strand two of the agreement. The Agreement states:

7. As soon as practically possible after elections to the Northern Ireland Assembly, inaugural meetings will take place of the Assembly, the British/Irish Council and the North/South Ministerial Council in their transitional forms. All three institutions will meet regularly and frequently on this basis during the period between the elections to the Assembly, and the transfer of powers to the Assembly, in order to establish their modus operandi.

8. During the transitional period between the elections to the Northern Ireland Assembly and the transfer of power to it, representatives of the Northern Ireland transitional Administration and the Irish Government operating in the North/South Ministerial Council will undertake a work programme, in consultation with the British Government, covering at least 12 subject areas, with a view to identifying and agreeing by 31 October 1998 areas where co-operation and implementation for mutual benefit will take place."

Elections to the Assembly took place on 25 June, producing an ambiguous result on the unionist side. Unionists are split over the Agreement: the Democratic Unionist Party (DUP) and the UK Unionists are opposed to it while the biggest party, Trimble's Ulster Unionist Party (UUP), is formally in favour but contains a strong dissident faction which includes several of their Westminster MPs. The UUP secured 28 Assembly seats (not all of these are pro-Agreement) while the DUP scored 20. There are also three anti-Agreement independent unionist members. The UK Unionists secured five seats. On the Unionist side, therefore, the balance of power is held by the UVF's political wing, the Popular Unionist Party with two seats, and the Alliance Party which holds six. The UDA's political wing, the Ulster Democratic Party failed to win any seats at the election. The Women's Coalition secured two seats. On the nationalist and republican side, the Social Democratic and Labour Party hold 24 seats and Sinn Fein have 18.

The Assembly met on 1 July to consider a number of matters formally referred to it by the Secretary of State for Northern Ireland, Mo Mowlam. These were specified as: the election of a First Minister and Deputy First Minister; agreement on the number of Ministerial posts and the distribution of responsibilities between these posts; the nomination of persons

to fill these posts on the basis of the D'Hondt procedure (parties choose the ministries on the basis of party strength); the establishment of related Committees (also using D'Hondt); and the steps necessary to enable relevant Assembly members to participate in inaugural and subsequent meetings of the Shadow British Irish Council and participation with Irish Ministers in the shadow North/South Ministerial Council, with a view to completing by 31 October the work programme mentioned in strand 2 of the Agreement. It was originally anticipated that all the institutions specified in the Agreement would be in place before powers were transferred to the Assembly in February 1999. This timetable is in tatters.

While the First and Deputy First Ministers were successfully elected (David Trimble and Seamus Mallon respectively), and there has been some progress on Assembly standing orders, there has been no agreement at the time of writing (early December) on the number of ministries. This should be fairly straightforward because it has always been understood that there would be 10 Ministers in addition to the First/Deputy Ministers. Unionists, however, prefer a smaller number. If there are ten Ministers, Sinn Fein would have two representatives in the Executive, as would Paisley's DUP. The minimising or excluding of Sinn Fein from the Executive is the central objective of the pro-Agreement Unionists. The main argument being used to block progress is that the IRA must start to decommission weapons before anything more can happen - particularly the formation of the Executive and the initiation of the Shadow North/South Ministerial Council.

Nothing in the Agreement gives legalistic authority to the Unionist stance on decommissioning. The key passage of the Agreement states:

All participants accordingly reaffirm their commitment to the total disarmament of all paramilitary organisations. They also confirm their intention to continue to work constructively and in good faith with the Independent Commission, and to use any influence they may have, to achieve the decommissioning of all paramilitary arms within two years following endorsement in referendums North and South of the agreement and in the context of the implementation of the overall settlement.

Certainly Unionist parties have done little to encourage loyalist armed groups to decommission. Indeed a number of new loyalist armed groups have appeared in recent months, including the Red Hand Defenders (who have claimed at least one murder of a

Catholic to date) and the Orange Volunteers. Both groups claim to have access to weapons shipped from South Africa in the late 1980s. The Loyalist Volunteer Force have declared a ceasefire which was finally accepted by the Secretary of State on 12 November (see below). The group originally promised to decommission within 24 hours of their ceasefire being officially recognised. Then the group offered to hand in one weapon for every 10 handed in by the IRA. Finally, they withdrew their decommissioning plans altogether following derogatory comments from the deputy leader of the Ulster Unionists, John Taylor. The Popular Unionist Party has publicly stated that the Ulster Volunteer Force will not decommission its weapons even if the IRA does. None of this appears to have concerned the mainstream unionist parties whose focus of attention remains on the IRA or rather, "IRA/Sinn Fein". Sinn Fein continues to maintain its position that it cannot speak for the IRA but is co-operating with the Decommissioning Body through the appointment of Martin McGuinness as its spokesperson. All republican armed groups remain on ceasefire except the Continuity IRA which is allied to Republican Sinn Fein (which split from Sinn Fein in the mid-1980s). "Security sources" continually warn of a realignment of dissident republican military activists from CIRA, Real IRA and the Irish National Liberation Army, and a renewed bombing campaign.

