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Surveillance of telecommunications

Data retention to be "compulsory"

- EU Council, Commission and European Parliament agree "deal" on surveillance
- Draft Framework Decision to make data retention and access for surveillance by law enforcement agencies "compulsory" leaked to Statewatch - traffic data to be kept for 12 to 24 months

Even as the European Parliament was discussing and voting on fundamental changes to the 1997 EC Directive on privacy in telecommunications the Belgian government was drafting (and circulating for comment) a binding Framework Decision on the retention of traffic data and access for the law enforcement agencies.

When the European Commission proposed changes to the 1997 Directive in July 2000 this was simply to update it in an uncontroversial way. But this was immediately seen by the EU's law enforcement agencies as an opportunity to get access to telecommunications traffic data. Ever since the Council of the European Union adopted on 17 January 1995 the "Requirements" (to be placed on communications providers) drafted by the FBI the agencies have been calling for access to this data.

The EU's list of "Requirements" was extended last year and covers both "real-time" interception (following a communication or series of linked communications as they happen) and procedures to be followed when an interception order is issued by a judicial authority (or Minister).

The powers of the law enforcement agencies were therefore used in a targeted way, that is to say they had all the powers they needed to place under surveillance anyone or any group they suspected of committing an offence on condition that there was sufficient evidence to justify the issuing of a judicial order. Thus after 11 September the EU's agencies had all the powers they needed to track down suspected terrorists.

Under the guise of tackling "terrorism" the EU's Justice and Home Affairs Minister decided on 20 September 2001 that the law enforcement agencies needed to have access to all traffic data (phone-calls, mobile calls, e-mails, faxes and internet usage) for the purpose of *criminal* investigations in general.

What stood in the way was the 1997 EC Directive on privacy. This was the follow-up to the hard-won 1995 EC Directive on data protection, now law across the EU. The 1997 EC Directive said that the only purpose for which traffic data

could be retained was for billing (ie: for the benefit of customers) and then it had to be erased. Law enforcement agencies could get access to the traffic data with a judicial order for a specific person/group.

The "deal" agreed between the Council (the 15 governments) and the European Parliament means that there are two crucial amendments: i) the obligation to erase data has been deleted and ii) EU member states are allowed to pass laws requiring communications providers to keep traffic data for a so-called limited period.

One of the arguments used to legitimise the move during the discussions in the European Parliament was that the change to the 1997 Directive simply enabled governments to adopt laws for data retention if national parliaments agreed. The document leaked to *Statewatch* shows that EU governments always intended to introduce an EC law to bind all member states to adopt data retention.

The draft Framework Decision says that data should be retained for 12 to 24 months in order for law enforcement agencies to have access to it. In theory the agencies will still need a judicial order to trawl back through the records of a targeted person(s) - though this legal nicety has never stopped the internal security agencies getting access in many countries.

When the measure was first mooted the European Commission and the European Parliament were firmly opposed. They backed the EU's Data Protection Commissioners, the EU's Article 29 Working Party on data protection and a host of civil society groups. The Commission caved-in last December and in the European Parliament the PSE (Socialist group) joined hands with the PPE (conservative group) to push the measure through.

Now the traffic data of the whole population of the EU (and the countries joining) is to be held on record. It is a move from targeted surveillance to potentially universal surveillance.

The hard-won right to privacy has been taken away and may well never be regained. **See feature, page 17**

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ICC/EU

US tries to split EU on the ICC

The US has adopted a new tactic to exempt its forces and officials from legal action by the newly-formed International Criminal Court. Having almost succeeded in its quest for permanent immunity through the UN Security Council, the US has is now pursuing a new tactic. Under Article 98 of the Rome Treaty, a country cannot be forced to hand over a suspect to the ICC if it has a bilateral agreement with the country whose citizens are wanted for trial. American embassies throughout the world are now busy pressuring governments to enter into such bilateral agreements. Romania and Israel have already signed-up, while the EU is reported to be planning a joint decision on the US approaches in September. According to the *New York Times*, particular is being applied to Italy in order to prevent a consensus within the EU, with Italian prime minister Silvio Berlusconi apparently willing to acquiesce to American demands to improve relations with Washington.

Sources: *www.iccnw.org*; *EUobserver.com*, 8.8.02; see feature on page 18.

EU

Fast-track to expelling migrants

The EU Summit in Seville adopted a whole series of measures on immigration and asylum which reflect the post 11 September ideology. Although a number of the proposals had been foreseen in the Tampere Council (1999) much of the content of sweeping new programmes has been influenced by numerous meetings with USA officials. At the February Justice and Home Affairs Ministers Council a "Comprehensive Action plan to combat illegal immigration and trafficking of human beings in the EU" was adopted with no parliamentary scrutiny and no public debate. No drafts of the measure were available until after its adoption.

On 10 April the European Commission put out a "Green Paper" (a consultation document) on "A Community return policy on illegal immigration". It is usual for the Commission to leave a year or more for national parliaments, the European Parliament and civil society to make their views known. On this occasion the deadline was set for 31 July. But if the Commission was acting with unseemly haste EU governments simply ignored the idea of consultation.

Barely two weeks after the Green Paper was issued the Council of the European Union (the 15 governments) adopted criteria on new readmission agreements and a list of countries (expulsion requires the cooperation of the receiving third world state). On 11 July the Danish Presidency of the Council put out a draft programme on expulsion and Council working parties discussed this at meetings on 17 and 22/23 July. A Commission "Communication", a formal proposal for an new Directive is scheduled for September and for adoption by the Council in November.

Moreover, on 27 June the German delegation put forward: "An initiative of the Federal Republic of Germany for a Council Directive on assistance in cases of transit for the purpose of expulsion by air". The proposal would require all Member States to help each others to expel migrants including detention and "using legitimate force to prevent or end any attempt by the third-country alien to resist transit" - the term "prevent" implies the use of restraints which have already led to the death of a number of people. Each Member State will automatically have to accept the word of the Member State requesting assistance that there is no risk of torture, death or other inhuman or degrading treatment for

the migrant in the state of destination. The requested EU Member State would not be obliged or even permitted to consider whether this was in fact the case, as long as the officials of the requesting EU Member State have ticked a box on a form asserting that there is no such risk.

The German government proposal can be compared with the already agreed Directive on mutual recognition of expulsion decisions (2001/40). This Directive was flawed but it did require the requested EU Member State to ensure that there any no human rights risks; permit migrants to challenge an expulsion order; only applies to expulsion in limited cases; and includes express data protection rights. The new proposal on transit contains none of these essential limits and safeguards and would lead to huge risks of violation of fundamental human rights.

The Commission's Green Paper on "returns" (expulsions) itself begs many questions. It covers the "return" of "illegal" migrants to their country of origin or country of "transit" (a country they passed through in reaching the EU). The overall object is to "improve cooperation" between the "receiving states" (transit countries), countries of origin and:

the UNHCR, IOM and NGOs with a view to facilitating voluntary and involuntary returns"

Some very basic figures are given: 367,552 people were "removed" in 2000 (but this does not include Ireland, Netherlands and the UK and the data from Belgium, Denmark and Luxembourg was incomplete). In addition the "International Organisation for Migration" (IOM) carried out 87,628 so-called "assisted voluntary returns" (68,648 of these were by Germany).

The sequence of events set out by the list of definitions put forward in the Commission paper are chilling. Each stage is seen as part of a lawful process for democratic societies and absolves officials, at each level, from any moral responsibility for their actions. Thus:

- "1. Detention order: Administrative or judicial decision to lay the legal basis for detention*
- 2. Detention: Act of enforcement, deprivation of personal liberty for law enforcement purposes within a closed facility*
- 3. Removal order: Administrative or judicial decision to lay the legal basis for the removal*
- 4. Removal: Act of enforcement, which means the physical transportation out of the country*
- 5. Voluntary return: the return to the country of origin or transit based on the decision of the returnee without use of coercive means [ed: this could therefore include "persuasive means"]*
- 6. Forced return: The return to the country of origin or transit with the threat and/or the use of coercive means*
- 7. Compliant forced return: Forced return with the threat and minor use of coercive measures such as escorts*
- 8. Non-compliant forced return: Forced return with the major use of coercive means, such as restraints"*

Green Paper on a Community return policy on illegal residents, COM (2002) 175 final, 10.4.02; Comprehensive Action Plan to combat illegal immigration and trafficking of human beings, doc no: 6621/1/02; German delegation proposal on expulsion by air, doc no 10386/02, 27.6.02; Danish Presidency Note on expulsion programme, 10895/02, 11.7.02. For documents and further analysis see Statewatch News online: www.statewatch.org/news/2002/jul/13expul.htm

EU/NETHERLANDS

Eurojust's "ETA suspect" bailed

On 16 January 2002 Juan Ramón Rodríguez Fernández - Juanra - was arrested in an Amsterdam supermarket by a Dutch police

snatch squad and detained pending extradition to Spain, where the authorities claim he is a supporter of the Basque separatist group ETA. It later transpired that the raid had been organised by "pro-Eurojust" - the provisional EU prosecutions unit (see *Statewatch News Online*, February 2002 and *Statewatch* bulletin, vol 12 no 1).

The following day, at 3.30 am, Dutch police raided the "Vrankrijk", a well-known collective of squatters and activists in Amsterdam where Juanra had been staying. Two mobile phones and a Spanish novel were confiscated in a thorough search under a warrant issued by the Dutch judge. Media reports in both Spain and Holland heralded the success of EU police and judicial cooperation in apprehending an "ETA suspect" who was in Amsterdam to set-up a "terror network".

The extradition hearing took place on 25 June, by which time Juanra had spent more than six months in detention and in virtual isolation. The initial case against him was based on the testimony of Fernando García Jodrá, an alleged member of ETA's "Barcelona-commando" who was arrested in August 2001. According to the Spanish authorities, Jodrá had testified that Juanra had supplied information about the extreme rightwing organisation CEDADE to ETA. These allegations were later retracted by Jodrá, whose lawyer claims to have evidence that he was tortured following his arrest. This led the Spain authorities to change their case against Juanra, and the charges have now been changed five times. Discrepancies and contradictions from Spanish prosecutors and unanswered questions from the Dutch court have met with the response that key files and documents have been "lost".

After a lengthy consideration the judge ruled that Juanra could be freed on a 20,000 euro bail pending a final extradition hearing on 17 September. Supporters of Juanra claim that his arrest was little more than an attempt to harass and discredit squatters and activists in both Spain and Holland - and unless the prosecution can come up with fresh and concrete evidence in the next month these claims are likely to be vindicated.

The case may also vindicate those who have expressed concerns about the activities of Eurojust and the recently agreed European Arrest Warrant which will replace extradition procedures in the EU by the end of 2003. Had it been in place already, Juanra would almost certainly have been transferred to Spain without a chance for his lawyer to respond to the dubious case against him.

Sources: <http://www.freejuanra.org>; *Statewatch News Online*, February 2002, <http://www.statewatch.org/news/2002/feb/02eurojust.htm>

Senator for the Interior has expressed the opinion that in cases where children are with their parents, children's rights considerations are irrelevant for immigration decisions.

Consequently, the convention is not fully applied to child refugees, unaccompanied minors (1,068 in 2000) or the children of foreigners. The reservation permits unequal treatment of indigenous and foreign children, in particular under asylum regulations (as well as with respect to the Children and Youth Support Act, KJHG). There is no obligation for unaccompanied minors (from the age of 16) to be legally represented, and they are treated as fully responsible for themselves. Asylum law treats them as adults. Care for unaccompanied refugee minors is refused, as well as guardianship or being placed in the charge of the Youth Authority. Because of residence obligations in the Asylum Procedure act, even unaccompanied minor refugees are refused permission to be transferred to another city where they have relatives.

Furthermore, no refugee child is entitled to special children's rights and no special provisions are offered. Because refugee children are subject to general asylum legislation they, like adults, are not entitled to full medical treatment. Unaccompanied minor refugees are frequently kept in accommodation for adults or even in detention. Minors are not exempt from deportation so education, training or other crucial steps in socialisation are neglected. Although there is an obligation for schooling and although the *Sixth Family Report of the Federal Government* insists that "an interruption of the education of children and youth shall be prevented under any circumstances", in practice children and youth individually or as members of families can be deported at any time. Equally, the right to family life, motherhood and childhood (Declaration of Human Rights, Art. 16, Art. 25/2; German Constitution, Art. 6) of refugees and foreigners has been violated in cases where one member of a family or a couple is deported whilst other members, wives or children have a "safe" status. Numerous cases of violations have been compiled by the Association of Bi-National Families covering the right to family life, for example refused marriages or family reunification with children or wives.

As early as 1995, the UN Committee on the Rights of the Child expressed its deep concern about the situation of refugee children in Germany. Although the Social Democrats, while in opposition, promised legal reform this has not been introduced. The Federal Working Association Youth Social Work (BAG JAW) has demanded that "refugee children shall not be excluded from any provisions,...child and youth welfare legislation must have priority over immigration legislation". A National Coalition for the Implementation of the UN-Convention on Children's Rights, supported by over 100 major welfare organisations has been set up but, as yet, with little impact.

The treatment of a group of about 550 stateless Kurdish refugees from Lebanon, who have been living in Bremen since their arrival, serves as a representative example, (see also *Statewatch* vol 11 no 1). Most of the parents and grandparents left the Lebanon during the 1980s, but two thirds of the group are children and youths, the majority of whom were born in Germany. Because the families were stateless they have not been issued Lebanese identity documents. Therefore they travelled via Turkey, where some - usually the head of the family or the parents - bribed the authorities to get onto a Turkish register or obtained falsified identity documents (German police officers, during lengthy investigations in Turkey found some evidence for these deals). The Administrative Courts concluded that some of this group must be bogus and are not Lebanese but in fact Turkish citizens, although they do not speak Turkish but Arabic. Usually these are the male heads of a family, whilst for most wives, accompanying their husbands no Turkish traces could be found. In fact, all of the below mentioned parents were born in Beirut and some still have their Lebanese birth certificates.

IMMIGRATION

GERMANY

Contempt for refugee children

In January 1990, the Federal Republic of Germany signed the UN Convention on Children's Rights. The Convention prohibits any discrimination against children and declares that the child's welfare is a top priority. In 1992 the German parliament expressed five reservations, two of which refer to refugee and foreigners' children: (i) a general clause stipulates that the Convention should not be directly applied in Germany, as national law is deemed adequate, and because it is perceived as interference with German sovereignty; (ii) "nothing can be interpreted as allowing unlawful entry or stay of foreigners,... or that it restricts the right of the Federal Republic of Germany to limit laws and ordinances on the entry and the conditions of stay or distinguishing between Germans and foreigners". Bremen's

In January, 15-year old Abdulkadir El-Zein was arrested at home and detained whilst his mother was with the Foreigners Authority. This was intended to put pressure on his two older brothers and his father, who were in hiding, to give themselves up for deportation. His mother suffered a nervous breakdown and as a result was hospitalised; his solicitor interpreted this as case of "hostage detention". Abdulkadir's eldest brother Serag El-Zein, was targeted for deportation too, regardless of the fact that his wife and German-born children have a secure immigration status, and are awaiting naturalisation. Whilst his parents gave in and have been deported he went into hiding. Since February he has been separated from his wife and children.

In 2001, Ömer Al-Zain received a deportation order that would separate him from his wife and five children, all born in Germany, on the grounds that his marriage had only been registered according to Islamic law but not with the German authorities. The marriage is therefore treated as non-existent. In April 2002, Zeki El-Zain, the father of two children born in Germany, one of whom is severely disabled, was served with a deportation order. It is argued that because in 1988 his parents provided Turkish passports at the port of entry, he must be of Turkish nationality too. This is despite the fact that he and his wife were born in Beirut, evidence for which can be found in their birth certificates. There is no evidence, neither for his wife nor for their children, pointing to Turkish connections. The authorities aim to separate him from his family arguing that they are free to follow him. In addition, his wife has received an order from the German authorities to apply for a Turkish registration in order to make her deportable.