While there is near stalemate on the implementation of the political institutions specified in the Agreement, there have been substantial developments in other areas. Under the Northern Ireland (Sentences) Act, a Sentence Review Commission was established at the end of July. The joint chair of the Commission is the South African lawyer, Brian Currin, who was appointed by President Mandela to the Prison Audit Committee and who was subsequently involved in setting up the Truth and Reconciliation Commission. Under the Act "qualifying prisoners" (those affiliated to groups on ceasefire at the time of the Agreement) apply to the Commission for release. The Commission makes a determination on the basis that fixed term prisoners must have served one-third of their sentence. If they have, they can be released. With life sentence prisoners the Commission is required to set a release date on the basis of "the completion of about two thirds of the period which the prisoner would have been likely to spend in prison under the sentence". Any eligible prisoners remaining after two years will be released automatically (subject to certain conditions). The Commission's determination goes to the Northern Ireland Office at which point the Secretary of State can object. She has done so publicly in only one case (the loyalist Johnny Adair) and for reasons which remain obscure. Her objection was withdrawn a few days later. Under Section 3(8), the Secretary of State can nominate "specified" groups, members of which are not eligible for release under the Act. INLA, Real IRA, Continuity IRA and the LVF were all specified initially but the LVF was "despecified" on 12 November. Despecification requires an order subject to parliamentary approval. The INLA and Real IRA, which declared ceasefires on 22 August and 7 September respectively, are likely to wait some time before despecification.

Part of the Agreement concerned the setting up of an Independent Commission on Policing. On 3 June, the composition of the Commission was announced under the chairmanship of Chris Patten, ex-Governor of Hong Kong and ex-Minister within the Northern Ireland Office. Other members of the Commission are Sir John Smith, a former Deputy Commissioner in the Metropolitan Police and Inspector of Constabulary; Kathleen O'Toole who used to work for the Boston police and has worked with the RUC on training; Dr Gerald Lynch, President of John Jay College, New York (the criminal justice institute); Clifford Shearing, Director of the Centre of Criminology at the University of Toronto; Peter Smith QC (who represented the two Royal Marines accused of

murdering Fergal Caraher in South Armagh in 1990); Dr Maurice Hayes who recently reviewed police complaints and came up with the proposal of an Ombudsman for police complaints; and Lucy Woods, the Chief Executive of British Telecom in Northern Ireland. The Commission is required to report "no later than" the summer of 1999. Its terms of reference are taken from Annex A of the Agreement itself and state:

Taking account of the principles on policing as set out in the agreement, the Commission will inquire into policing in Northern Ireland and, on the basis of its findings, bring forward proposals for future policing structures and arrangements, including means of encouraging widespread community support for those arrangements. Its proposals on policing should be designed to ensure that policing arrangements, including composition, recruitment, training, culture, ethos and symbols, are such that in a new approach Northern Ireland has a police service that can enjoy widespread support from, and is seen as an integral part of, the community as a whole. Its proposals should include recommendations covering any issues such as re-training, job placement and educational and professional development required in the transition to policing in a peaceful society. Its proposals should also be designed to ensure that... the police service is delivered in constructive and inclusive partnerships with the community at all levels with the maximum delegation of authority and responsibility... and conforms with internationally accepted norms in relation to policing standards...

The terms of reference also refer to examining "the scope for structured co-operation with the *Garda Siochana* and other police forces". The Commission is required to focus on policing issues but "if it identifies other aspects of the criminal justice system relevant to its work on policing, including the role of the police in prosecution, then it should draw the attention of the Government to those matters". Finally the Commission is required to "consult widely, including with non-governmental expert organisations, and through such focus groups as they consider it appropriate to establish".

The Patten Commission is currently holding public consultation meetings after the call for written submissions produced a relatively thin response - around 300 were received by the closing date of 15 September. These meetings have heard a torrent of complaints about RUC behaviour and those held in areas where Sinn Fein are the dominant party have heard many calls for the RUC to be replaced. The Commissioners attending such meetings have reacted with an air of indifference. Patten himself tries to turn the meetings round by saying that people ought to focus on the future rather than the past. The independence of the Commission has also been called into question following revelations in October that its secretariat consists of three officials from the Northern Ireland Office, including a former garda, and a serving RUC Inspector.

There are signs, however, that some members of the Commission may understand that a sizeable section of the nationalist population detest the RUC, and that name changes and other cosmetic reforms will not suffice. In November (18), the *Irish Times* carried a story claiming that "preliminary drafts of the Independent Commission report on the RUC recommend that the membership of the force should effectively disband and reapply to join a newly constituted police service". This would allow Catholics, so the thinking goes, to apply to the new force in sizeable numbers. As the Northern Ireland Affairs Committee points out (Third Report, 1997/8 HC 337-1) only "7.55 per cent of RUC officers are Roman Catholic. The proportion of Roman Catholics in Northern Ireland is over 40 per cent... Assuming a steady recruitment of Roman Catholics at a rate of 40 per cent of new intakes... it will still take about thirty years before Roman Catholics form 40 per cent of the RUC (ie 2027)". The problem facing the Commission is how to increase Catholic involvement in policing while at the same time "downsizing" and reshaping RUC paramilitary policing for conditions of peace. The *Irish Times* story suggests that initially the Commission may

recommend “upsizing” the full-time RUC element (currently 8,500) while sacrificing the RUC Reserve (full-time, 2,920; part-time, 1,380). (The official establishment of the RUC is 13,456.) The new force would be unarmed, possibly regionalised and linked to local authorities.