In May 2002, Sadan El-Bedewi, aged 24, was taken into detention, awaiting deportation, after having spent 13 years in Germany; there was some evidence that he had been in Turkey prior to seeking asylum in Germany. The authorities decided to follow the example of his parents who had been deported earlier this year. For Sadan's wife and three children, who were born in Germany, no such evidence was found. Having lost their main breadwinner, who worked at a garage, the family now has to apply for social security. In June, Schokli Al Zain, 20-years old, who arrived with his parents 14 years ago, was targeted for deportation. This has interrupted his promising secondary education. He has chosen to seek refuge in a church.

Members of the local council's youth welfare unit, the local Representative for Foreigners, the German Children's Safety League, the Counties Parents' Association, the Pupils Union, the Juveniles Court Service, and even the Police Sports Association and many others have protested about these cases. Their concerns were not taken into account by the Senator for the Interior nor the Foreigners Authority.

Deutschen Komitee für UNICEF (2001): Alle Rechte vorbehalten - Die UN-Konvention über die Rechte des Kindes, UNICEF-Dokumentation Nr. 11, Köln; United Nations/Committee on the Rights of the Child (1995): Concluding observations of the Committee on the Rights of the Child: Germany, CRD/C/15/Add. 43; Senator für Inneres (2001): Aufenthalt von türkischen Staatsangehörigen kurdischer Volkszugehörigkeit, Letter to Jugendhilfeausschuss, Bremen; Flüchtlingsinitiative Bremen (2001): Ausländerbehörde reisst junge Familien auseinander, Bremen; Bundesarbeitsgemeinschaft Jugendsozialhilfe (2001): Isoliert und am Rande der Gesellschaft - Die Situation junger Flüchtlinge, Bonn; Frankfurter Rundschau, 5.4.02; TAZ Bremen, 23.1.02 TAZ Bremen; 12.4.02; Neue Zürcher Zeitung, 10.5.02; Weser Kurier 05.06.02; further documents: www.libasoli.de; www.bgaw.de; http://www.agj.de/htm/agj_naco.htm; www.verband-binationaler.de

UK

"Snatch squad" storms mosque

The principle of the sanctity of a place of worship was violated on 25 July when five immigration officers and 12 policemen

smashed their way into a mosque in Lye, West Midlands, dressed in riot gear and armed with a battering ram. The action was carried out by an immigration "snatch squad", twelve of which are supposed to enforce the government's annual deportation target of 30,000 from the end of this year onwards. A strong community based anti-deportation campaign and a legal challenge has forced the government to postpone the family's deportation, and Muslim community leaders have voiced outrage at the "military-style" raid.

Farid and Feriba Ahmadi and their two children aged 4 and 6 had fled Afghanistan and were given sanctuary in their local mosque and have received strong community support after having received a deportation order. The British government applied the Dublin Convention in their case, after having found out through the European-wide asylum seekers finger-printing database Eurodac, that the family had applied for asylum in Germany. In Germany however, the family spent 10 months in immigration detention centres before finding out their application was refused. Germany argues it is "discouraging" asylum seekers from coming to Germany by imprisoning them in isolated detention centres with no means to travel or communicate, rendering them prone to racist attacks (two people died in attacks on centralised refugee housing last year alone).

After having come to Britain in June 2001, Farid and Feriba started studying at a local college and the children attended the local primary school, the governor of which has now become the secretary of their defence campaign. The governor Soraya Wilson said:

They came to England so that they could have freedom and a life and so the children could be brought up in freedom. People forget that in this country.

Farid was tortured by the Taliban and Feriba was forbidden to study and both made their way via Pakistan, the Ukraine and Germany to the UK.

Muslim leaders said that the police raid was "inhumane and insensitive", pointing out that although the family had been in the mosque for four weeks, neither the police nor the immigration authorities had contacted the mosque. Questions were asked as to whether the authorities would have acted in the same way if sanctuary had been given by a Christian church. In reply to allegations that the raid had insulted the Muslim faith, a police spokesman contested that officers had worn plastic bags as shoe coverings and the female officers had covered their hair whilst they forced their way into the mosque.

National Coalition of Anti-Deportation Campaigns Newsletter Issue 27 (July-September) 2002; The Times 26.7.02; The Guardian 26.7.02. The Ahmand Family campaign can be contacted at: paulrowlands@thenec.freereserve.co.uk, or via Soraya Wilson on 0044 (0)1384 423552.

UKRAINE

EU deportation regime adopted

On 15 May, six Vietnamese undocumented migrants were "repatriated" via Paris to Hanoi on a Ukrainian International Airlines flight. The Ukrainian Border Police publicised the deportation as a success in the fight against "illegal migration". Some of the migrants had apparently been imprisoned in a detention centre for up to 10 months, before the Vietnamese embassy recognised them as citizens and paid for their deportation back to Vietnam. The deportation was declared "voluntary", (i.e. with their agreement in the face of imprisonment and no opportunity to travel to a country of their choice).

Little is known about the number of deportations from non-EU countries such as the Ukraine, nor about human rights concerns in relation to police conduct during their

implementation or about the conditions in Ukrainian detention centres. But Ukrainian activists report that conditions in the centres are degrading. Until recently deportations had returned migrants and asylum seekers from the state's borders to "transit countries". This is thought to be one of the first deportations carried out by a Ukrainian airline company (see *deportation-alliance.com*).

In 1996, the Ukraine started to implement the policies and measures imposed on non-EU countries by the EU in an attempt to thwart migration and flight routes. The same year, the Ukraine announced its closer cooperation with NATO and the EU. Since then Germany, in particular, has started to carry out systematic deportations via Poland to the Ukraine, which represents an important transit country for migrants who want to enter the EU as well as being a country of emigration. Poland rejects migrants who try to enter at the Ukrainian-Polish border, on grounds of corresponding repatriation agreements.

Migrants and asylum seekers from Ethiopia, Afghanistan, Angola, Iraq, Iran, Jordan, Cameroon, Turkey, Pakistan, Rwanda, Somalia and Zaire, amongst others, depend on the Ukraine as a transit country. The Ukraine signed the Geneva Refugee Convention at the beginning of this year, but although it passed an asylum law in 1993, the first recognition of asylum seekers was in 1996, in the case of Afghan refugees. Police brutality is well recorded in the Ukraine, in particular against asylum seekers and migrants. The UNHCR and other asylum rights organisations have pointed to the violation of international and EU human rights standards resulting from deportations from the EU (or the imposition of EU migration control measures onto third countries) to the Ukraine or other countries deemed "safe third countries". Human rights standards here refer to rendering the refugee vulnerable to the return to a torturing country of origin, or rendering the migrant vulnerable to return to economic destitution. *www.noborder.org*. See the series of reports published in German in 1996, by the Research Centre for Flight and Migration (<http://www.ffm-berlin.de/deutsch/hefte/hefteindex.htm>) for details on the situation of migrants and refugees in the Ukraine and Poland. The "domino effect" resulting from the restrictive implementation of EU asylum and migration policies in Eastern Europe and their human rights consequences is also outlined by the German asylum organisation Pro Asyl (<http://www.proasyl.de/lit/litauen/leutha4.htm>).

EUROPE

International Border Camps 2002

Border camps (see *Statewatch*, vol. 9 no. 5 and vol. 10 no. 3 & 4), which protest against the EU's repressive migration regime and its corresponding racism have become tradition. Activists, human rights and refugee and migrants groups will meet over a period of two months (July-August) in camps in Poland, Finland, Germany, Strasbourg and Slovenia. The concept of the border camp has even reached Australia, where around 1,000 activists met in front of the Woomera detention centre from 27 March until 2 April this year, culminating in the tearing down of the fence, enabling around 50 refugees to flee. Information and links to border camp websites detailing actions, workshops and discussions can be found on *www.noborder.org*. Central to this year's activities is the Strasbourg camp, which represents the first European-wide border camp as it is being organised by groups from various European countries. The camp, similar to its counterparts, poses the demand for "freedom of movement and settlement for everyone". Strasbourg was chosen because it is home to the headquarters of the Schengen Information System, which is seen by migrant and refugee groups and activists as a key instrument in the implementation of the EU's border regime as it enables the rejection of migrants and refugees at EU borders as well as their deportation.

SPAIN

Expulsions rise three-fold

On 25 June 2002 the Spanish Interior Ministry announced that 19,290 foreigners were expelled, denied entry or returned to their countries of origin between January and May 2002. The breakdown of the figures shows 3,643 expulsions (the total for 2001 was 3,817), signalling a three-fold increase from 1,025 compared to the same period in 2001.

The procedure that regulates expulsions means that a foreigner who is arrested in an irregular condition and whose origin is known faces automatic expulsion and the possibility of 72-hour detention. Once expulsion proceedings have started, they may be held in detention centres (CPTs) for up to 40 days; when an expulsion order is issued police must carry it out in 72 hours, during which time an appeal may be filed. Also, prosecutors can ask judges for expulsion orders to be passed in cases involving foreigners accused of crimes punished with prison terms of under six years. The presumption of innocence should prevent expulsion until a sentence is passed. In cases where criminal proceedings involve foreigners accused of crimes carrying longer prison sentences, expulsion may not occur until prison terms are served in Spain.

3,857 persons were denied entry in the same period, an increase of over 1,000, although some foreigners were denied entry due to measures restricting freedom of movement under security arrangements for EU meetings during the Spanish Presidency. Over half the foreigners mentioned in the figures (11,799) were repatriated in line with bilateral readmission agreements between Spain and third countries (Morocco, Colombia, Ecuador, Dominican Republic, Nigeria, Poland and Romania) whereby the latter take back nationals expelled by Spain.

El Pais 25.6.02

Immigration - in brief

■ **Spain: Electronic border monitoring in Fuerteventura:** Three transportable platforms to monitor the coast of the Canary Islands will be part of a programme to seal the Spanish coast, known as *Sistema Integral de Vigilancia Exterior* (SIVE, Integrated External Surveillance System) which has been allocated 10.5 million euros funding over five years. The stations, costing more than 6 million euros, will patrol Fuerteventura's 150 kilometre coastline and will be equipped with a radar system to detect objects coming within 25 kilometres of the coast, infra-red cameras detecting objects with the temperature of either a human or an engine within a 7 kilometre range. The three stations will be controlled from an operations centre in Puerto del Rosario from where patrol launches will obtain the coordinates and speed measurement of the vessel that has been spotted. *El Pais* 25.6.02

Immigration - new material

Bundesdeutsche Flüchtlingspolitik und ihre tödlichen Folgen - Dokumentation 1993 - 2001 [Germany's Refugee Politics and its Deadly Consequences - Documentation 1993 - 2001]. *Antirassistische Initiative Berlin*, pp 216, 2002. Since 1993, the Berlin-based anti-racist initiative *ARI* has annually compiled and documented deaths and injuries resulting from border crossings, suicides and suicide attempts and deaths and injuries before, during or after deportations. Also included are racist attacks on refugee homes. As far as is known to *ARI*, last year at least two people died at Germany's eastern borders and five were injured. Two people committed suicide rather than face deportation, at least 29 refugees harmed themselves or tried to commit suicide and survived, some with severe injuries, whilst they were in deportation prisons. Three

refugees were injured due to applied force or abuse during their deportation, at least 27 people were abused and/or tortured in their country of origin after their deportation. Two refugees died and 11 were injured during police operations, two refugees died in a racist attack against centralised refugee housing, at least 15 people were injured, some severely, in these attacks. The compilation is available online on www.berlinet.de/ari and a CD-Rom can be ordered from: Antirassistische Initiative e.V., Yorckstr. 59, 10965 Berlin, 0049-30-7857281, ari@ipn.de.

Política de cupus: en el reino del absurdo [The politics of quotas: in the reign of the absurd], Agustín Unzueta. *Mugak* no. 18, 1st quarter 2002, pp.27-29. Criticises the quota system for immigrants in Spain, dismissing official claims that it helps to regulate the entry of immigrants according to the needs of the labour market. In fact, Unzueta argues, it has served to 1) restrict the number of third country nationals who can obtain work or residence permits under normal procedures; 2) provide a cheap labour pool with few legal guarantees for farming, cattle rearing and domestic work; 3) firmly establish the idea of immigrants as a subsidiary workforce to be used in the absence of nationals, and 4) regularise some immigrants illegally residing in the country, causing many to emerge in the hope of obtaining regularisation, only to order them to leave or expel them. *Mugak* is available from: Pena y Goni, 13-1 2002 San Sebastian, Basque Country, Spain.

La olvidada emigración española (The forgotten Spanish emigration), Carlos Marichal. *El País*, 1.7.02, p.16. Marichal accuses Aznar's administration of "amnesia" in relation to its plan to seal Europe's borders, by highlighting different periods in Spanish emigration (to South America, North Africa, and European countries such as France and Germany in the 1960s and 1970s) for "economic" motives, and the historical debt that Spain owes these countries.

LAW

UK

IRR concern over sentencing

The Institute of Race Relations has issued a press release expressing its concern over the extensive sentences handed out to youths of Pakistani descent who took part in the riots in Manningham, Bradford in July last year. The sentences - mainly for stone throwing - has prompted the launch of a campaign, Fair Justice for All (FJA), which will set up a support network to look after the welfare of families who have imprisoned relatives. The campaign is supported by members of the band Fun-da-Mental, and musician Ali Nawaz said on their behalf:

We feel what has been going on is not correct.. it is not fair and it is not going to be good for community relations in future. I think sentences need to be reviewed and sentencing coming up needs to be put in line with what is correct

As a result of the disturbances, which caused over £1 million of damage, 137 individuals have been charged with riot and a further 40 have been charged with public disorder. However, the FJA has argued that the "social context that fuelled the riots has been excluded from the courts." The IRR analysed 58 of the convictions which:

reveal a huge discrepancy in the sentences imposed against the Manningham rioters, most of whom are of Pakistani descent, and the sentences which have been brought in other cases of civil disturbance in the UK, such as the recent riots in Belfast. The sentences are also out of proportion to those imposed in cases resulting from the disturbances which took place one day after the Manningham riot, at the mainly white Ravenscliffe Estate, Bradford

The Institute draws attention to seven specific cases that are of

concern.

For further information contact Arun Kundnani on 07957 240755.

Law - new material

Legislating in the Shadow of the Human Rights Act: The Criminal Justice and Police Act 2001, M. Wasik. *Criminal Law Review* December 2001, pp931-947.

Arresting developments, Roger Smith. *Legal Action* June 2002, p.6. Considers the issues that arise from the forthcoming Extradition Bill, published in draft form in July. Smith concludes that: "It would be of considerable benefit if the UK government could balance the current proposals with an equivalent document setting out minimum standards for the defence of individuals affected by international judicial co-operation..."

MILITARY

Military - in Brief

■ **EU: Foreign ministers agree on military spending.** EU foreign ministers ended a long running dispute over the financing of military operations conducted under the European Security and Defence Policy (ESDP) in June. The problem was to agree over which costs for common military operations should be shared and which should be carried by the individual member states. Under the current EU treaty, military operations cannot be financed by the community budget. The Benelux countries and France, Italy and Greece had pushed for as wide as possible definition of "common costs". Germany, the UK and the neutral countries supported the principle of costs falling where they lie, similar to Nato, as well as reducing the number of items in the common costs category, since expenses could spiral. In the end, member states agreed on a compromise proposed by Spain, consisting of two categories of common costs, one for headquarters and another for barracks and troop deployment. There would be a third category of common costs decided case by case. *Financial Times* 20.6.02 (*Judy Dempsey*)

■ **EU: Report urges EU procurement policy.** A report being prepared by leading European aerospace industry executives and senior EU officials will advocate a unified European procurement policy including harmonisation of members' military requirements, procurement budgets and defence research. According to a near-final draft obtained by *Jane's Defence Weekly* EU member states must "face the fact that additional resources will be required to meet the demands of the ESDP (European Security and Defence Policy)." The European aerospace industry accounted for 429,000 jobs and a consolidated turnover of 2.3 billion euros in 2000. *Jane's Defence Weekly* 26.6.02 (*Luke Hill*)

■ **EU: Funding cleared for Galileo.** The European Transport Council (ETC) approved 350 million euros in EU funding on 26 March to proceed with the Galileo navigation satellite project - Europe's version of the US global positioning system (GPS). The EU, in conjunction with private partners and the European Space Agency (ESA) hopes to deploy 30 satellites in orbit in 2006-07 and begin operating Galileo in 2008. *Jane's Defence Weekly* 10.4.02 (*Darren Lake, Michael Sirak*)

Military - new material

Standards and Criteria of Convergence for the Further development of the European Armed Forces, Reiner K. Huber. *Europa-ei-sche*

A threat to the world? The facts about Iraq's weapons of mass destruction, Glen Rangwala. *Labour Against the War* 2002, pp4. This pamphlet considers the argument that "military action against Iraq would be a justifiable response to threat from Iraq's weapons of mass destruction (WMDs) - nuclear, chemical, biological weapons, and the means of their delivery by long and medium range missiles." It concludes that "No evidence has surfaced of Iraq's attempts to rebuild WMDs since the withdrawal of inspectors in December 1998." and argues that "the clearest way to re-establish an ongoing weapons monitoring system is for the US to drop the leadership change agenda: for the partial lifting of sanctions as a reward for Iraqi compliance thus far; and for mapping a clear path to their full lifting." Available from: Labour Against the War, PO Box 2378, London E5 9QU, Tel. 0208 985 6597, email latw@gn.apc.org

The War on Terror Runs Amok, Ken Coates (ed). *The Spokesman* no. 75 2002, pp88 (£5). This issue covers America's "war on terrorism" and includes contributions from Edward Said, John Pilger, Ken Coates and Liz Fekete. Available from: Bertrand Russell Peace Foundation, Russell House, Bulwell Lane, Nottingham NG6 0BT, Tel. 0115 9784504, email elfeuro@compuserve.com

CIVIL LIBERTIES

ITALY

Ombudsman criticises "anomalous" data retention

In his annual report the data protection ombudsman, Stefano Rodota, estimated that at least 350 billion pieces of telecommunications traffic data may be held in Italy due to current laws that require the storage of information for five years - which is sometimes extended due to "incorrect interpretation by judges". Rodota condemns this as an anomaly, stressing that in no other country is the legal term for retention longer than a year, although he recognises that traffic data can help in criminal investigations. However, he asks, "can the mere chance of having one more clue to discover a criminal many years later justify the permanent exposure of all citizens to the risk of their data being improperly used? Can the extensive use of technology for data processing be used to transform all citizens into potential suspects?"

Rodota says that after the 11 September attacks privacy has been questioned for its costs, for being an obstacle to the market or to investigations and for limiting the right to information. He reiterates the European data protection authorities' position, stressing that "Measures against terrorism must not compromise the protection of fundamental rights that characterise democratic societies", because privacy may be balanced against other interests "but cannot be cancelled", or democracy itself will be devalued. The report says that the "ever-increasing technological capability to create large databases" and the transnational movement of data risks making important information available to criminals, if it is not matched by strong guarantees and strict security measures.

Rodota called on parliament to take a more active role in data protection issues before society becomes trapped in a "steel cage" with "generalised systems of control", a matter that involves fundamental rights. He says that citizens are increasingly taking notice, "protesting and asking us to intervene when video surveillance systems are put into place". He warns against the risks of the widespread use of new technologies such as iris or face recognition and DNA databases, as substantial number of "false matches" led to face recognition schemes being

abandoned in certain locations, and is concerned about mass identification and the possible creation of a "genetic underclass". Very limited use for specific purposes, and without the parallel development of databases is different from "mass identification", which Rodota describes as an "unprecedented democratic issue". *Privacy ombudsman Rodota's annual report (2001)*, available on <http://www.garanteprivacy.it>

Civil liberties - new material

Überwachung neuer Kommunikationstechnologien [State Surveillance of New Technologies of Communication]. *Bürgerrechte & Polizei*, Cilip 71 (1/2002), pp 112. The articles address electronic surveillance of the internet and the fight against cryptography; the legal powers of German authorities to intercept telecommunications; mobile phone interception and issues arising, such as the collection of traffic data or the spatial localisation of the mobile phone user; the harmonisation of surveillance technologies at EU-US level ("International Requirements for Interception", renamed "International User Requirements" in 1994), which have been developed in International Law Enforcement Telecom Seminars since 1993; data protection violations through the collection of traffic data at EU level; the Cybercrime Convention and post-11 September anti-terrorist measures, amongst others. Available from: Verlag Cilip, c/o FU Berlin, Malteserstr. 74-100, 12249 Berlin, Tel: 0049-30-838-70462, Fax: 0049-30-775-1073, info@cilip.de, www.cilip.de. Annual subscription (3 issues): 18.41 Euro.

I'm dead on the inside, Simon Hattenstone. *Guardian G2* p6. Interview with Paddy Hill, one of the Birmingham 6 who was wrongly convicted and jailed for life in August 1975 for participating in an IRA bombing campaign that killed 21 people. Hill was released in 1991, but has yet to receive an apology or compensation having turned down two "derisory" offers. In this painful interview he recounts the consequences of his imprisonment on himself and his family. Hill also discusses Mojo, the organisation he set up to fight miscarriages of justice.

POLICING

GERMANY

Death of a prisoner

On 11 May, Stefan N. was taken into custody by Cologne police after a report of a family argument. On 23 May, after spending two weeks in a coma, he died of a brain oedema. Colleagues reported that he had been repeatedly beaten by six officers in the police station, resulting in his hospitalisation. A forensic examination concluded that his death did not result from the beating, and the public prosecutor has refrained from bringing charges for bodily harm resulting in death or manslaughter. The family's lawyers have demanded compensation and argue that not only Stefan N's death, but his arrest itself was unlawful.

The Am Eigelstein police station in Cologne has a record of violent police conduct. According to the weekly magazine *Der Spiegel*, an unpublished report into complaints about police conduct concluded that almost half of the First Police Division, Cologne (which includes the police station "Am Eigelstein") could not "control" their anger towards civilians. Ninety percent of the officers questioned thought colleagues had at times "gone too far" during police operations. According to the public prosecution, Am Eigelstein has seen 37 cases initiated against its officers over the past three years on suspicion of inflicting bodily harm. Several proceedings had already been initiated against the 28-year old officer facing charges in the current case.

Arrest warrants were issued against the 28-year old policeman and his 24-year old colleague on 25 May, after two of

their colleagues reported that 5-6 officers had continuously kicked and beaten Stefan N whilst he was lying bound on the floor. They claim that he was dragged by his feet into a cell, where the beating continued, before he was taken to hospital by a paramedic. The beatings were allegedly carried out as revenge, after an officer was injured during Stefan N's arrest. According to the *Kölner Stadtanzeiger* newspaper (6.6.02), the younger policeman told the injured officer after the abuse of Stefan N. "we avenged you". Both officers are also accused of attempting to destroy evidence after they were seen removing blood stains and disposing of parts of their uniforms.

The preliminary medical report on Stefan N.'s death concluded he died of a brain oedema as the result of a heart failure. A medical examination by the university of Cologne however, held that his death was not the result of the beatings, because the victim had been "psychologically ill" and "visibly psychotic" during his arrest. The police and the public prosecutor declared on 26 June that his death was a heart failure, a result of a stress reaction. "[A]cute cannabis consumption" had also "impacted" on the situation, the authorities claimed. They conceded that the stressful condition the victim was in at the time of his arrest was "exacerbated" by the officers, but the death, they say, was not predictable and not brought on by them.

The two officers facing charges were immediately released from custody after their arrest and are currently suspended from duty. Jürgen Sengespeik, the officer in charge of Am Eigelstein has been transferred to another police station, but has refused early retirement. In the past, he had made various positive remarks about the conduct of the 28-year old officer facing charges, despite previous complaints of brutality. Sengespeik, claims not to have known anything about the complaints.

The family's lawyers have demanded an investigation into the legality of Stefan's arrest and death. Apparently, the disagreement between himself and his mother had already been settled when the police arrived on the scene. The family has now initiated a civil claim against the police. They will also appear as joint plaintiffs in the criminal proceedings against the two officers.

Frankfurter Rundschau 28.06.02; <http://www.wdr.de/themen/homepages/panorama> 25, 28, 29.5.02, 5 & 29.6.02

UK

O'Brien family - £250,000 damages, but still no apology

The family of Irishman Richard O'Brien, who an inquest found was unlawfully killed by Metropolitan police officers in south London in 1994, was awarded £250,000 in damages at the High Court in May. Richard died of positional asphyxia after he was held down by policemen following a disturbance at a christening in which he suffered 30 separate injuries, including 12 cuts to his head. Eye-witnesses described how the father of seven repeated to the police officers several times "I can't breathe. You win, you win". A policeman kneeling on his back replied, "We always win."

An investigation by the Inquest Lawyers Group described his death as being brought about as a result of three "interlinking" factors: "the position in which he was placed by the five officers (face down on the ground with his arms handcuffed behind his back and his legs folded against the small of his back); the application of physical force and restraint to his body (two officers placed their knees on his back and behind [and] also applied pressure elsewhere on Mr O'Brien's body); and the physical exertion on Mr O'Brien's part as he struggled for his life..."

In 1995 an inquest into the death ruled that O'Brien was

unlawfully killed, but subsequent manslaughter trials resulted in the acquittals of three police officers. In July 2000 judgement was entered against the Metropolitan police under the Fatal Accident Act. Scotland Yard fought against the case. The Irish in Britain Representation Group welcomed the settlement and urged local authorities to "learn the lessons of this and other cases involving Irish people and treat members of our community with respect and dignity." Their hopes would appear to be unlikely to materialise as the O'Brien family are still awaiting an apology from the police.

For background see Inquest Lawyers Group "The right to life. The police and the criminal justice system: the case of Lapite, O'Brien and Treadway" (Inquest) 1998 (ISBN 09468 5806 3); Crown Prosecution Service "Inquiry into Crown Prosecution Service decision-making in relation to deaths in custody and related matters" (Stationery Office) 1999 (ISBN 0-11-341236-3)

ITALY

Genoa - police evidence discredited

After two days of tension and clashes between police forces and protestors in Genoa on 19-21 July 2001 a police raid on the *Armando Diaz* and *Sandro Pertini* schools led to the arrest of 93 people, many of whom were beaten, on the evening of 21 July (see *Statewatch* vol 10 no 3 & 4). Criticism in Italy and across Europe mounted over the raid and subsequent ill-treatment in custody suffered by protestors in Bolzaneto police barracks, which was converted into a makeshift detention area. Police and interior ministry sources reacted by claiming that militants had been staying in the Diaz school and that stones were thrown at the police. One officer, Massimo Nucera, was said to have had his vest ripped in a knife attack. Molotov cocktails, kitchen knives, black clothing and pick-axes allegedly found on the premises were shown to the press.

The police claims appear increasingly unlikely. Scientific tests on officer Massimo Nucera's jacket and bulletproof vest by carabinieri from the *Reparto di Investigazione Scientifica* (RIS, Scientific Investigation Unit) in Parma indicate that his version of the "knife attack" is inconsistent with the evidence. Nucera is now under investigation for falsehood and slander. Furthermore Pasquale Guaglione, deputy police chief in Gravina di Puglia recognised the molotov cocktails that were said to have been confiscated in the raid as ones he found hours earlier in a hedge in Genoa. Guaglione says that he was surprised to see them among the evidence from the school. Former Genoa police chief Francesco Colucci denies that the bottles passed through Genoa police headquarters. Genoa police are in charge of investigations.

Figures from the *Misteri D'Italia* newsletter indicate that 77 policemen are under investigation for inflicting injuries to those in the school, with some accused of false testimony and slander. Twenty members of the law enforcement agencies (including prison officers) are under investigation in connection with abuses carried out in Bolzaneto while protestors were in custody; 400 protestors and over twenty officers are under investigation in connection to clashes in the streets of Genoa, including the high profile case of the deputy head of the Genoa *Digos*, Alessandro Perugini, who was caught on camera beating a 15-year old.

Policing - in brief

■ **Northern Ireland: Orde new chief constable.** Hugh Orde, a Metropolitan deputy police commissioner, was appointed Northern Ireland's chief constable at the end of May. Orde, who joined the Metropolitan police in 1977, was involved in piloting stop and search methods before taking charge of community and

race relations and running Operation Trident, an investigation into gun crime in London's black communities. The new commissioner has frequently been to Northern Ireland since taking charge of day-to-day running the controversial Stevens inquiry into the loyalist murder of civil liberties lawyer, Pat Finucane, which was facilitated by British security forces and Special Branch.

■ **UK: Police car chase deaths triple.** The Police Complaints Authority (PCA) has published a report, *Fatal Pursuit. Investigation of Road Traffic Incidents (RTI's) involving police vehicles, 1998-2001* which shows that deaths in accidents resulting from police car chases have tripled over the past four years. According to the PCA investigation 30 people were killed in police-chase crashes in the nine months up until January 2002, compared with nine deaths during the year 1997-1998. The inquiry examined 85 collisions involving 64 pursuits since 1998 that resulted in 91 deaths and concluded that: "There is inadequate risk assessment taking place in many pursuits/follows resulting in risky decisions taken by police drivers..." The report also insists that pursuits "undertaken by unmarked police cars...and convoys of police vehicles" should be prohibited. The key conclusion from the study is that: "the police continue to engage in too many pursuits/follows that endanger public safety and that the most effective way to reduce this is by increasing management control on the evolution of pursuits and reducing officer discretion about both initiating and continuing with pursuits. Forces may need to consider whether officers who pursue without control room permission, or who fail to adequately communicate risk, or who fail to pull over when instructed to call off a chase by the control room, should be at risk of being disciplined as a result." *Police Complaints Authority "Fatal Pursuit. Investigation of Road Traffic Incidents (RTI's) involving police vehicles, 1998-2001: Identifying common factors and the lessons to be learned" 2002 (www.pca.gov.uk)*

Policing - new material

The Transformation of Policing? Understanding Current Trends in Policing Systems, T Jones & T Newburn. *British Journal of Criminology* vol 42 no 1, 2002, pp129-146. This paper considers that policing systems in developed economies are undergoing radical change. A number of significant shifts have occurred including major reforms in public policing, and a substantial expansion of the private security industry. It concludes by arguing that it is helpful to locate changes within the framework of policing in a wider context. Rather than view current developments as a fragmentation of policing, they can be seen as part of a long-term process of formalisation of social control.

The police have lost the plot, Penny Wark. *Times* 21.5.02., pp4-5. Interview with former National Crime Squad head, Bob Taylor, who retired last year. Taylor argues for the "common sense" of a national police force, an end to trial by jury ("too complex for people to understand"), a national DNA register ("civil liberties issues are outweighed by the protection and security of the public") and a clampdown on drugs ("The idea of legalising drugs is irresponsible"). Taylor concludes, "We don't want a return to Victorian values, but...."

Policing as forestry? Re-imagining policing in Belgium, Ronnie Lippens & Patrick van Calster. *Social & Legal Studies* vol. 11 no. 2 (June) 2002, pp283-305.

Wrong man, Bob Woffinden. *Guardian G2* 14.6.02., pp.4-5. Article on the miscarriage of justice case involving Dudley Higgins, a black man arrested and convicted in connection with an £8,000 robbery in the West Midlands. Higgins met the man who carried out the robbery, and who had confessed to it, while serving his sentence, before being released on appeal in January. At his appeal the judge expressed "extreme concern" at the conviction and the actions of the police.

The Police National Computer and the Offenders Index: can they be

combined for research purposes, Brian Francis, Paul Crosland and Juliet Harman. *Findings* 170 (Home Office) 2002, pp4. "This study investigates the feasibility of merging relevant police records held on the Police National Computer into extracts from the Offenders Index in order to maximise the information available to researchers."

SECURITY & INTELLIGENCE

NETHERLANDS/TURKEY

Case reveals tampering with intercepted evidence

Hüseyin Baybasin was arrested in Lieshout, Holland on 27 March 1998. He was charged with membership of a criminal organisation and conspiracy to murder, hostage taking and attempted murder in connection with the heroin trade. On 10 February 2001, he was convicted and sentenced to 20 years imprisonment in the special security prison at Vught, by the court in Breda. During the course of his trial Baybasin, who is Kurdish, made serious allegations about contacts between the Turkish authorities and drug traffickers and argued that there had been interference with taped telephone conversations used during the trial. Baybasin has launched an appeal against his conviction after new evidence, alleging wilful tampering with intercepted material and threats by the Turkish authorities, were raised by the defence.