Patten has dismissed the *Irish Times* report as untrue and causing him great annoyance. Nevertheless, some of the things which are being said to the Commission about the past must be getting through because in a Channel 4 news interview on 10 December, Patten announced that he had asked to see copies of the Stalker/Sampson report on a number of “shoot-to-kill” operations, and the report of the Stevens Inquiry into the leaking of security force files to loyalist armed groups following the killing of Loughlin Maginn in August 1989. Reading these reports will raise more questions than answers. As Amnesty International's report on Political Killings (1994) commented with respect to the Stevens Inquiry:

[it] would have been very important if its scope had been wide enough to look at the issue of collusion as a whole... It did not look at evidence that collusion between members of the security forces and Loyalist armed groups had been going on for many years, or at the overall pattern as it related to both targeted and random killings of Catholics. It did not examine the authorities' record during this time in bringing criminal proceedings against security personnel in this regard, or the official response to evidence of partiality and discriminatory treatment.

How the Patten Commission deals with the reports will be highly indicative. For many years there have been calls for these reports to be made public because of strong suspicions that murders by state forces and state assistance to loyalist groups to carry out murder have been covered up at the highest levels. These suspicions are sufficiently strong for the UN Rapporteur on the independence of judges and lawyers, Param Cumaraswamy, to have called in March of this year (1998) for an independent inquiry into the murder of solicitor Pat Finucane in February 1989. Cumaraswamy was refused access to the Stevens report. The British government, in its response to the Law Society's representations on the Special Rapporteur's report, argues that “there are no grounds to hold such an inquiry”. It also responds to several points regarding the rules of evidence and powers limiting access to lawyers under existing emergency powers by claiming that “the Government has plans to repeal the existing Northern Ireland (Emergency Provisions) Act and the Prevention of Terrorism (Temporary Provisions) Act and to bring forward in their place new, permanent legislation to counter terrorism of all kinds, including international terrorism.” Plans for such legislation, modelled on the Lloyd Report (1996), were first announced by Home Secretary Jack Straw on 30 October 1997. Straw told parliament, “the Secretary of State for Northern Ireland and I (therefore) intend to present proposals to

replace both the current Acts with permanent United Kingdom-wide counter-terrorism legislation. We intend to publish the proposals in the form of a consultation paper early in the new year. That paper will draw on Lord Lloyd's most helpful analysis and recommendations. Indeed, I hope that he will contribute further to our thinking.” No paper appeared. The next mention of the consultation document was during debates in March 1998 over the continuation of the PTA. On 3 September, (during the debate on the Criminal Justice (Terrorism and Conspiracy) Bill) Lord Dubbs said the document would be issued early in the autumn and Straw said on 27 October that it was “forthcoming”. By December, no paper had appeared.

Meanwhile, the government has implemented a number of sections of the Police (Northern Ireland) Act 1998. The Act changes the 19th century oath of allegiance to the crown, to a declaration to discharge duties faithfully. In addition, it introduces the office of Police Ombudsman which will decide what a complaint is, instigate an investigation in the public interest (whether a complaint has been made or not), and make recommendations to the DPP on the prosecution of police officers. On 12 November the government made it clear that it has stopped short of barring members of the Orange Order from becoming police officers. Instead, a voluntary register for existing officers who are members of Loyal Orders and/or the Freemasons will be introduced. It will be a private, internal register.

Further indications that the government is under pressure on human rights came on 19 November with the publication of the UN Committee Against Torture's conclusions on a report presented by the UK. The Committee, referring to the continuing “state of emergency” in Northern Ireland, noted that “no exceptional circumstances could ever provide justification for failure to comply with the Convention”. The Committee went on to complain that it had “recommended the closure of detention centres, particularly Castlereagh, at the earliest opportunity the abolition of the use of plastic bullet rounds as a means of riot control ... (and) the reconstruction of the RUC so that it more closely represented the cultural realities of Northern Ireland”. All these points remained “subjects of concern”. In contrast, the government claims to be implementing a human rights agenda as part of the Belfast Agreement. The Northern Ireland Bill (containing more than 400 amendments) became law on 19 November. It describes the powers and functions of the Assembly, allows for the participation of Ministers in the British Irish Council and the North/South Ministerial Council, and establishes the new Equality Commission (an amalgamation of the Commission for Racial Equality (NI), the Fair Employment Commission, the Disability Council and the Equal Opportunities Commission) and the Human Rights Commission which has been criticised for lacking teeth.

EU

EU-FBI surveillance plan extended to Internet and new mobile phone systems

The Justice and Home Affairs Council (JHA Council) of the European Union is to extend the EU-FBI telecommunications surveillance plan to the Internet and to new generation satellite mobile phones (see *Statewatch*, vol 7 no 1 & 4 & 5). EU Interior Ministers are also working their differences over the legal powers they intend to give themselves to intercept all forms of telecommunications under the new Convention on Mutual Legal Assistance. In the US the same issues are being openly discussed - the Federal Communications Commission has deferred a decision on an FBI proposal to extend surveillance to the Internet.