In 2000, the Turkish author Mahmut Baksi wrote a book, based on the recollections of Baybasin, *A Kurdish businessman: Hüseyin Baybasin*, which investigates the narcotics trade in Turkey. The Turkish public prosecutor demanded that the publisher, Ahmet Onal of *Peri Publishing*, be jailed for up to 27 years; in September 2001, he was fined approximately 3,000 Euro (1.9 billion TL) instead. Baybasin accuses important Turkish politicians, such as former Prime Minister Cilles, of being linked to the drugs trade. Baybasin, who became wealthy smuggling tobacco, marijuana, heroin and other drugs in the 1970s and 1980s, would have been in a position to know this.

Baybasin was first arrested for his part in drugs trafficking in the "Lucky-S" case in 1996 and jailed for one and a half years. He claims that he has information on drug-money bank accounts of many well known Turkish personalities. He also claims that the drugs recovered by the police aboard the "Lucky-S" later reappeared on the drugs market.

The book outlines the relations between Turkish politicians and the drugs trade. In one instance, following a car crash near Susurluk in Turkey, in which three people died, those in the car were identified as Abdullah Çatli (a former leader of the MHP, an extreme right wing party in Turkey), a drug trafficker (with an outstanding international warrant), Hüseyin Kocadag (second in charge of the Istanbul police force and later director of the police academy) and Sedat Bucak (connected to the Turkish intelligence service). The contact between drug dealers, politicians and policemen raised questions in the media and in parliament.

Baybasin says that after his 1996 imprisonment, he wanted to get out of the drugs trade, but that he was threatened on several occasions by figures connected to the Turkish state. He says that he became involved in the Kurdish solidarity movement and even helped to finance the Kurdish Parliament in Exile in The Hague. Due to his position on the Kurdish question, as well as the allegations against Turkish politicians, he claims that the Turkish state wants to eliminate or jail him. His accusations are supported by "HT" a former member of the Turkish intelligence services, who maintains that Turkey sent a death squad to Holland to assassinate him. The Dutch Supreme Court gave credibility to "HT's" claims by refusing to grant Turkey an extradition order on

the grounds that there were "serious suspicions" that Baybasin would be killed. The integrity of the trial has also been questioned because of evidence from an individual that even the Criminal Intelligence Service (CID) describes as biased. "MB", who was presented as a crown witness, later disappeared.

Two weeks before Baybasin was convicted, the defence stopped work. They claimed that the trial was flawed after their request for an investigation into the use of tapped telephone conversations was denied. His appeal has now reached the Supreme Court in Amsterdam where the defence has asked the judges to challenge the Penal Code Chamber's ruling on the grounds that the public prosecutor used fabricated recordings of tapped phone conversations.

The new defence team, P Bakker Schut and A van der Plas, have called on evidence from several IT experts. One of these is JWM van de Ven, an ex-employee of the MID (military intelligence service) and a former employee of the Israeli company, ECI-Ectel (responsible for the delivery of Comverse equipment in Holland). Van de Ven, who is seen as an authority on lawful interception technologies, argues that the interception methods used by the Dutch police allow for manipulation of the data. The company does not provide the source code (password) for the interception equipment, making it impossible to know exactly what happens to the data once it has been collected.

According to Maurice Wesseling from the privacy and civil liberties organisation *Bits of Freedom* (BOF), 15 of the 36 interception stations are equipped by the Israeli company Comverse Infosys (Comverse is an offshoot of Israeli military intelligence). According to the internet magazine *Kleintje Muurkrant* half of the research and development costs of the company are paid for by the Israeli government. The Dutch branch of Comverse Infosys was renamed Verint, after the company was accused of spying for Israel, using the interception systems that it sold to governments. An FBI investigation resulted in several Israeli citizens being arrested. Company director, Michel Manche, has worked as systems manager for the interception department of the Dutch Intelligence Service (BVD).

A specific problem with the Comverse equipment is the fact that the equipment is not known to the police forces which use it and, therefore, they do not know how the interceptions are made. Theoretically, the data saved on the hard disks of the Comverse systems can be used by parties other than the Dutch justice department. It has also been suggested, in several American media reports, that information was transferred to Mossad, the Israeli Intelligence Service. While there is no hard evidence for these allegations, it is evident that there are serious questions about Comverse's interception procedures.

It also became clear in December 2001 that tapped phone conversations between lawyers and their clients were being collected and used in a court case against a drugs trafficker. In Dutch law, these conversations may be recorded but not stored. Apparently, they were not destroyed, leading to questions about the practice to the Minister of Justice, Korthals. Van de Ven and another telecommunications expert, R. Eygendaal, stated in the newspaper *Twentsche Courant Tubantia* that security in Holland "leaks like a sieve", referring to the fact that it is unclear what happens to collected data because intercepting officers do not know the password and cannot ensure the deletion of data.

In relation to the Baybasin trial, the prosecution's case was dependent on intercepted conversations, five of which have been analysed by Van de Ven who discovered a number of irregularities. He points to Recording 140 which consists of two separate conversations that have been merged. The five conversations are a small sample of the enormous amount of material the Department of Justice intercepted between September 1997 and Baybasin's arrest in March 1998. There are around 6,000 taped conversations, (around 28 daily calls by Baybasin). A peculiarity, according to the defence, is that the prosecutor has never asked for the specifications of the phone

bills from the providers. The defence also questions the translations of intercepted tapes, alleging that one of the translators was a Turkish police agent.

Baybasin's case is presented by Public Prosecutor Van Raaij as a straightforward case of drugs trafficking. The case is far from straightforward. The role of the Turkish state, as well as the legality of interception methods and violation of data protection laws, remain to be investigated.

NETHERLANDS

Intelligence services expand

In September 2001, Holland acquired another intelligence service, the Social Intelligence and Investigation Service (SIOD). It is a trend that, if it continues, will see every ministry getting its own law enforcement department. The Ministry of Agriculture and Fishery has a General Inspection Service, the Ministry of Finance has the Fiscal Intelligence and Investigation Service and now the Ministry for Social Affairs and Work will get its own department, too. The SIOD is aimed at "illegal employment", i.e. employers who are paying immigrants without a residence permit and therefore do not pay taxes which, according to Hans Hoogervorst, former Parliamentary Under-Secretary of the Ministry for Social Affairs and Employment, cost the Dutch state 750 million Euro in untaxed employment in 2001.

The new service is equipped with wide-ranging investigative powers. Apart from phone tapping and general surveillance, the service is allowed to infiltrate, search cars and participate in "fake" purchases. The service's officers have wider authority than police officers investigating cases of social security fraud. While Hoogervorst did not mention illegal immigrants he argued that "illegal employment offices" (employment offices set up for illegal workers) are connected to organised crime. The SIOD officially started work on 4 April 2002.

The SIOD has 280 officers, a figure that will increase to around 345 in 2003. The service will have offices in The Hague, Amsterdam, Groningen, Breda, Roermond and Arnhem. It seems to be the most significant of all of the special forces working in the area of social fraud, such as the Regional Interdisciplinary Fraud team (active since 1994), the Horeca Intervention Team, the Fashion Intervention Team (active since 2000), the Westland Intervention Team (active since 2000), the Construction Intervention Team.

The SIOD's work is supposedly targeting employers. However, other similar teams established with a similar purpose are in practice policing immigration. For example, the Westland Intervention Team was active in southwest Holland, an agricultural area. A television documentary revealed that the team was primarily there to trace illegal immigrants, whereas the arrest of employers or the closure of companies was not an issue. In the annual programme of the Employment Inspectorate for 2002 it is clearly stated that the Inspectorate will tackle illegal work in the agricultural and greenhouse agriculture industry. In the Ministry of Social Affairs and Work press releases there is only one sentence which refers to the inhumane working conditions of illegal migrants; an improvement of the legal position of these workers is not an issue.

As a result, some undocumented workers have set up a Trade Union for Illegal Workers (VIA) based in The Hague. Currently, Turkish workers from Bulgaria make up most of the VIA's members. While they do not need a visa to enter Holland they are not allowed to work, but because of the situation in Bulgaria they prefer to stay in Holland and work illegally. The Hague Islamic Platform (SHIP) supports the founding of the VIA, which is also supported by the official trade union, FNV bondgenoten. Through VIA, the workers try to improve their position in the labour market and increase their rights. Willem Vermeend,

former Minister of Social Affairs and Employment, has tried to criminalise the trade union by suggesting that it is an informal employment office. The Liberal Party, and the employers organisation VNO-NCW called the support of the FNV-bondgenoten for the VIA, "socially irresponsible".

The FNV bondgenoten will ask the government to ratify the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which states that illegal workers have the same rights to housing, work and legal protection as legal workers. The previous Dutch government was not supportive of illegal workers and judging by recent developments, the present one will probably be less so.

IRELAND

Call for Saville-type inquiry

Edward O'Neill, whose father was one of 33 people killed by loyalist car bombs planted in Ireland on 17 May 1974, has called for a public inquiry into the events based on the Saville inquiry into Bloody Sunday. The Dublin and Monaghan bombings are Ireland's largest unsolved murder case and within days of the explosions the involvement of the British intelligence services was suspected because of the sophistication of the devices and organised planning involved. The bombs were claimed by the loyalist Ulster Volunteer Force but it is widely accepted that acting alone they lacked the capability to carry out the acts. Claims of British involvement have been alleged by a number of former intelligence operatives, including a Military Intelligence Officer seconded to MI6, Fred Holroyd. At least a dozen British MPs have supported demands for a thorough and independent investigation "to establish the truth."

O'Neill's call follows his disillusionment with the current Irish inquiry into the bombings, headed by Justice Henry Barron. O'Neill told *An Phoblacht/Republican News* "The Irish government are not interested... We had 33 people die and not one arrest, not one person questioned, not one person ever charged." O'Neill, who received horrific injuries in the car bomb that exploded in Dublin in May 1974, said that he was not questioning the integrity of Barron, but felt that he "will not be allowed to investigate the bombings properly." He, along with other victims of the bombings, have met with relatives of those killed by British soldiers on Bloody Sunday in Derry in 1972, and they have formed a support group to put pressure on London, Dublin and Belfast. The Barron report is expected to be finished by the autumn.

For background on the events see Fred Holroyd and Nick Burbridge "War Without Honour" Medium Publishing Co (1989) ISBN 1-872398-00-6; Don Mullen "The Dublin & Monaghan Bombings" Wolfhound Press (2000) ISBN 0-86327-719-5; An Phoblacht/Republican News 16.5.02.

GERMANY

Government still refuses to disclose NPD informants

In January the Federal Constitutional Court interrupted proceedings initiated by the German government and parliament to enforce a ban against the far-right *Nationalsozialistische Partei Deutschlands* (NPD) on grounds of violating the free democratic order of the Federal Republic of Germany (FRG). The plaintiffs had withheld the vital information that their witnesses were neo-nazis who had also worked for the *Verfassungsschutz* (VS - internal secret service) as informants (see *Statewatch* vol. 12 no. 1). The extent of the involvement of VS informants became evident because state money in the form of informants' wages was fed back into the party, many asked if

the NPD was not effectively built up by the state.

The court has demanded clarification of VS involvement in the NPD, but the Interior Ministries of the *Länder* are still refusing to reveal the names of their informants, claiming they want to prevent the NPD finding out about informant activity. However, there have been reports that NPD informants usually inform the party cadre of their state contacts, and arrange what information is to be leaked. Informants' wages are given to the party. The court had given the plaintiffs until 31 July to disclose the number and identity of VS informants in the NPD.

Interior ministers from the federal government and the regional *Länder* have announced they will not disclose any names but have admitted that 30 of the 210 strong NPD cadre work with the VS. That implies that every seventh functionary is an informant. The explanatory paper given by the parliament and government to the court argued that it was not true that the NPD was steered through state organs (an accusation brought forward by many MPs) because the number of informants in the NPD leadership had not exceeded 15%.

The plaintiffs have ignored demands to draw up a new bill of indictment which excludes any evidence given by informants: the NPD manifesto in itself would suffice to prove the party's unconstitutional aims. Many believe the trial itself is being jeopardised through the governments lack of response to the court and argue that the only party to have gained from the scandal so far is the NPD itself. The fact that dozens of racist attacks, arson and even murders against asylum seekers and migrants have been carried out by VS informants seems to have been forgotten in the current debate.

On 8 October, the court will decide if the trial will go ahead.

Berliner Zeitung 11.7.02; Frankfurter Rundschau 15.7.02

Security & Intelligence - in brief

■ **UK: "Big Brother" nominee appointed security chief.** The Prime Minister, Tony Blair, appointed Sir David Omand to the role of Britain's Security and Intelligence Coordinator in June. His appointment mirrors President Bush's appointment of Governor Tom Ridge as his Homeland Security Advisor in the USA. Omand is a former Home Office permanent secretary who was educated at Corpus Christie college, Cambridge. He started his career at the Government Communications Headquarters (GCHQ), where he served as director, before moving on to the Ministry of Defence. At the MoD he was Deputy Under Secretary of State for Policy. In 1985 he was moved to Brussels where he worked on loan to the Diplomatic Service as the defence counsellor to the UK delegation to NATO. In 1999, in his capacity as head of the Cabinet Office he was runner-up to then Home Secretary, Jack Straw, in the annual "Big Brother" awards made by *Privacy International* in the category of worst civil servant. Omand also served as a member of the Joint Intelligence Committee for 5 years, a position he will resume with his new appointment. *10 Downing Street press release 20.6.02.*

■ **UK: MPs call for Israeli Embassy bombing reinvestigation.** Twenty-seven Members of Parliament have joined Amnesty International and a host of other civil liberties organisations in calling for the reinvestigation of the 1994 bombing of the Israeli Embassy. The cross-party early day motion (no. 1546) said that the wrongful conviction of Samar Alami and Jawad Botmeh left the actual bombers free and tarnished the government's claim to be fighting a war on terrorism. Samar and Jawad were convicted in 1996 after substantial evidence, which seriously undermined the evidence against them, was not disclosed to the defence. The use of public immunity certificates ensured that crucial information was withheld from the judge. Samar and Jawad have been in prison for seven years and have protested their innocence throughout. They are awaiting an appeal to the House of Lords. The Freedom

& Justice for Samar & Jawad campaign can be contacted at BM FOSA, London WC1N 3XX.

Security - new material

Sorry, Arthur, Roy Greenslade. *Media Guardian* 27.5.02., pp2-3. In 1990 the Daily Mirror, edited by Greenslade, smeared the National Union of Mineworkers (NUM) president, Arthur Scargill, stating that he had misused donations intended for miners' during the 1984-85 strike. Here, some twelve years after the events, Greenslade offers a *mea culpa*: "I am now convinced that Scargill didn't misuse strike funds and that the union didn't get money from Libya. I also concede that, given the supposed wealth of [the] Mirror and the state of NUM finances, it was understandable that Scargill didn't sue." He also cites former MI5 head Stella Rimington, who denies that the main source for the story (former NUM executive, Roger Windsor) was working for MI5.

PRISONS

UK

European court decision frees Satpal

Satpal Ram has been released, after spending 15 years in prison, following rulings by the European Court of Human Rights and the UK court of appeal. Satpal was jailed in 1987 after defending himself against a violent racist attack, in which one of the aggressors died after he refused hospital treatment. However, the racist motivation behind the assault and the issue of the right to self-defence were not raised by Satpal's defence lawyer and he was convicted of murder and jailed for life, with a recommended tariff of 11 years. Successive Home Secretary's refused to release Satpal once he had served the recommended tariff, because he would not acknowledge his "guilt". Throughout his imprisonment Satpal continued to protest his innocence, highlighting not only his case but drawing attention to the all too frequent instances of racist and other abuse of prisoners, (see *Statewatch* vol. 4 no. 3, vol. 6 no. 6, vol. 9 no. 5).