The secret making of policy

Within the formal structures of the EU, under the Justice and Home Affairs Council, the work on the interception of telecommunications is carried out by the Police Cooperation Working Party (Interception of telecommunications). This Working Party in turn is represented on three non-EU “technical expert groups” - ILET (International Law Enforcement Telecommunications), STC (Standards Technical Committee) and the IUR (International User Requirements). The findings on these non-EU groups are in turn brought back within the EU structures

through the Police Cooperation Working Party and presented to the K4 Committee, COREPER and the JHA Council as being:

agreed by the law enforcement agencies as an expression of their joint requirements

Meetings in Rome on 14, 15 and 16 July of the IUR and STC were reported back to the meeting of the EU's Police Cooperation Working Party on 3-4 September in Brussels. Further meetings of the IUR in Vienna on 20-22 October and in Madrid on 27-28 October led to a draft Resolution from the Austrian Presidency to the Police Cooperation Working Party, dated 4 November, on the "interception of telecommunications in relation to new technologies".

The effect will be to extend the Requirements to be placed on network and service providers adopted by the EU as the Resolution of 17 January 1995 (see *Statewatch*, vol 7 no 1). Under the plan telecommunications network and service providers would have to give access to communications from "mobile satellite services" (provided by multinationals like Iridium via their "ground station" in Italy, (see *Statewatch*, vol 8 no 5) and to e-mail sent and received via ISPs (internet service providers) in addition to phone calls and faxes sent through the traditional system (land and sea lines and microwave towers).

The EU's plans for the surveillance of all forms of telecommunications is being determined by non-EU bodies - ILETS, STC and IUR - on which the major players are: the EU (represented by the Police Cooperation Working Party and other experts), the USA (the FBI), Canada and Australia (New Zealand and Norway are also involved). The stakes for these governments are enormous. Just as important as the "law enforcement agencies" being able to set down the "Requirements" for intercepting every form of communication are the commercial profits to be made out of "agreed" standards, equipment and service provision. Once adopted, EU-US standards, are set to become "global". For example, Iridium, the first multinational to open a "ground station" in Italy to serve the EU with a global earth-satellite, "mobile satellite service" (MSS, or "Satellite Personal Communications System, SPCS) is using Motorola and Kyocera to make Iridium handsets. The initiative for creating Iridium came from Motorola. Moreover, the EU market is critical to Iridium's initial success because AT & T dominates the US with traditional land based systems.

Spelling out "law enforcement" demands

Underneath the draft Resolution amending the 17 January 1995 EU Council Resolution is a detailed report ("Interception of telecommunications: recommendation for a Council Resolution in respect of new technology") explaining the need for "supplementary requirements and supplementary definitions in respect of new technologies including SPCS, the Internet..." This report was discussed at the Police Cooperation Working Party in Brussels on 3-4 September.

The report opens with the statement that the Resolution of 17 January 1995 - which was never even discussed by the JHA Council but adopted by "written procedure" (signed by the Brussels-based Permanent Representatives of each EU member state) - has to be changed to be:

suitable for new technologies, especially satellite communication, Internet, cryptography, pre-paid cards etc

Throughout, the report distinguishes between the new "international requirements for surveillance.. developed by the law enforcement agencies" for: i) SPCS ("Satellite Personal Communications Systems") and ii) the Internet.

Introducing the "law enforcement agencies" need for the interception of SPCS the report says:

Operational scenarios comprise the following connections: mobile to mobile (via satellite), mobile to mobile (terrestrial), mobile (via satellite or terrestrial) to the public switched telephone network

(PSTN) and PSTN to mobile (via satellite or terrestrial). Interception of such satellite based services is subject to the national laws of the requesting law enforcement agency as well as those of the state providing the gateway.

The report's introduction on the Internet is altogether simpler: "This explanatory memorandum refers to requirements of law enforcement agencies to the interception of ISP-based Internet services."

The report then looks at each of the already agreed "Requirements" and proposes new ones.

First, under "Requirement 1" the "law enforcement agencies require access to the entire telecommunications transmitted..". Traditional means of communications are simple and provide the "locations" of the two parties but this is not so for calls between two mobile phones (SPCS). However, a solution is provided by "a single terrestrial gateway [which] serves many countries from one site" (such as the Iridium ground station in Italy covering the whole EU). For the Internet access is required to:

ISP address, customer's account number, logon-ID/password, PIN number, E-mail address.

Second, is the "Requirement" that "law enforcement agencies require a real-time, fulltime monitoring capability" as well as "call associated data". "Real-time" is defined: "100 milliseconds to 500 milliseconds are desirable".

Third, network operators and service providers are required to provide "one or several interfaces" for the new Iridium-style SPCS mobile phones and, of course, Iridium by offering the use of its facilities meets this need - "Interception can be planned as a MSS-gateway [SPCS] which serves several countries..". Equally, "Several countries can carry out interceptions of the same mobile subscriber who is served by a gateway."

Fourth, the need for immediate interception, "in urgent cases within a few hours or minutes" where "questions of sovereignty can cause further delays if cooperation of law enforcement agencies from different countries is required".

The "Supplementary requirements" state that network and service providers have to hand over full details of any customer:

the complete name and complete address of the monitored person... the person who pays the bill for the services available to the monitored person.. sufficient credit card details to identify the customer account...

Together with details of all the services used by the "customer", for example, conferencing, voice-mail, ISDN, telex, internet domain names, "roaming" permissions (for mobile phone users).

Network and service providers will have to provide their own secure means of ensuring the "security" of the intercepts. One reason given for this "security" is the comforting thought that the rights of the individual are to be protected:

Protection of the interests of an interception subject from revelation of its telecommunications to other parties than the intercepting authority

On the other hand, another "requirement" is that "neither the interception target nor any other unauthorised person is aware of.. the interception order."

The MLA "debate"

The draft Convention of Mutual Legal Assistance in Criminal Matters is still under discussion in the Justice and Home Affairs Council. The "outstanding" issues are whether or not data protection provisions should be included (only Italy, Austria, Belgium and the Commission are in favour), the role of the Court of Justice, its jurisdiction (the usual dispute between the UK and Spain over the status of Gibraltar) and the Articles on the interception of telecommunications.

It should be remembered that the primary purpose of this new Convention is to "supplement the provisions and facilitate the application" of the 1959 Council of Europe Convention on

Mutual Legal Assistance in Criminal Matters. The Schengen Agreement (1985 and 1990) and the Benelux Treaty (1972) have been added. The 1959 Council of Europe Convention is not limited to "serious crime" or "organised crime", it simply concerns any punishable offence however minor. New powers contained in this new EU Convention on mutual assistance are, therefore, applicable also to any punishable offence (see *Statewatch*, vol 7 no 4 & 5).

The draft Convention thus places no limits on the use of the proposed new powers of intercepting telecommunications - this is solely regulated by each member states' national law.

In the latest draft of the new Convention the Articles on the "Interception of telecommunications" are in Title III, Articles 11-14 and represent the third substantial revision. The major areas of "discussion" in the secret conclaves of the EU member states are as follows.

The issue starts with the question as to whether "where a Member State intercepts or intends to intercept a target present in another Member State.. and does not need any assistance from that Member State" it should tell the other Member State. As presently drafted Article 13 provides that: the "intercepting Member State" will inform the "visited Member State", that the "visited Member State" may "require that the interception not be carried out or be interrupted", and that the "visited Member State may lay down conditions on the use of material already intercepted". This issue particularly arises if the Iridium's EU ground station in Italy is able to provide access to call contents (for SPCS mobile phones) in different countries instantaneously.

Due to the different legal powers to authorise interception in EU states a discussion has emerged over the role of security and intelligence agencies. Fourteen EU member states believe that the new Convention *only* refers to "criminal investigations" and therefore excludes interceptions by security and intelligence agencies. In these countries interception by these agencies takes place either through administrative authorisation (for example, from an Interior Minister) or through a judicial warrant. In the UK the Security Service (MI5) is issued with warrants by the Home Secretary for both matters of national security and for criminal investigations (where they are working on serious organised crime). As presently drafted the UK would be obliged to inform other EU states when MI5 is intercepting communications in another member state.

What has been highlighted by this discussion between EU member states is that there is no existing or proposed regulation of the interception of telecommunications when carried out by security and intelligence agencies. It also demonstrates that there is not a simple distinction between "criminal investigations" and "national security". One of the questions asked in the latest draft is whether there should be an obligation by a member state to inform other member states where "it would be likely to prejudice its security, ordre public or other essential interests?"

Another issue is whether other EU member states should be informed when the surveillance (of GSM mobile phone networks) is for less than 24 hours and may involve, in border areas, several EU member states.

The member states are also divided over whether the "visited Member State" should have the power to "require the interception not to be carried out or to be interrupted" and the power to "impose restrictions on the use of the already intercepted material".

At the JHA Council on 3-4 December the Ministers were asked to consider the following question:

Which of the following reasons should be regarded as a basis for requiring interception not to be carried out or to be interrupted:

- national law of the visited Member State?

- fundamental principles of national law of the visited Member State, and/or ordre public?"

A new Article (no 14a) has now been included "to ensure an appropriate legal basis for the purpose of agreements on the use of the *service provider solution* [Iridium] regarding satellite telecommunications". The new Article states, in full:

Nothing in this Title shall preclude any bilateral or multilateral arrangements between Member States for the purpose of facilitating the exploitation of present and future technical possibilities regarding the interception of telecommunications".

A proposal which, potentially, could drive a "coach and horses" through any provisions in the new Convention. The so-called "service provider" for the interception of telecommunications carried out through Iridium's EU ground station in Italy would mean that if a "target" moved from one country to another the surveillance would simply be "switched" from one country to another.

There is no provision in this new Convention for it to only come into effect when all 15 EU member states have ratified it. Under Article 18.4 it can come into effect between any two or more member states who declare that it should do so.

Conclusion

The new powers to intercept telecommunications is by no means limited to any common perception of "serious crime". By including the interception Articles in a new Convention on Mutual Legal Assistance in Criminal Matters the limits are simply those set out in the 1959 European Convention on Mutual Assistance in Criminal Matters which refers to any punishable offence however minor. Once in place to "combat organised crime" these powers can be infinitely extended to all forms of offence including public order or "national security".

Council Resolution of 17 January 1996 on the lawful interception of telecommunications; Interception of telecommunications: recommendation for a Council Resolution in respect of new technology, ENFOPOL 98, 10951/98, 3.11.98 and ENFOPOL 98 REV 1, 10951/1/98, 4.11.98; Draft Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, JUSTPEN 108, 13144/98, Limité, 19.11.98; PC Magazine, January 1999.