In May the European Court ruled that Dennis Stafford, who was jailed for life for a killing in 1967, had been unlawfully detained from between July 1997 and December 1998. It held that the UK had violated his rights to protection from arbitrary detention and to have the legitimacy of his detention tested by a court. He received compensation and legal damages. In June an appeal was brought by two convicted killers, Anthony Anderson and John Taylor, challenging the Home Secretary's right to fix a tariff for murderers. It is expected to be heard shortly and, following the European Court ruling, will inevitably succeed.

The European Court ruling denied the Home Secretary the right to keep a prisoner behind bars when the Parole Board had recommended his release. The Board had recommended Satpal's release in October 2000, but the then Home Secretary, Jack Straw, refused to accept their advice. Even after the European Court's decision, and after the Lord Chief Justice eventually signed Satpal's release papers on 14 June, the Home Office still prevaricated, ensuring that he spent another weekend incarcerated.

Satpal's miscarriage of justice became the centre of an effective campaign to clear his name after supporters highlighted the frequent brutality and racist treatment he received in prison. Despite being subjected to a humiliating and degrading campaign at the hands of prison officers, which saw him subjected to numerous beatings, regular strip searches and serve over five

years in solitary confinement, he never ceased to proclaim his innocence. His case was taken up by the Asian Dub Foundation, who initiated a series of "conscious clubbing" benefits across the country, raising support and awareness. A series of vocal pickets outside various prisons resulted in him being "ghosted" (removed at short notice) to more than 65 separate institutions.

However, while Satpal's release is long overdue it is a pyrrhic victory, as his conviction has not been quashed. As his lawyer, Daniel Guedalla commented: "It does not mean they accept he is innocent and he is still challenging his wrongful conviction. This is a victory but not a complete vindication. He is still on a life licence until his conviction is quashed." Satpal, and his supporters, will continue to fight to clear his name.

ITALY

Suicides and protest in Marassi

On the evening of 7 May 2002 there was a protest by detainees in Marassi prison (Genoa) after two suicides within three days in the prison's medical centre. In the afternoon 38-year-old FB hanged himself in the centre's toilet using a belt. He had been arrested in February following a violent argument with his parents, and was reported to be in a psychologically fragile condition.

On the night of Friday 4 May, AG, a 30-year-old man serving a 15-year sentence for murder, hanged himself using bedsheets in a toilet at the same medical centre. A protest by prisoners involved shouting, banging on cell gates and the hurling of missiles, including gasfires from windows, which ignited a prison van in the street below. Inmates protested against the deaths, prison conditions and the 70 transfers ordered on 3 May by justice minister Roberto Castelli, at a prison that is overcrowded and chronically understaffed.

The problem of overcrowding is not limited to Marassi. According to figures from *Gruppo Abele*, an NGO dealing with issues of social exclusion, the Italian penal system has a normal capacity of 41,983 persons, a tolerable capacity of 47,919, and an actual population of 53,798. *Il Messaggero* reported that a flyer found in the prison after the protest accused the prison management: "they hanged him after imprisoning his mind with pharmaceuticals and his body in a cell". The flyer also criticised the use of fire hydrants to quell the protest, which re-started on 11 May and reportedly spread to other jails in Liguria (north-west Italy).

While the first protest was led by prisoners in sick bay (including AIDS sufferers) and immigrants, it later spread to all the inmates in Marassi prison, according to prison sources. Prison guard unions criticised the understaffing and poor conditions under which they work, threatening protests. *SAPPE (Sindacato Autonomo di Polizia Penitenziaria)* regional secretary Michele Lorenzo asked for a team from *GOM (Gruppo Operativo Mobile, the prison flying squad)*, to help with the transfers. The *GOM* were singled out by police officers as the main perpetrators of abuses suffered by detainees in the makeshift detention area in *Bolzaneto carabinieri barracks* in Genoa during the G8 summit in July 2001 (see *Statewatch* vol 11 no 3/4).

Judicial investigations have been opened into the two suicides and the protests, with 10 detainees charged with causing damage. Speaking of the medical centre, lawyers acting for the prisoners said "you only leave that place dead, and the sick have no rights", adding that "the supervisory court does not grant transfers to other institutions, nor the release of AIDS sufferers and prisoners awaiting trial". *Gruppo Abele* published government figures in its yearbook indicating that in 1999 there were 53 suicides in Italian prisons, and that in June 2000 1,548 inmates were HIV positive, 511 of whom had AIDS symptoms, or were recognised as having AIDS.

www.ilnuovo.it 8.5.02; *Repubblica (Genova)* 8, 9, 14.5.02; *AGI* 14.5.02; *Il*

RACISM & FASCISM

NORTHERN IRELAND

Racist attacks on increase

According to an *Overview Analysis of Racist Incidents Recorded in Northern Ireland by the RUC - 1996-1999*, commissioned by the Inter-Departmental Social Steering Group and published by The Office of the First Minister & Deputy First Minister in February this year, there has been a substantial increase in the number of racist incidents recorded by the police. Between 1999 and 2000 there had been a 45% increase in recorded racist incidents, and the report warns that racist violence was far more rampant than figures suggest. All ethnic minorities fall victim to racism, but the Indian and Pakistani communities are targeted most. The number of children as victims "increased from 8.5% of the total in 1996 to over 16% in 1999. Violence or physical assault was a factor in the majority of cases involving children". The highest number of racist assaults appears to occur in Belfast (where Protestant working class areas show the highest number of incidents recorded), Glengormley, Ballymena, Derry and Bangor, and the "stereotypical perpetrator of racist harassment is a young white male who was acting in consort with other similar young white males."

The report is the first to systematically record and analyse racist attacks in Northern Ireland and is based on 357 incidents recorded by the RUC. It is divided into 16 chapters, which include an outline of minority communities in Northern Ireland, gender and age of the victims, geographical location of incidents, nature of racist incidents, perpetrators of racist incidents and police response to racist incidents, amongst others.

Although the report analyses in detail the number and nature of incidents and their geographical location, the identification of perpetrators remains very low at 56% of cases, with a corresponding "low response" by the police. The report admits that out of 357 incidents recorded,

- In six cases the police spoke to one or more suspects;
- In ten cases the police arrested one or more suspects;
- In one case a person was bound over;
- One person was cautioned;
- One person was charged;
- In two cases a prosecution was taken.

Although the report excuses the police's low response because of formal restrictions on the possibilities to act (no "crime" committed, one person's word against the other, no visual evidence, identification difficulties), critical observers might conclude that racist incidents do not appear to be the RUC's highest priority.

This report follows two surveys in the Republic of Ireland from 2000 (see *Statewatch Bulletin*, vol 10 no 2) which found a drastic increase in racist attitudes. The debate seems to have sought to identify the origins of the rise of racism, which were seen to be directly linked to anti-immigrant propaganda by leading politicians and racist media reporting. The present report remains at the level of urging more "intelligence-led" investigations and "multi-agency approaches".

The RUC report can be downloaded from www.research.ofndfmi.gov.uk. A press release on the report by The Office of the First Minister and Deputy

AUSTRIA/UK

Fury at Haider's London visit

The extremist governor of Carinthia, Jorg Haider, who stood down as leader of the *Freiheitliche Partei Osterreich* (FPO, Freedom Party) two years ago following international protests at his inclusion in the Austrian government, visited London at the end of June. Haider's visit, to launch a Ryanair airline service between Britain and Austria, prompted immediate protests and a vocal demonstration outside his London hotel. Ryanair did not attend. The inclusion of members of the previously untouchable FPO in the Austrian government, after they became the second largest party in Austrian national politics, led to EU sanctions being briefly imposed against Austria in 2000. The British government supported the sanctions against Haider, who has frequently announced his admiration for the policies of Adolf Hitler, expressing "deep distaste" over the affair.

Haider has since expressed his admiration for the leadership of Tony Blair, in particular for the Labour government's economic and immigration policies. Only last May Labour's Home Secretary David Blunkett, explicitly invoking the ghost of the racist former Conservative and Unionist MP Enoch Powell, spoke of refugees "swamping" new Labour's schools and services. As EU countries increase controls over the freedom of movement of non-European nationals, eliminating primary immigration and severely clamping down on asylum, Haider's world view appears to have been accepted by many European governments. Whatever the views of EU governments Labour MEP, Glyn Ford in a statement condemned Haider's "extremist policies" warned that: "Letting Haider in sends a signal to the resurgent far right in Europe that they will be given a place at the table."

WALES

Mosque official dies after attack

The treasurer of a Llanelli mosque, Muhammed Ashraf, died from a heart attack after witnessing members of his congregation being attacked by a racist gang. Twelve white men in their early twenties carried out the attack on the group of elderly worshippers at the beginning of June, as they made their way to the mosque. Four men have been arrested and charged with assault and police are looking for a fifth attacker. Mr Ashraf was reported to be totally dismayed by the assault, which included racist abuse as well as physical violence, and collapsed in front of his wife inside the mosque. He died on route to hospital. Dyfed-Powys police, however, say that they are not treating Mr Ashraf's death as a racist incident, claiming that he died from natural causes.

There has been an alarming increase in Islamophobia and racist attacks on Muslims across Europe since 11 September, according to reports by the Institute of Race Relations and the European Monitoring Centre on Racism and Xenophobia. At least some of the hostility is stimulated by a "culture of suspicion" endorsed by governments and in the media. Inflammatory pronouncements by the UK Home Secretary David Blunkett, combined with press attacks identifying refugees and asylum seekers as terrorists, have given the green light to racists across the UK.

A colleague of the Ku Klux Klan leader Alan Beshella, who was jailed for racially harassing an Asian shopkeeper in March, has been imprisoned for his role in a campaign of intimidation

against Mohammed Nawaz, (see *Statewatch* vol. 12 no. 2). Evan Short who admitted harassing Mr Nawaz at his shop in the south Wales village of Maesteg by making racist comments and threatening to kill him was sentenced to 12 months in a young offenders' institution and placed under a restraining order. *Western Mail* 31.5.02.

FRANCE

Presidential candidate was a torturer

Fresh allegations of torture were levelled against presidential candidate and far-right *Front National* (FN) leader, Jean-Marie Le Pen, in the run up to the French parliamentary elections in June. Evidence gathered in Algiers by the French daily *Le Monde*, who interviewed new witnesses, and reported in the *Guardian*, confirmed previous reports that the anti-immigrant politician engaged in a torture campaign involving electrocution, rape and beatings during the Algerian war of independence. Le Pen had won several court cases against those accusing him of torture, before losing to the historian, Pierre Vidal-Naquest in a case last year. It was revealed that as long ago as 1962 that he had boasted of his involvement in torture.

In a 1962 interview with *Combat* magazine, Le Pen said: "When someone is brought to you who has planted 20 bombs that could explode at any moment and who will not talk, you use all the methods at your disposal to make him talk." Despite admitting in the same interview, that he "tortured when necessary", the new charges have been denied by Le Pen who has threatened to sue *Le Monde*. The French paper has found four new witnesses, now in their 60s or 70s, who were supporters of Algeria's National Liberation Front in their war against the French colonial regime.

One of the men, Abdelkar Ammour, a retired teacher identified Le Pen as one of a group of 20 soldiers who "interrogated" him. He was stripped and forced to the floor where:

they connected up electric wires...and moved them all over my body. I was screaming. They took dirty water from the toilet and made me swallow it through a floor cloth held over my face. Le Pen was sitting on me. He held the cloth while someone else poured the water

Ammour's description was backed-up by other eye-witnesses; Ghaniya Merouane described to the *Guardian* Le Pen's enthusiasm for his job, urging his men to carry out increasingly violent acts. The Merouane family, whose father Mohamed was a resistance leader, said Le Pen was in charge when the French tortured members of their family:

The electricity was put on their chests and on their ear lobes. Mr Le Pen and the others brought a metal jerry can of water. They poured water on them. It made them shake. My father did not cry. But Mustapha was so young [then aged 18] that he cried. He suffered

Le Pen's party, the *Front National*, has based its political philosophy on racist principles - in particular scapegoating France's Algerian and Muslim citizens. This popularist and extremist rhetoric took him to the run-offs of the presidential election in May, leading to massive demonstrations across France. Le Pen attracted around 5.5 million voters making the FN Europe's most successful extremist movement.

Le Monde 3, 4.6.02; *Guardian* 4.6.02

Racism and fascism - in brief

■ **France: Nazi extremist's gun attack on Chirac.** A 25-year old local election candidate for Bruno Megret's *Mouvement Républicain National* (MNR) was arrested in mid-July after

attempting to shoot president Jaques Chirac at the annual Bastille Day parade. Maxime Brunerie fired a single shot at the president before attempting to turn his gun on himself as he was overpowered by bystanders. Brunerie was immediately disowned by the MNR who claimed that their party, a split from Jean-Marie Le Pen's *Front National*, "always rejected all forms of extremism." In addition to his MNR membership, the would-be assassin also had links to the French and European Nationalist Party (PNFE), a violent overtly fascist organisation actively involved in racist attacks as well as the *Groupement Union Défense* (GUD), an ultra-right student movement. He was also a member of the *Kop de Boulogne*, Paris Saint-Germain's racist football "firm". According to press reports, Brunerie, who had never been in trouble with the police, had been known to police since 1997, when he began attending right-wing rallies. He is now being held at a police infirmary in Paris where he is undergoing psychiatric tests, but is expected to stand trial. Police also want to question Brunerie's best friend. *Guardian* 16.7.02.

■ **UK: BNP wins three council seats.** The British National Party won three seats in Burnley, Lancashire, in May's council elections. The organisation fielded 67 candidates across the UK, contesting 63 wards, plus a mayoral candidate in Newham, east London. The Lancashire former mill town, which has above average levels of unemployment and child poverty, saw a concerted campaign by the fascists, who fielded thirteen candidates in fifteen wards following outbreaks of rioting last year. The three councillors, David Edwards, Carol Hughes and Terry Grogan were greeted by demonstrations against them when they took up their seats. Edwards will be the group leader, Grogan his deputy leader while Hughes will be their secretary.

Racism & Fascism - new material

CARF. Campaign Against Racism and Fascism, no 67 (Summer) 2002, pp16. This issue of the new-look CARF focuses on fundamentalism. An article by the Reverend Kenneth Leech examines "The Rise of Christian fundamentalism" while Arun Kundnani considers tensions in British Asian communities and how communalist groups utilise nationalist techniques of mobilisation derived from twentieth century Europe.

Europe shifts right, Graeme Atkinson. *Searchlight* no. 324 (June) 2002, pp.4-7. The article examines the growth of fascist and anti-immigrant popularist parties, charting "the key organisations and their leaders."

Rostock - more questions than answers. *European Race Audit*, no. 41 (July/August 2002). This article highlights the attempt by the public prosecutor to avert the trial of four neo-nazis in Rostock for their part in the racist pogrom that led to the burning down of a housing block inhabited by refugees and Vietnamese guest workers in Rostock-Lichtenhagen in August 1992. The trial did not start until November 2001, as the prosecution took three years to press charges and another six years to open the proceedings. The presiding judge Horst Heydorn explained the delay by claiming the court was "too busy" with "other pressing criminal proceedings". Proceedings against one of the accused was halted as the statutory period of limitation had been exceeded, and the trial against the remaining three has been marked by a down-playing of the racist motivations of the accused. There have also been difficulties in finding witnesses to shed light on the events, either due to fears of far-right recrimination or due to witnesses themselves being racist. Available from: *Institute of Race Relations*, 2-4 Leeke Street, London WC1X HS

EU Unaccountable undercover teams set up

Quite unnoticed, and unreported, the EU's Justice and Home Affairs Council adopted at their meeting on 25/26 April, without debate (an "A" Point), a "Recommendation establishing multinational ad hoc teams for gathering and exchanging information on terrorists". The Recommendation, is intergovernmental (ie: outside of EU treaties) and is not binding on EU states and so there was no obligation to refer it to national parliaments or to the European Parliament for scrutiny.

The discussions made clear that the object of these *ad hoc* teams is *not* to arrest and bring suspects to court - and thus they would not compete with existing EU plans for the creation of "joint investigative teams" for criminal offences. Rather small groupings of EU states - led by Spain and Italy - will set up unaccountable, undercover teams of police and internal security officers and agents to target and place under surveillance suspected groups and individuals.