KEEP in TOUCH

access Statewatch's searchable database on the internet with over 24,000 entries - reference and full-text (including back issues of the bulletin)

The url is:

<http://www.statewatch.org>

STAY INFORMED

order documents on Europol, asylum, and public order from the Statewatch European Monitoring and Documentation Centre (SEMDOC)

JHA Council, September 1998

After a slow start to the Austrian Presidency the number of measures on the table at the Justice and Home Affairs Council (JHA Council) in Brussels on 3-4 December was voluminous - there were 20 items for discussion by the Ministers and a further 19 reports agreed on the nod as "A" Points (adopted without discussion). The main issues under discussion at the JHA Council were the "Action Plan establishing an area of freedom, security and justice" (see article page 2), the draft Convention on Mutual Legal Assistance (see front page feature), the draft EURODAC Convention and the "Rules of Procedure for the Joint Supervisory Body" of Europol.

Then at the General Affairs Council on 7-8 December a further five "justice and home affairs" reports went through. The most significant of these was the creation of a High Level Working Group on Asylum and Migration which is to report back by March 1999.

The EURODAC Convention and Protocol

The official line is that there is now "global agreement" on the content of the Eurodac Convention, which covers the fingerprinting of all asylum seekers entering the EU. "Political agreement" was reached through a "compromise" on two outstanding issues - the jurisdiction of the Court of Justice and the management of the Eurodac fingerprint database by the European Commission.

The jurisdiction issue concerned the Court of Justice being able to give a preliminary ruling. The UK, Ireland and Denmark are each covered by Protocols in the Amsterdam Treaty allowing for each to make specific decisions on their involvement in measures moving to the "first pillar" (eg: free movement). The delay allows these countries to decide whether to join this measure or not. The compromise is that the draft Convention will be "frozen" until the Amsterdam Treaty comes into effect and then the Commission will put forward a Regulation for a community legal instrument. The UK has always agreed to the Court of Justice's role under such "first pillar" measures.

The delay is anyway not significant as the computer system to operate the immediate exchange of fingerprints will not be ready until the end of 1999 at the earliest.

The French government objected to the management of the Eurodac Central Unit being given to the Commission as it viewed the initiative as a police cooperation measure which did not properly belong to the Commission's remit (now or under the Amsterdam Treaty). The compromise is to be a declaration that giving the Commission the Eurodac system will be without prejudice to the management of the Schengen Information System (SIS).

Most of the discussion however centred on the Protocol to be added to the draft Eurodac Convention. The EU governments' rationale for setting up Eurodac is ostensibly to help them enforce the Dublin Convention that came into effect on 1 September 1997 and which by general consensus is not working as intended. Specifically it is intended, by the comparison of the fingerprints of asylum seekers, to "facilitate the determination of the [Member] State responsible for examining an asylum application". In short, to find out if the asylum seeker had previously tried to enter another EU Member State.

The first extension to this objective was the inclusion of the fingerprints of:

every alien of at least fourteen years of age who is apprehended by

the competent authorities in connection with the irregular crossing by land, sea or air of the border of that Member State having come from a third country and who is not turned back (Article 3.1)

This provision would effect EU states differently. For example, people entering Germany by land from Poland (a third country) would be covered as would people landing at the UK's Heathrow airport but not people coming by boat, plane or sea from France, Netherlands etc. The draft does not define "land" borders therefore it is unclear whether this simply refers to the actual border line or to the "zones" behind the borders operated under the Schengen Agreement.

The second, and far-reaching, extension is the proposal to collect and check the fingerprints of "suspected illegal immigrants" or, in the almost casual language of the draft Protocol:

Each Member State may communicate to the Central Unit [of Eurodac] fingerprints it may have taken of any alien of at least fourteen years of age found to be illegally present within its territory with a view to checking whether the said alien has previously lodged an application for asylum in another Member State (Article 7.1)

Articles 7.2 and 7.3 say that such fingerprints are not to be held by the Central Unit and are to be destroyed when the check has been made. They cannot therefore be held by the Central Unit for future use but no restriction is placed on the Member State gathering them nor on any other use to which they might be put.

This proposal is a reflection of the frustration in some EU Member States not just with the Dublin Convention but with the undefined and unknown numbers of suspected "illegal immigrants" resident within the EU. In practice it has little or nothing to do with the Dublin Convention and reflects the thinking in the "Recommendation on harmonising means of combating illegal immigration and illegal employment and improving the relevant means of control" agreed under the French Presidency of the EU in June 1995.

Joint Action concerning temporary protection of displaced persons & Joint Action concerning solidarity in the admission and residence of beneficiaries of the temporary protection of displaced persons: Two Actions proposed by the Commission last July. The JHA Council had an "exchange of views" which did little to bridge the divisions in the member states. Some member states support temporary protection while remaining opposed to any system of burdensharing, while others believe the two systems must go together. The issues on the table include: what is the scope of temporary protection? Can member states unilaterally make a decision? On "solidarity" the new euphemism for "burden-sharing" there remain fundamental divisions. Can "solidarity" simply comprise a financial contribution or does it involve looking after refugees? Too what extent should "military contributions" on the ground count against receiving migrants and refugees?

Joint Action making it a criminal offence to participate in a criminal organisation in a member state of the EU: Despite "political agreement" at the March 1998 JHA Council the Belgian parliamentary reserve remained as its parliament is considering a new law on precisely this issue - over which a major dispute has arisen because as presented it could encompass trade unions and political activity (see *Statewatch*, vol 8 no 3 & 4).

Joint Action on corruption in the private sector: The JHA Council reached agreement on this Joint Action which will be formally adopted at a forthcoming Council meeting. It aims to get measures passed at national level dealing with "passive and active corruption" in the private sector. It defines "breach of duty" as:

any disloyal behaviour constituting a breach of a statutory duty, or, as the case may be, a breach of professional regulations or instructions, which apply within a business of any employee or other person when directing or working in any capacity for or on behalf of a natural person or legal person operating in the private sector.

It is intended that offences will be criminal (rather than civil) and will cover actions which might result in "economic damage".

Resolution on the prevention of organised crime: The JHA Council agreed this Resolution which will be formally adopted later. It emphasised the role of "civil society" as well as law enforcement agencies.

State of ratification of conventions in the Member States: The JHA Council emphasising the need to speed up the ratifications of Conventions going through national parliaments. Since the Maastricht Treaty entered into effect only the Europol Convention had been completed.

Joint Action on a uniform format for affixing visas: No agreement was reached on this issue. Greece requested that the Turkish part of Cyprus should not be covered by the Joint Action.

Europol: Although the Europol Convention was officially in force on 1 October Europol cannot take up its activities because four Member States - France, Italy, Luxembourg and Portugal - have not ratified the Protocol on the privileges and immunities of Europol officers. Nor have the rules governing the Joint Supervisory Body been adopted. The "Europol Drugs Unit" (EDU) continues. Mr Jurgen Storbeck, the current Director of the EDU, is to serve for a further 5 years when Europol becomes operational.

Europol: Rules of Procedure of the Joint Supervisory Body: an unexpected disagreement broke out between Germany and France over whether the meetings of the Joint Supervisory Body (JSB), comprised of data protection commissioners, should be held in secret or in public. The draft Rules stated that: "The meetings of the Joint Supervisory Body shall be non-public." (Article 6.4). Germany took the view that most if not all of its meetings should be in public as this would be the only way Europol could be seen to be accountable, France as usual wanted secrecy. The formal disagreement is over the "legal character" of the JSB - is it to be a quasi-legal body or an administrative body? The Austrian Presidency proposed that it should be neither rather a "sui generis body which would be neither a court nor a purely administrative organ".

Joint action setting up FADO (European Image Archiving System): The JHA Council adopted this Joint Action to set up a central computerised system to rapidly exchange information on genuine and false documents - FADO stands for "False and Authentic Documents". FADO, in a little noticed move, is to be run by the General Secretariat of the Council, not the Commission.

Improving methods of data collection concerning crime relating to xenophobia, racism and antisemitism: the proposals include: reporting incidents "involving bodily harm, meaning any medically ascertainable assault on physical integrity, regardless of how minor, even in the absence of hospitalisation and incapacity to work".

Agence Europe, 2, 3 & 4.12.98; Justice and Home Affairs Council, press

release, 4.12.98; Draft Protocol extending the scope of the Convention concerning the establishment of Eurodac for the comparison of fingerprints of applicants for asylum, ASIM 237, 12943/98, Limité, 17.11.98; Recommendation on harmonising means of combating illegal immigration and illegal employment and improving the relevant means of control, ASIM 188, 16.6.95.

New JHA working structures

Under the Amsterdam Treaty the Council is having to consider changes to its working methods especially as immigration and asylum is to move to the "first pillar" within five years and that all new measures will be agreed by the "Community method" (as community law and involving the European Parliament).

Below are extracts from the Action Plan on establishing an area of freedom, security and justice (12028/1/98, dated 10 November 1998):

The Communitarisation of part of the field of justice and home affairs.. alters the working method of many Council working parties. Some Council working parties which under the Maastricht Treaty dealt exclusively with third pillar matters will now be dealing with those matters under the first pillar and others will in future have to apply sometimes the law of the Treaty establishing the European Community and sometimes the law of the Treaty on European Union....

..The transfer of the fields of visa, asylum and immigration policy and judicial cooperation in civil matters to Community law has no effect on the fact that these subjects will in future continue to be dealt with by the Council in its composition of Ministers of Justice and Home Affairs...

...The Treaty of Amsterdam provides explicitly for a Coordinating Committee consisting of senior officials on Third-pillar matters (police cooperation and judicial cooperation in criminal matters) (Article 36 of the TEU). The Committee's mandate is clearly defined in the Treaty on European Union. For areas transferred to the first pillar (ie: the fields of immigration policy, external border controls, visa, asylum policy, the free movement of third country nationals, on the one hand, and the fields of judicial cooperation in civil law matters and other private international law issues, on the other hand), this Committee has no competence.

It is necessary to coordinate the problems in the fields of immigration, visa, external border controls, asylum policy below the level of Coreper. This work can be carried out by a Steering Committee solely competent for such matters. Establishment and definition of the terms of reference would be carried out by Coreper. It would allow for properly informed coordination in the migration field and with regard to security matters.

...Integration of the Schengen acquis into the framework of the European Union means in the first place that Schengen working groups will cease to exist and that they will be absorbed by corresponding working parties of the Council. Where necessary the existing mandates of some working parties of the Council would have to be enlarged and in cases where no corresponding working parties of the Council existed, they will have to be created in order to ensure the continued application of the provisions of the Schengen acquis and their further development.. The fact that the provisions of the Schengen acquis will not.. apply to some Member States.. has only an effect on the voting procedures in the Council, not on its composition or that of its subordinate bodies.