"There is no need for rules of procedure"

Why would EU governments adopt this Recommendation when they had already agreed, on 6 December 2001, on a "Council Framework Decision on joint investigation teams" which includes the provision that:

The Council considers that such teams should be set up, as a matter of priority, to combat offences committed by terrorists

What distinguishes this Framework Decision on joint investigative teams from the Recommendation on *ad hoc* multinational teams is that the former was: subject to parliamentary scrutiny, lays down rules of procedure (eg: allowing for the use of "Information lawfully obtained") and contains provision for civil and criminal liability. The Recommendation contains no such provision, and for a very good reason.

The first report from the Spanish Council Presidency set out the explicit purpose (29.1.02) to tackle terrorist groups "and their support networks". It argued that there was an "operational shortfall" in the "case of non-judicial or pre-judicial operational investigations" by "law enforcement or intelligence agencies". Further that "many activities" by terrorist groups:

which directly or indirectly harm Member States' interests or national security, do not come under criminal legislation, not being criminal offences, and thus do not and cannot give rise to any actual judicial proceedings

The proposal was that teams should be set up "made up of specialists from the law enforcement and intelligence agencies" for:

investigation, information-sharing, searching, tracing and any other effective action generally in combating terrorism, in specific operations in any European Union country

The Spanish Presidency organised a Seminar on 27/28 February in Madrid attended by officials from all member states. Presentation were made by delegates from France, Greece, Italy and Spain. The meeting concluded that there was "a serious terrorist problem in the EU, generated by local groups and violent radical Islamic groups" which required the intervention of "pro-active" multinational teams collecting "information". It proposed that a series of "Recommendations" should be adopted which included:

There is no need for rules of procedure (flexible framework)" [and] "Flexibility, confidentiality and mutual confidence are necessary for the work of these teams" [and logically] "The main objectives should

be approved by common agreement of all parties participating in the multinational teams

The second report from the Spanish Presidency and first draft of the "Recommendation" stated that there would be "no danger of conflict or overlap" between this proposal and the Framework Decision on joint investigative teams as: "they operate in quite different spheres" because the operations of the *ad hoc* multinational teams: "do not come under criminal legislation, not being criminal offences, and thus do not and cannot give rise to any actual judicial proceedings"

There was some opposition from the EU member states to the "Recommendation". At a meeting of the EU Working Party on Terrorism on 4 February the Netherlands delegation said a "profound examination" should be made to see whether such teams were necessary. At the meeting of the same group on 25 February it was noted that "the added value" of the *ad hoc* teams to the already planned joint investigative teams under the Framework Decision "has to be proven". It was also noted that "the French and Portuguese delegations backed the approach by the Presidency".

Despite the statement by the Spanish Presidency that "the concept of investigation teams has been substituted by the concept of collecting information" the minutes of the meeting on 18 March show the Danish and Austrian delegations "wondering whether there was a need for a new instrument". But "the general philosophy [of the Presidency].. was backed by the French, Greek, Portuguese and Italian delegations".

In a report, dated 9 April from the Spanish Presidency to the high-level Article 36 Committee (senior interior ministry officials), the Swedish delegation sought to limit the roles of the teams by deleting the word "gathering" from the objective of "gathering and exchanging information". The report says: "The Presidency and many other delegations opposed this request". This was an unsuccessful attempt to remove their proactive capacity.

The wording of the adopted "Recommendation" reflects to a degree the disquiet of some EU governments but does not alter its overall purpose. Among the changes were: first, "Law enforcement and intelligence agencies" became "specialists from the competent authorities in Member States". Second, Europol could be involved in the teams "within the limits of the Europol Convention". Third, the teams would be expected to act within "constitutional provisions in order to combat terrorism as defined in European Union instruments" - which as the Preamble reminds us is set out in the potentially double-edged EU definition of terrorism which covers protests as well (see *Statewatch* vol 11 no 6).

The real danger is that the most "hawkish" EU states, led by those who equate "urban violence" and "violent radical youthful groups" (like Spain and Italy) with terrorism, will create their own free-ranging "information" gathering teams - and extend their remit to "destabilising" targeted groups - while other governments will simply not participate. Such a fragmented development is extremely dangerous.

Lessons from Northern Ireland and Spain

It is not unusual for teams or units to be set up to gather "information" and/or "intelligence" and later for them to intervene operationally, either directly or most usually indirectly through other agencies or third parties (ie: paid informers, agent provocateurs and "agents in place").

In Northern Ireland the Force Research Unit (now renamed "Joint Support Group") is run by military intelligence, it was involved in the assassination of solicitor Pat Finucane in 1989. Its job is officially to: "provide analytical support and security advice". Also operating in Northern Ireland was the 14th Intelligence Company carrying out extensive direct surveillance and involved in many killings. Alongside these two undercover units were the SAS (Special Air Services) and the E4A unit of the Royal Ulster Constabulary (RUC) - involved in the "shoot-to-kill" policies in the 1980s.

In Spain there was the *Grupos Antiterrorista de Liberacion* (GAL) units, financed by reserve funds in the Interior Ministry, which was active from 1983 to 1987 in France and the Spanish Basque country. They carried out kidnappings and assassinations of known or suspected ETA members and are known to have committed a number of lethal mistakes (killing many people who were misidentified or unrelated to ETA). GAL units included members of the Spanish police, Information Services of the Interior Ministry, military intelligence (CESID) and *Guardia Civil* alongside criminals, mercenaries, extreme right-wingers, former military and intelligence personnel who were sometimes hired on an *ad hoc* basis. Members of the French police and secret services were also alleged to have been involved.

What is of concern is that such a measure can be adopted without any parliamentary scrutiny whatsoever. There can be little objection to the creation of teams to combat genuine terrorists providing they act under the rule of law, according to rules of procedure and are accountable legally and democratically for their actions. But when none of these safeguards are in place then they have no role in defending democratic societies.

Council Recommendation for the establishment of multinational ad-hoc teams for gathering and exchanging information on terrorists, doc no 5715/6/02, 22.4.02.

Information to be exchanged on terrorists (and protestors)

At the meeting of the Justice and Home Affairs Council on 13/14 June the proposal by the Spanish Presidency for the "introduction of a standard form for exchanging information on terrorists" was adopted as an "A" Point (without debate) (see *Statewatch*, vol 12 no 2). However, the Council's press release for this JHA Council failed to mention its adoption.

The Recommendation allows for the exchange of information between EU member states on suspected "terrorists" including those going to EU Summits and other international meetings. The measure is not limited to groups and individuals on the UN/USA/EU terrorist lists. The adopted version, and the five earlier drafts, are clearly drawn so widely that they can include protestors and protest groups. It is intended to cover "terrorist

organisations [achieving] their criminal aims at large internal events". But there have been no terrorist attacks on Summits etc. Further it covers: "terrorist organisations for the purpose of achieving their own destabilisation and propaganda aims", which is plainly ludicrous, no real terrorist would stand outside a G8 Summit handing out leaflets. Although the wording has changed between the first and the final draft the overall effect is the same. The first draft referred to: "incidents caused by radical groups with terrorist links.. and where appropriate, prosecuting violent urban youthful radicalism increasingly used by terrorist organisations to achieve their criminal aims, at summits and other events arranged by various Community and international organisations".

Correspondence between Lord Brabazon, chair of the UK House of Lords Select Committee on the European Union, and Bob Ainsworth, Parliamentary Under Secretary at the Home Office, reveals the contradictory nature of the Recommendation and some silly arguments. On 25 April Brabazon wrote to the Home Office for clarification on a number of points and Ainsworth replied on 16 May that "the issue is clearly very important to the Spanish" and the UK government supported them. Ainsworth elaborated on the method of exchanging the "information" via the "BDL Network" and confirmed that the "Bureau De Liaison" is the "secure e-mail network" used by the EU's internal security agencies. On the central issue Ainsworth wrote:

this initiative is essentially about ensuring that those hosting large international events within the EU are informed that known terrorists with a police record intend travelling to the event in question, not necessarily to commit acts of terrorism but with the intention of furthering their aims

This is plain nonsense, does this mean that there are "known terrorists" wandering freely around the EU who have not been arrested?

The same tortuous argument is made by Ainsworth in relation to the right to demonstrate/protest which he says is not affected. Brabazon wrote again on 30 May as "the purpose of the instrument remains unclear" and asking:

How are the police in the notifying country to be certain that the individuals concerned are travelling for such purposes (whatever they are) and not to exercise the right to demonstrate?

Ainsworth's response on 24 June does not answer this point.

There are no provisions in the Recommendation for data protection or for scrutiny of its use. It is another of the dangerous measures put through under the Spanish Presidency which are at the very least ambiguous in their intent, but which in the hands of governments who view protests as an extension of terrorism will be open to gross abuse.

EU document no 5712/6/02..

EU: Law enforcement agencies win out over privacy

European Parliament caves in to demands of EU governments on data retention & surveillance: a document

This feature looks at the "deal" done between the European Parliament and the Council of the European Union over data retention, the vote in the European Parliament and the leaked text of the draft "Framework Decision on the retention of traffic data and on access to this data in connection with investigations and prosecutions" (prepared by the Belgian government).

The European Parliament caves in

In December 2001 the Telecommunications Council of the European Union (the 15 EU governments) agreed a "common

position" which meant that two key protections in the 1997 EU Directive on privacy in telecommunications would be removed. First, the provision that traffic data held by communications providers must be erased once it no longer served its purpose of checking customer billing and second, that member states could adopt laws at a national level to require that traffic data must be retained for a specific period in order for the law enforcement agencies to have access (police, customs, immigration and internal security agencies) to it. On 30 January the European Commission abandoned its long-held opposition to these

proposals.

The European Parliament in its 1st reading report, adopted in November 2001, was also strongly opposed (as were the EU's Data Protection Commissioners, the EU's Article 29 Data Protection Working Party and dozens of civil society groups).

On 18 April the parliament's Committee on Citizens' Freedoms and Rights agreed its 2nd reading report but only by 25 votes to 19 on data retention. Despite the convention that position agreed unanimously on the 1st reading should not be amended again the chair of the Committee, Ana Palacio (PPE, conservative group, now a Minister in the Spanish government), broke ranks and led the demand that the parliament should agree with the Council. The parties voting to maintain opposition to data retention and surveillance were the PSE (Socialist group), the GUE (United Left), the Green/EFA group and the ELDR (Liberal group). A date for the vote in the plenary session of the parliament was set for 30 May.

However, following the vote in the Committee the Spanish Presidency of the Council undertook:

a number of informal contacts.. [with] interested members of the European Parliament with a view to exploring the possibilities for a pre-negotiated agreement on a set of compromise amendments..

Meetings of the Council's Telecommunications Working Party examined "a number of compromise texts" at its meetings on 3 and 13 May. On 15 May Ana Palacio said she intended to submit her own "compromise" agreement to the Council on behalf of the European Parliament - this move was stopped by a meeting of the rapporteurs on the report. But the Council simply used Ana Palacio's "compromise" and in a report dated 16 May said her amendment was: "acceptable with small modification".

A week before the vote a coalition of 40 civil liberties groups, including *Statewatch*, sent a letter to all MEPs asking them to reject the Council's position. In addition, the "Stop 1984" campaign collected over 17,000 names on an EU-wide web appeal.

The vote in the plenary session for the "compromise" could however not be delivered without one or more of the political groups breaking ranks. Just after the letter from the civil society coalition went out, just days before the vote, the PSE (Socialist group) broke ranks and joined the PPE (conservative group) to form an "unholy alliance" commanding a clear majority of votes (as they did on the new Regulation on access to EU documents). A "deal" had been done with the Council to the effect that they made some concessions on "spam" and "cookies" and the parliament withdrew its objection to data retention and surveillance.

The PSE rapporteur on the issue, Elena Paciotti MEP, replied to the civil society coalition on 28 May trying to explain the group's U-turn. Right up to the vote in the Committee on 28 April the PSE was opposed to data retention. In her letter Paciotto simply said that references to the European Convention on Human Rights and Community law had now been added and this therefore ensured that the rights of citizens would be protected.

This argument is sheer nonsense. The ECHR and Community law automatically apply to all EU Directives and therefore adding references to them is simply "window-dressing".

In the decisive "split vote" on data retention 351 MEPs (PPE, PSE and UEN - another rightwing group) voted for data retention and surveillance and 133 (ELDR, Greens, GUE and TDI) against.

In the debate Elena Paciotto said that in her country, Italy, data was already kept for five years and the measure was necessary to protect "national security". She also repeated the argument that the inclusion of a reference to the ECHR made the Council's position acceptable. Michael Cashman, PSE (UK) MEP, summed up the position of his group:

What is this idea that it is a stitch-up, that groups come together to reach a compromise that ill serves the civil liberties of ordinary men

and women? Civil liberties, let us remind ourselves, need protecting from the international terrorists who operate cross-border terrorism, drug-trafficking, transnational crime, the trafficking of women and children. These are the civil liberties that we seek to protect with these proper, balanced data retention rules..

When the European Commission first proposed that the 1997 EU Directive should be updated in July 2000 its amendments were uncontroversial. The EU's law enforcement agencies, however, saw it as an opportunity to get what they had long argued for: that telecommunications data should be retained and they should have access to it. The EU governments used the attacks on 11 September to put the issue on the top of the agenda - even though the powers to intercept and surveil the telecommunications of suspected terrorists already existed.

Up until 11 September the European Commission, the EU Data Protection Commissioners, the European Parliament and dozens of civil society groups were opposed. The Commission dived-in in December and the European Parliament in May this year.

At the time Tony Bunyan, *Statewatch* editor, commented:

The right to privacy in our communications - e-mails, phone-calls, faxes and mobile phones - was a hard-won right, now it had been taken away. Under the guise of fighting "terrorism" everyone's communications are to be placed under surveillance. This is a practice that is rightly associated with authoritarian regimes

The draft Framework Decision on data retention

While the European Parliament was still discussing the changes to the 1997 EC Directive on privacy in the telecommunications sector the Belgian government was working on a draft Framework Decision - a measure binding on all EU member states - on the same issue. Indeed one of the argument officials used to legitimate the changes to the 1997 Directive was that it was *not* binding, it simply allowed member states to introduce data retention if their governments and parliaments agreed.

This "voluntarist" approach was never seriously considered. Since January 1995, when the EU governments adopted the FBI's "Requirements" (to be placed on service and network providers), it has been clear that for the surveillance of telecommunications to work data retention would have to be mandatory for EU member states (and the applicant states). Surveillance requires, at one level, the "real-time" interception of a series of communications. For example, a phone conversation between two people in countries A & B which is immediately followed by the person in country A ringing a person in country C and the person in country B ringing someone in country D. Equally, the same model would apply to the surveillance of e-mail data which would break down if countries B and D did not have the same laws on data retention and access to the data by law enforcement agencies (police, immigration, customs, prosecution service and internal security agencies).

Framework Decision: from non-binding to binding

In June the incoming Danish Presidency of the Council of the European Union (the 15 EU governments) submitted "Draft Council conclusions" on this topic, which contain four Recommendations, to the EU's Multidisciplinary Group on Organised Crime (MDG). The Draft Conclusions say that:

*within the very near future, **binding rules should be established** on the approximation of Member States' rule on the obligation of telecommunications service providers to keep information concerning telecommunications in order to ensure that such information is available when it is of significance for a criminal investigation (emphasis added)*

The four Recommendations proposed are very general: i) "to ensure that law enforcement agencies are able to react immediately and effectively to the new challenges"; ii) to ensure the agencies "receive further training"; iii) to ensure that

decisions on interception and access to data is taken quickly, "especially in the case of mobile telecommunications, where the communicating parties can move freely from country to country without warning"; iv) to find solutions to the "increased use of encryption".

The work programme of the Danish Presidency says it: "intends to submit a proposal for a Council Resolution on investigation methods in relation to modern information technology, including the storage of telecommunications data" (3.7.02). In their effect Council Resolutions and Council Conclusions are the same, they are both non-binding and intergovernmental (that is, outside EC Treaties).