In summary: the Justice and Home Affairs Council continues to cover immigration and asylum and police cooperation and judicial cooperation. The K4 Committee becomes the Article 36 Committee, but a new Steering Committee will handle "first pillar issues previously handled by the K4 Committee. All 15 EU Member States will take part in these Committees and their working parties on Schengen issues.

Statewatch European Monitor

documenting justice and
home affairs in the EU

First issue, Vol 1 No 1
published September 1998

A unique resource. It brings together in one publication information on all key aspects - the Justice and Home Affairs Council and the Schengen Executive Committee (full text documents), plus review of cases in the European courts, debates, resolutions and written answers in the European Parliament
ISSN 1463-5232

Subscriptions (two issues a year)
£20 a year for individuals and community groups
£50 a year for libraries, media, national organisations and

“HomeBeats: Struggles for Racial Justice”

A multimedia journey through time from the Caribbean, Asia and Africa to the making of modern Britain.

“HomeBeats” is the first CD-ROM on racism and the black presence in Britain, fusing music, graphics, video, text and animation into a stunning voyage of personal discovery for every user.

Price £25.00 from: IRR, 2-6 Leeke Street, London WC1X 9HS.

○ Translators

Statewatch is looking for people who are prepared to help us with translation from German and Dutch.

If you can help please write to:
Statewatch, PO Box 1516, London N16 0EW, UK or fax us at: (00 44) 0181

○ Press cuttings & articles

Please send us cuttings etc you think would be of interest to Statewatch.

CONTENTS

EU:

Surveillance extended to internet and satellite phones 1

Europe 2

EU: Action Plan establishing an “Area of freedom, security and justice”

EU: Presidency migration plan sidelined and resurrected

Italy-Turkey: The other extradition

Basque Country: Peace process moves

European Court: Police lose blanket immunity

Immigration 4

Denmark: Asylum seekers get “lunch packages”

Law 5

UK-Ireland: More emergency law

Belgium: Study indicates bias

Belgium: Trade unionists before court

UK: Survey of freemasons

Military 7

Northern Ireland 7

“RUC Watch” launched

Policing 8

UK: Five suspended after death in custody

UK: UN committee concerned about deaths in custody

UK: Deaths attributed to CS spray

Netherlands: Police want pepper spray

Wales: Domestic violence resignation

Prisons 10

UK: Campaign to free Zoora Shah

Racism & fascism 11

UK: March stopped in Dover

France: Le Pen and Megret: the last act?

France: In court with Le Pen

France: FN unwelcome in church

Security & intelligence 13

UK: MI5’s “file destruction programme”

Sweden: Spying on the left

Belgium: Report shows “intelligence is a European issue”

Netherlands: Informer uncovered

Netherlands: New powers in Intelligence Bill

FEATURES

UK-Chile:

Pinochet’s come-uppance 15

Northern Ireland:

Peace process falters? 17

EU-FBI surveillance plan extended to Internet and new mobile phone systems 19

EU:

JHA Council, September 1998 ... 22

EU:

New JHA working structures

Web database

Statewatch has a searchable database on the World Wide Web. The new url is:

<http://www.statewatch.org>

[the old url will be automatically linked to the new address]

Contributors

Statewatch, was founded in 1991, and is an independent group of journalists, researchers, lawyers, lecturers and community activists.

Statewatch’s European network of contributors is drawn from 12 countries.

Editor: Tony Bunyan. Deputy Editor: Trevor Hemmings. Reviews Editor: Nadine Finch. Lee Bridges, Phil Collins, Unmesh Desai, Paddy Hillyard, Ben Hayes, Steve Peak, Phil Scraton, Joe Sim, Ann Singleton, Mike Tomlinson, Frances Webber, Stef Janssen, Ida Koch, Catherine Weber, Dennis Töllborg, Francine Mestrum, Kees Kalkman, Helle Hagenau, Christian Busold, Barbara Forbes, Heiner Busch, Pedro Airbe, Sandra Schmidt, Mads Bruun Pedersen, Ciáran Ó Maoláin, Vassilis Karydis, Cristiano Codagnone, Steve Peers, Sonia Routledge, Ragnhild Sollund. The Centre for Studies in Crime and Social Justice (Edge Hill College, Lancashire), Liberty, the Northern European Nuclear Information Group (NENIG), CILIP (Berlin), Demos (Copenhagen), Omega Foundation, AMOK (Utrecht, Netherlands), Jansen & Janssen (Amsterdam), Komitee Schluss mit dem Schnuffelstaat (Bern, Switzerland).

Statewatch bulletin

Subscription rates: 6 issues a year:
UK and Europe: Individuals and voluntary groups £15.00 pa;
Institutions and libraries: £30.00 pa
(outside Europe add £4 to the rate)

Statewatch does not have a corporate view, the opinions expressed are those of the contributors.

Published by Statewatch and printed by Russell Press, Russell House, Bulwell Lane, Basford, Nottingham NG6 0BT
ISSN 0961-7280

Statewatch,

PO Box 1516, London N16 0EW, UK.

Tel: (00 44) 0181 802 1882.

Fax: (00 44) 0181 880 1727

e-mail: office@statewatch.org