While Recommendations, Resolutions and Conclusions are not binding Framework Decisions are. The Danish Presidency declares its intent to "within the very near future" put forward "binding rules".

Statewatch has acquired a copy of the "Draft Framework Decision on the retention of traffic data and on access to this data in connection with investigations and prosecutions" (prepared by the Belgian government). The draft has been circulated to a number of other EU governments, including the UK, for comment and will now be taken up in the Danish Presidency's programme.

The Recitals

The Draft Framework Decision starts with 16 Recitals followed by 10 Articles. In the Recitals it is argued, as is now common, that there is a need for:

maintaining a balance between the protection of personal data and the need of the law and order authorities to have access to data for criminal purposes (Recital 3)

This is a balance which is struck in favour of the "law n' order agencies".

Again in Recital 4 is another familiar argument used to legitimise new measures in the EU. The argument involves, including buzz words like "paedophile" and "racism" to justify intrusive new powers (in the 1990s the words were "organised crime" and "illegal immigrants"). Thus the Recital reads:

Access to traffic data is particularly relevant in the case of criminal investigations into cybercrime, including the production of paedophile and racist material

The EU's concept of "cybercrime" is itself high problematic and is by no means limited to "paedophile and racist material".

The argument in the next four Recitals (5-8) is that laws in EU member states generally allow access to communications traffic data where authorised by a court or Minister for a specific investigation. "Many Member States" have also, it says, passed legislation requiring compulsory "a priori retention" but "the content of the legislation varies considerably" - the direction of the argument is obvious, there is a need for harmonisation (which would also have the effect of bringing up to speed member states who were not intending to do this). Thus:

These differences present problems... and are prejudicial to cooperation in criminal matters. A harmonisation is therefore desired both by the authorities responsible for criminal investigations and by the providers of telecommunications services

In sum:

The purpose of this present framework decision is to make compulsory and to harmonise the a priori retention of traffic data in order to enable subsequent access to it, if required, by the competent authorities in the context of criminal investigation.

The overall rationale finishes with the bland statement that although the retention of data "constitutes an interference in the private life of the individual" it "does not violate" international laws on privacy "where it is provided for by law and where it is necessary in a democratic society, for the prosecution of criminal offences" (Recital 9). This argument has many potential dangers

not the least of which is, what if a law is adopted which undermines a democratic society?

The Recitals then move on to deal with the details. Apparently:

a minimum period of 12 months and a maximum of 24 months for the a priori retention of traffic data is not disproportionate (Recital 12)

Recital 14 says that it "would be disproportionate" if the minimum list of "types of data to be retained" was extended "to the content of messages exchanged or of the information sources consulted under whatever form" (eg: pages visited on internet sites). It remains to be seen whether this version will end up in the adopted text - there will be those in the "law enforcement community" who will argue that there is only limited value in keeping only the traffic data but not the content.

It appears there are likely to be at least four further Framework Decisions. One will cover a "minimum list of data to be retained" by telecommunications service providers. Second, although the draft Framework Decision says that it will *not* apply "to data at the time of transmission, that is by monitoring, interception or recording of communications" this is coded language for saying than another Framework Decision is in the pipeline (the "real-time" interception of communications was included in the "Requirements" adopted in January 1995). Third, a certificate for the exchange of data between EU Member States. Fourth, we can expect another to cover access to the content of communications.

The Articles

Article 1 covers "Definitions" the most important of which is on "traffic data", defined here as "all data processed which relate to the routing of a communication by an electronic communications network" which is not very illuminating. But there is a footnote referring to the Council of Europe Cybercrime Convention (Article 1 point d) which says:

"Traffic data" means any computer data relating to a communication by means of a computer system, generated by a computer system that formed part of the chain of communication, indicating the communication's origin, destination, route, time, date, size, duration or type of underlying service

Article 2 would allow access to "the authorities responsible for criminal investigations and prosecutions" - which is interesting in the light of the UK government's attempt to give access to traffic data to some 1,039 public authorities (see *Statewatch News online*, June 2002).

Article 3.1 says that there will be an "obligation" on a telecommunications service provider or a "trusted third party" (not defined) to retain "for a period of 12 months minimum and 24 months maximum" the following categories of traffic data:

- a) *Data necessary to follow and identify the source of a communication;*
- b) *Data necessary to identify the destination of a communication;*
- c) *Data necessary to identify the time of a communication;*
- d) *Data necessary to identify the subscriber;*
- e) *Data necessary to identify the communication device*

Article 3.2 says that the "types of data" must be:

limited to what is necessary in a democratic society for criminal investigation and prosecution

This begs a major question: what is necessary in a "democratic society" is not static. The boundaries for "what is necessary" have expanded leaps and bounds over the past few years and in particular since 11 September. Indeed it has to be asked are there any boundaries?

Article 3.4 sets out a minimum list of 33 "serious" offences to be included, which is the same as set out in the European arrest

warrant. They include: trafficking in human beings, computer-related crime, facilitation of unauthorised entry and residence and motor vehicle crime. This same list of offences appears in a number of recent measures (including the Framework Decisions on the European arrest warrant and the Freezing of assets) and looks like becoming a list of "quasi-federal" offences - many have not been harmonised or even defined.

Article 4 sets out "Procedural rules and data protection", which contains *no* provision on data protection.

The Article again says that access to traffic data retained will on be allowed for:

judicial authorities or, to the extent that they have autonomous power in criminal investigation prosecution, to police authorities (Article 4.1)

It says further that: "Data to which access has not been asked at the end of the mandatory retention are destroyed" (ie: after 12 or 24 months).

Article 4.2 says nothing in this Article limits national laws which cover: "access to data during their transmission, including tracking, interception and recording of telecommunications".

Articles 5-8 deal with requests and the exchange of traffic data between the "competent authorities" of EU Member States.

Thus Article 6 defines "competent authorities" as follows:

The issuing authority shall be the authority of the issuing State which is competent to issue a decision of access to retained traffic data by virtue of the law of the issuing State (Art 6.1)

Under the proposal of the UK government, that was withdrawn for re-consideration after a public outcry, a "competent authority" could be any one of the 1,039 "public authorities" authorised under the Regulation of Investigatory Powers Act 2000 - for which there is no comprehensive oversight in place.

The "executing authority" (ie: the authority agreeing to the request) shall be a "judicial authority of the executing State" (Art

6.2).

Article 7 sets out the procedure for the exchange of data. The "issuing authority" will send a request to the "executing authority" in the form of a "certificate" which will simply cover:

- a) *the issuing authority;*
- b) *information allowing to identify the provider of telecommunication services which must have retained the traffic data;*
- c) *the criminal conduct under investigation;*
- d) *indications allowing to select the searched data among all retained data"*

The "executing authority" is allowed (Article 7.4) to ask for "further information to enable it to decide whether access to retained data would be authorised in a similar national case". However, if the "issuing state" simply states that the "criminal conduct under investigation" is one of the 33 listed crimes there is no apparent reason why further information would be required.

Article 7.5 deals with the special situation of the UK and Ireland who are not yet full members of the Schengen Convention on policing matters. The UK and Ireland may state in a declaration the "central authorities" to be notified "when the provisions on mutual assistance of the Schengen Implementing Convention are put into effect for them". Article 8 "Conditions of execution" appears to allow Member States, like the UK, who want to authorise hundreds of "authorities" to request access, to apply the same rules when answering a request. Implementation of the Framework Decision is set for 31.12.03 (Article 9.1).

Sources: see Stewatch, vol 7 no 1 & 4 & 5; vol 8 nos 5 & 6; vol 10 no 6; vol 11 nos 1 & 2 & 3/4; vol 12 no 1.

US/EU/ICC

Farcical birth of International Criminal Court

On 17 July 1998, the Rome Statute on the creation of an International Criminal Court (ICC) to prosecute people accused of genocide, crimes against humanity and war crimes was agreed. The treaty was welcomed by governments, lawyers and civil society groups as the most significant development in international law since the UN Charter more than 50 years before. For the court to be established sixty states had to ratify the treaty. The sixtieth was marked by a ceremony at the UN headquarters in New York on 11 April 2002 and the Rome Statute duly entered into force on 1 July. The ICC will be located in The Hague, the Netherlands, and is expected to be up-and-running in the first half of next year. 139 states have now signed the treaty and over half have ratified it.

US and them

In keeping with the new mantra of US unilateralism and disregard for international law, the Bush administration has condemned the ICC since coming to power, 'unsigned' the Rome treaty and signing domestic legislation against the future court. In May it took a further step, attempting to insert a paragraph into a UN Security Council Resolution on East Timor to remove the actions of peacekeepers there from the jurisdiction of the ICC. This proposal was rejected, but the US reintroduced its demands on 19 June in regard to the renewal of the UN peace-keeping operation in Bosnia-Herzegovina and also proposed a general resolution to exempt peace-keepers from non-ICC states stationed anywhere in the world. This time it threatened to withdraw all US personnel

from all UN peace-keeping operations if it did not get its way.

Opposition from the international community was fierce and led by an apparently united EU which together with the 10 accession candidate states expressed its "deep regret" through the current Danish presidency. Kofi Annan, UN Secretary General, publicly told the US to reconsider, governments from no-less than 116 UN member countries stated their opposition, while the UK ambassador to the USA, Jeremy Greenstock said the UK was "unalterably opposed".

A temporary extension of the UN Bosnia mandate was agreed on 21 June and again on 3 July, giving the UN Security Council a further 12 days to resolve the situation. During this period, opposition to the US proposals among key states weakened considerably, first with UK backing for the US demands, followed soon after by four more of the 15 voting Security Council members: Russia, Norway, China and Cameroon. In an open-session of the UN Security Council on 10 July, representatives of 72 countries made statements again opposing the proposal, but on 12 July, the other nine voting states - Bulgaria, Columbia, France, Guinea, Ireland, Mauritius, Mexico, Singapore and Syria - accepted a "compromise" and adopted Resolution 1422 (2002).

UN Security Council Resolution amends Treaty

It is hard to see how the Resolution can be described as compromise. Article 1 requests UN states not to allow ICC investigation or prosecution of officials or personnel from a

country not Party to the Rome Statute (such as the US) involved in any "UN established or authorized operation", for a twelve-month period, starting on 1 July 2002. Article 2 provides for annual renewal of Article 1 "under the same conditions each 1 July for further 12-month periods for as long as may be necessary" (this rolling extension is the "compromise"). Article 3 orders the member states to abide by Article 1 and their UN obligations.

The Resolution raises various questions as to the effect and validity of international law-making. It is based on Chapter VII of the UN Charter, requiring the Security Council to consider a "threat to the peace", "breach of the peace" or "an act of aggression", though it is quite obvious that none of these conditions apply to the ICC (the US argued that the crisis it had contrived in threatening to withdraw its peacekeepers from Bosnia constituted a "threat to the peace"). Under Article 3 all UN member states must act in direct contravention of the object and purpose of the ICC treaty, with the overall effect that UNSC Resolution 1422 (2002) - which was opposed by a large majority of UN member states and agreed by only 15 - breaches the UN mandate and unlawfully amends an international treaty now ratified by 76 countries.

"Zero exposure" of US soldiers to ICC jurisdiction

The Coalition for an International Criminal Court (CICC), which represents more than 1,000 NGOs and civil society groups that support the ICC, has conducted a survey of all 16 current UN peace-keeping operations and concludes that:

In every UN peacekeeping mission, the US either has no personnel in the mission, the host state is not a party to the ICC, or the ICTY [International Tribunal for the former Yugoslavia] has primacy. Thus, total US exposure to the ICC is zero in every case (emphasis in original)

Moreover, under the principle of "complementarity", the ICC will only take cases when national legal systems are unwilling or unable to do so. This means that US prosecutors could easily prevent cases reaching the ICC by conducting a "good faith investigation" themselves. Additionally, the jurisdiction of the ICC - over "the most serious of crimes of concern to the international community as a whole" - is limited to widespread or systematic crimes against humanity and war crimes offences that are planned or part of policy and therefore unlikely to ever cover peacekeepers. The ICC also respects 'SOFAs' (Status of Forces Agreements) which are usually negotiated between the countries hosting peacekeeping forces and give exclusive jurisdiction over alleged offences to the state that supplies the soldiers (in January, the UK negotiated this kind of agreement with Afghanistan on behalf on the 19 states with a military presence in the country). Finally, it should also be pointed out that the ICC can only examine crimes committed after the entry into force of the statute, so contrary to the hopes of human rights campaigners, former US

secretaries of state and intelligence chiefs are also immune from prosecution.

The bigger picture

Through the UN Resolution, the US has achieved immunity from ICC jurisdiction not just for its peace-keepers, but any personnel involved in planning or commanding the operations. And not just peace-keeping operations but any military action approved by the Security Council, (for example, the US led war in Afghanistan). This has all been done under the pretext of protecting US "peace-keepers" from injustice, despite their *de facto* position outside the ICC's jurisdiction anyway. The only logical conclusion is that the US wants to undermine the ICC and prevent it developing into the future world criminal court its supporters promote.

EU shows a different enthusiasm

While the USA wants little to do with the ICC, the EU appears a strong supporter. By mid-2002 all 15 member states had ratified the Rome Treaty and on 11 June adopted an EU Common Position pledging full support for the ICC (quite how the UK has interpreted this common position is unclear given that is now widely reported that it cooperated closely with the US on its demands for immunity from the outset).

On 13 June, the EU Justice and Home Affairs adopted a Decision setting up a network of contact points for ICC investigations, prosecutions and information exchange. This Decision went largely unnoticed until the Danish Presidency of the EU proposed that the network should be used to screen all applicants for asylum or residence - not just for "war crimes" but for "similar serious offences including terrorism". "War crimes", "terrorism" and "similar serious offences" are not defined. In an analysis of the proposal, *Stewatch* concluded that:

The proposed Decision could have the Kafkaesque result that persons, including genuine refugees, EU citizens and their family members, are denied a residence permit without ever knowing the reasons why or having a chance to challenge these reasons.

Security services have been demanding open-ended powers to become involved in visa, asylum and residence applications since 11 September, despite the fact that any such powers contravene established processes and human rights. The way the US and EU are going, the ICC appears not as the fledgling "world court" and neutral arbiter of international law the world was promised, but little more than another mechanism for the West to subject the rest of the world to their own visions of justice.

Sources: www.iccnw.org; EU Common Position 2001/443/CFSP on the ICC; EU Decision 2002/494 on exchange and information and contact points for ICC; Proposed EU Council Decision on the investigation and prosecution of war crimes etc., 10204/02, 19.6.02 (for analysis of this proposal see Stewatch News Online, July 2002

EU The EU Constitutional Convention: Will the Sinners Repent?

Since the end of February, a (constitutional) Convention has been meeting regularly under the chairmanship of former President Giscard d'Estaing of France to consider the future of the EU. This would seem an ideal opportunity to consider the problems with the legitimacy, transparency, democratic and judicial control and human rights obligations of the EU, particularly as regards Justice and Home Affairs (JHA) matters. But the obvious problem is that national executives and the Council Secretariat

that services them benefit from the lack of transparency and democratic scrutiny within the EU system. To what extent do they show signs of willingness to change their ways?

Background

The Convention is composed of delegates from the Commission, each current Member State's executive, the European Parliament

(EP) and all Member States' national parliaments (including the national parliaments of all candidate Member States). It is due to meet until spring 2003 and then present its results to an EU summit meeting. Subsequently a new Intergovernmental Conference (IGC) will meet in 2003 and/or 2004 to consider amendments to the EU Treaties, to conclude before the next EP elections in spring 2004. This IGC will follow the official procedure for such IGCs, which essentially places all decision-making power in the hands of representatives of Member States, with considerable *de facto* participation of the Council Secretariat and Legal Service. But the IGC will doubtless take considerable account of the results of the Convention. So in principle it seems that the future of the EU will be influenced by a mostly wider range of participants than in the past, as it largely comprises people from the national and European Parliaments, as compared to the total domination of IGCs by national executives.

While the structure of the Convention is based on the previous Convention that met from 1999-2000 to draw up the "EU Charter on Fundamental Rights", which was subsequently approved unamended by the EU institutions, it differs from the prior Convention in having participation from the candidate countries, a more distant attitude to civil society (see further below), a bigger and stronger Presidium and detailed rules of procedure, including the extensive use of working groups. Also it seems that Member States are paying greater attention to the workings of the Convention this time.

Originally, the next IGC was due to consider answers to four questions set out in a Declaration to the last Treaty amending the EU and EC Treaties, the Treaty of Nice, which has not yet been ratified. These questions concerned: the status of the EU Charter of Fundamental Rights; the role of national parliaments; a clearer division of powers between the EU and its Member States, including the principle of 'subsidiarity' (taking decisions at the most optimal level within the EU); and the simplification of the treaties. Subsequently, the EU summit in Laeken in December 2001 adopted a "Laeken Declaration" which both established the Convention and set out a more detailed list of questions to consider.

At the moment it seems that the Convention is likely to conclude next spring by reaching as much agreement as possible on a relatively short "constitutional Treaty" including all the basic rules on the composition and functioning of the EU institutions, the division of power between the EU and its Member States, EU decision-making processes and the role of human rights in EU law. In principle this should be reached by consensus but this requirement may be fudged by not taking a formal vote or by presenting "options" on all or (more likely) some issues. A draft of this Treaty will likely be presented to spark discussions in late 2002.

The Convention to date

To date the Convention has held a number of plenary meetings examining the basic questions concerning the foundation of the EU and six working groups were set up this spring to report back this autumn to the plenary. These groups address subsidiarity, the role of national parliaments, legal personality for the EU (as distinct from the EC, which clearly has legal personality), economic governance (about the extent of the EU institutions' and the European Central Bank's power over national economic policy), human rights (concerning both the status of the EU Charter of Rights and the ability of the EU or EC to ratify the European Convention on Human Rights) and "complementary competence" (the areas like health and education in which EC powers are ancillary to those of Member States). It seems that the "human rights" group is also due to consider the limits to the jurisdiction of the Court of Justice over justice and home affairs issues.

In light of further debates within the plenary, four further working groups were to be set up in late July or possibly September, presumably to report back later in autumn. These will deal with justice and home affairs, external relations, defence, and EU decision-making process and legal instruments. The JHA working group has a mandate to discuss four issues: the "improvements" to the Treaties to "promote genuine, full and comprehensive implementation of an area of freedom, security and justice"; improvements to instruments and procedures; clear identification of criminal law matters to be addressed at EU level, along with stepping up criminal judicial cooperation; and adjustments to the EC Treaty regarding EC competence, particularly for immigration and asylum. So most key JHA issues will be discussed in this working group, although certain issues affecting JHA will be discussed by the others: for example, the jurisdiction of the Court of Justice in the human rights group; treaties with third states on criminal law and policing matters in the legal personality and external relations groups; and the role of national parliaments in JHA matters in the national parliaments group. The key issues will be how far the "normal" EC method, with a Commission monopoly on proposals, qualified majority voting in the Council, co-decision by the European Parliament, extensive jurisdiction for the Court of Justice and the "supremacy" and "direct effect" of EC law will apply to all JHA matters. While there appears to be a sizeable majority in the Convention for fuller or at least more extensive application of the "Community method" to JHA matters, some Member States still object.

It is too early to say at this stage whether the Convention is or is not likely to produce a final text that significantly improves the legitimacy, transparency or accountability of the EU or human rights protection within it. However, so far three disturbing trends are evident.

Problems with the Convention

First, there is a very limited role for civil society to date, particularly as compared with its role in the Convention that drew up the EU Charter of Fundamental Rights. There has been only one meeting between the Convention and civil society and there is no indication that the Convention is taking significant account of civil society contributions to the online "Forum" for civil society to comment on the Convention's work.

Secondly, the Member States seem determined to deal with some issues outside the Convention framework. Discussions were held on the future of the rotating Council Presidency during spring 2002 and the Seville summit in June 2002 called for a report on the future of the Presidency system by the end of the year, apparently with a view to reaching a "political agreement" on future Treaty amendments on this issue without the involvement of the Convention, or even the use of the normal procedure for convening IGCs. This is a separate issue from reforming the functioning of the Council under the current Treaty rules (which the Seville summit also agreed on), as the system of rotating Presidencies plays a significant role in the EU system and any Treaty amendments relating to it should be discussed in the broader open forum of the Convention, not the narrow secret club of Member States' leaders personal representatives.

Thirdly, transparency could be improved, both as regards the Convention's agenda and the Convention itself. It appears that while the openness of Council meetings is on the agenda of the working group on national parliaments, broader issues of access to documents and freedom of information have not yet been discussed. Even as regards open meetings, there is a risk that the Council and some Member States will try and deflect the critics by pointing to the decision at the Seville summit to hold open Council meetings whenever a proposal for legislation under the "co-decision" procedure is first presented and when it is finally adopted. This decision has been widely "spun" to the press as a

decision to broadcast all Council meetings discussing any legislation at all points of the legislative procedure. But it does not cover any discussions under other forms of procedure, such as the "consultation" procedure still widely applied to many important areas (such as JHA matters, agriculture, fisheries and tax). Nor does it cover "non-legislative" matters like external relations, which need greater scrutiny than provided for at present. Moreover, even where it does apply, most of the discussion concerning legislation subject to "co-decision" will still take place behind closed doors.

As for the Convention itself, the plenary meetings are held in public and the Presidium's documents are translated and made public. But at least one working group does not meet in public (the legal personality working group) and many of the working groups' working documents are not made available online. Most contributions from civil society and even members of the Convention are not translated and so will have limited impact. Since the members of Presidium chair the six initial working groups at least and the Presidium has strict control of the plenary sessions according to the rules of procedure, there are grave doubts about whether the members of national parliaments in the Convention will have significant influence over a Presidium

strongly influenced by the Member States' executives and the Council Secretariat.

Conclusion

The Convention on the EU's future will likely be the last significant opportunity for some time to improve the workings of the EU as regards democracy, transparency and accountability. The case for necessary improvements is being argued vigorously at the Convention and has not (yet?) been lost. However, a possible "stitch-up" of the Convention by Member States' executives and their allies in the Council Secretariat and the Convention Presidium is still a significant possibility. Failing that, national executives will have the final say in the ensuing IGC. So the chance of significant reform still hangs in the balance.

Mandate, working group on the area of freedom security and justice (CONV 179/02); Summary of the meeting of working group IV on national parliaments on 10 July 2002 (CONV 198/02); note on the plenary meeting of 6 and 7 June 2002 (CONV 97/02); discussion papers on the area of freedom, security and justice (CONV 69/02 and CONV 70/02); Conclusions of the Laeken European Council; Conclusions of the Seville European Council; Declaration 23 to the Treaty of Nice.

Viewpoint

In the name of a "Just War" - defending the "civilised world"

Extract by Phil Scraton from "Beyond September 11 - an anthology of dissent" (Pluto Press)

On January 29, 2002 George W Bush gave his State of the Nation address. A president whose popularity bordered on the unelectable just a year earlier, whose credibility at home and abroad had seemed torn beyond repair, now enjoyed an 82 per cent rating within the US. The key to this remarkable turnabout was in his first sentence: "As we gather tonight, our nation is at war..." [footnote 1] Forget the economic recession, ignore the criticisms of US global domination and reject the growing alienation of populations throughout the Middle East and Asia, "the State of our Union has never been stronger". As Bush was constantly interrupted by waves of enthusiastic applause, 77 times in all, his triumphalism was unrestrained: "Our nation has comforted the victims ... rallied a great coalition, captured, arrested, and rid the world of thousands of terrorists, destroyed Afghanistan's terrorist training camps, saved a people from starvation, and freed a country from brutal oppression."

Thanks to the US military "we are winning the war on terror". The message of the Afghanistan intervention was "now clear to every enemy of the United States: even 7,000 miles away, across mountains and continents, on mountaintops and in caves - you will not escape the justice of this nation". Yet the "war" on terror was in its infancy as "tens of thousands of trained terrorists ... schooled in the methods of murder, often supported by outlaw regimes" remained at large. The twin objectives for the US and its allies were the elimination of terrorist training camps and the bringing of terrorists to justice alongside the prevention of regimes "who seek chemical, biological or nuclear weapons from threatening the United States and the world". While "training camps operate" and "nations harbour terrorists, freedom is at risk". And so, "our war against terror is only beginning". It represented "the civilised world" against the rest.

Bush named the states and their "terrorist allies" which "constitute an axis of evil", the regimes that "pose a grave and growing danger". The US knew "the true nature" of North Korea, Iran, Iraq and Somalia. Iraq was "a regime that has something to hide from the civilised world". Meanwhile, the US remained operational in Bosnia, the Philippines and off the coast of Africa

"acting" to "eliminate the terrorist parasites". Whatever proved "necessary to ensure our nation's security" would be done without hesitation or further provocation for "the price of indifference would be catastrophic". As has been the habit of many contemporary US senior politicians, Bush transformed collective responsibility for waging war into one of destiny and honour: "History has called America and our allies to action, and it is both our responsibility and our privilege to fight freedom's fight."

History and freedom become self-evident determinants that seemingly release the US and its allies from voluntarism and choice. Perhaps Sir Paul McCartney, with an equally uncomplicated lyric written in support of the post-September 11 military action, more succinctly caught the populist mood that projected Bush's poll ratings into the stratosphere: "This is my right/A right given by God/To live a free life/To live in freedom/Anyone who tries to take it away/Will have to answer/For this is my right/Talkin' about freedom/Talkin' about freedom/I'll fight for the right/To live in freedom". Concert hall or Congress hall, the audience was ecstatic; a president and a Knight of the Realm together in perfect harmony. What was remarkable, perhaps not when Thatcher's Falklands/Malvinas War is remembered, was how Bush became elevated to major league statesman and presidential hero while the US economic recession deepened and international markets recoiled from the spectacular collapse of Enron. His State of the Nation speech pressed the right buttons, making spurious yet convincing connections between the necessity of costly military interventions abroad and swallowing the bitter pill of economic downturn.

Apparently subjected to 17 redrafts, the speech sabre-rattled its way through to the "billion dollars a month" cost of the "war on terror" and the promise of a pay rise for the "men and women in uniform". Bush justified the "largest increase in defence spending", stating that "while the price of freedom and security is high, it is never too high. Whatever it costs to defend our country, we will pay." Not only was this a commitment to bankrolling the "war", but also to doubling the funds available to establish "a sustained strategy of homeland security" focused on

"bioterrorism, emergency response, airport and border security, and improved intelligence". Built on the twin foundations of the "war on terror" and "homeland security" would be the "final great priority ... economic security for the American people". Thus the three objectives were successfully interwoven: winning the war, protecting the homeland and revitalising the economy. The "priorities" were "clear" and the "purpose and resolve we have shown overseas" would succeed "at home": "We'll prevail in the war, and we will defeat this recession." Bush's knockabout one-liners on jobs, energy, trade, tax cuts, welfare reform, teaching and health security represented a cynical exercise mobilising ideologies and rhetoric of patriotism and freedom to demand public acceptance of unemployment, low-pay long-term poverty and social exclusion.

The carefully choreographed and interminably rehearsed delivery sought and received endorsement from the newly liberated, from the bereaved and from the heroes. During the address he welcomed to Congress Chairman Hamid Karzai, the Afghanistan interim leader, and Dr Sima Samar, the new minister of women's affairs. At the moment of remembrance to those who had died at Ground Zero he introduced Shannon Spann, the wife of the CIA officer killed at Mazar-I-Sharif. And while affirming his commitment to homeland security he acknowledged the two flight attendants who had apprehended the British "heel-bomber" in flight. His final introduction, as he reflected on the "courage and compassion, strength and resolve" of the American people, was "our First Lady, Laura Bush". She had brought "strength and calm and comfort" to our nation in crisis".

Bush made a commitment to the expansion of the US Freedom Corps (homeland security) and the Peace Corps, encouraging development and education and opportunity in the Islamic world. This expansion would be at the heart of "a new culture of responsibility". The US had taken the lead, "defending liberty and justice because they are right and true and unchanging for people everywhere". There was "no intention" to impose "our culture" but the "demands of human dignity: the rule of law; limits on the power of the state; respect for women; private property; free speech; equal justice; and religious tolerance" were "non-negotiable". He concluded: "Steadfast in our purpose, we now press on. We have known freedom's price. We have shown freedom's power. And in this great conflict, my fellow Americans, we will see freedom's victory."

On the long march to freedom Bush was not celebrating a war won. He was not winding down a reactive and reactionary operation which had deposed a brutal and brutalising regime. Rather, he was proclaiming the initial success of what would be an enduring military offensive which "may not be finished on our watch ...". The US had taken it upon itself to use its superpower, lone ranger status to police globally and engage selectively according to its criteria for establishing terrorism, its definitions of lawful combat and its acceptance of international conventions regarding war. The shame and guilt of Vietnam finally had been buried deep in the rubble of Afghanistan. A "just" war was a war so labelled; "justice" was justice according to the US administration. And the primary enemies, comprising a "terrorist underworld", were offered to the American nation: Hamas, Hezbollah, Islamic Jihad, Jaish-i-Mohammed.

As Bush was widely criticised for cranking up the volume of war, particularly his endorsement of populist assumptions about "civilisation", "evil" and "terrorism", he fiercely condemned "nations that developed weapons of mass destruction" that might "team up with" or give shelter to terrorist groups.[footnote 2] These were the nations on the US "watch list". He continued, "People say, well, what does that mean? It means they had better get their house in order is what it means. It means they better respect the rule of law. It means they better not try to terrorise America and our friends and allies or the justice of the nation will be served on them as well." So that was what carpet-bombing,

cluster bombs, collateral damage, atrocities, civilian deaths and Camp X-Ray together amounted to: US justice.

While Bush appeared to enthuse at the projection of "tens of thousands of trained terrorists" on the loose, providing him and his administration with their calling, a real and present danger was inspired by US words and deeds. Throughout Asia and the Middle East the deep distrust of the US, the hate directed against its military-industrial complex and cultural imperialism and its open disdain for human rights while mouthing rhetoric of the "civilised" against the "uncivilised", emphasised a profoundly riven world. For "Third World" nations already knew to their cost that the US had never promoted globalisation - politically, economically or culturally - as an arena for equal participation, equal shares or equal opportunities.

Five months on from the September 11 attacks and many deaths beyond those at the World Trade Center, the Pentagon and in the Pennsylvania countryside, the enduring casualty - as so often the case - is truth. The struggle for truth is about making public and private institutions accountable for their definitions, policies, strategies and actions. It is about challenging what Foucault analysed as "regimes of truth" through the critique of power relations. Power that has the ability, capacity and ideological appeal to harm with political confidence and legal impunity. Power that has the authority to confer legitimacy on external military action and on internal law enforcement. To this end it can establish partial investigations, deny disclosure of information and evidence and place restrictions on findings.

Conversely, it is formidable in its capacity to deny legitimacy, neutralise opposition and disqualify knowledge - ruling alternative accounts out of court. It pathologises victims, survivors and campaigners, using patriotism, loyalty and ostracism as means of silencing. The condemners become condemned. The demonisation and vilification at first directed towards the "terrorists" is redirected towards "sympathisers", "appeasers" and "traitors". Within this distorted world of "with us or against us" the casualties of war, regardless of their status as military or civilian, are held responsible; their losses, their injuries, their suffering reconstructed as self-inflicted. With so much reporting and commentary derived in the manufacture and selection of news through spin and manipulation, it is not difficult for states and their administrations to deny responsibility for their part in atrocities, their part in the long-term consequences of war. "Refusal to acknowledge" reveals the power within advanced capitalist states at its most cynical, its most self-serving. History soon becomes rewritten, truth becomes degraded, the pain of death and destruction heightened by the pain of deceit and denial. It is from within this experience that the next generation of terror strategists will emerge and develop their consciousness. And the "sacrifice, determination and perseverance" demanded by Rumsfeld in the US global "war on terror" will be matched.

Footnotes:

1. All quotes taken from *The President's State of the Union Address issued by the Office of Press Secretary, The White House, 29.1.02.*

2. *Guardian*, 1.2.02.

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