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SURVEILLANCE OF MOVEMENT

Biometric ID documents herald a global identification system

Nearly two years on from 11 September 2001 there have been a number of significant "casualties" as the "war on terrorism" is also a "war on freedom and democracy". The first are the measures being put in place to exclude or remove refugees and asylum-seekers fleeing from poverty and persecution. Second, the targeting and stereotyping of resident migrant communities across Europe. All refugees, asylum-seekers and resident migrant communities are regarded as potential terrorists and if not terrorists then potential criminals. Third, are the moves across the EU to introduce the surveillance of telecommunications (phone calls, e-mails, faxes, mobiles and internet usage) of the whole population (see Statewatch vol 12 no 6).

A fourth sweeping move is now on the agenda - the introduction of biometric identifiers on EU passports, visas and identity cards (and the introduction of biometric ID cards where they do not currently exist).

It was in 2002 that the USA announced that from October 2004 all travel documents for people arriving there have to have biometric details or passengers will face lengthy checks on arrival. Since then the proposals have been working their way through various international fora. On 5 May 2003 the Justice and Home Affairs Ministers of the G8 countries meeting in Paris endorsed a "Declaration" drawn up by the G8 Lyons group (police and security experts on organised crime) and the G8 Roma group (intelligence and security agencies). This then formed the basis of the decision taken by the International Civil Aviation Organisation (ICAO, a UN body) in Montreal on 28 May 2003.

On 3 June the Commission published a Communication on illegal immigration, which in passing said EU passports too could hold biometric details (COM(2003) 323). On the same day, 3 June, the Greek Presidency of the Council of the European Union produced the first draft Conclusions for the Thessalonika EU Summit on 19-20 June - this too, under the heading of "Visas", slipped in a commitment to introduce biometric data on "EU citizens' passports".

Although the Commission "spins" the line that this move is in response to the US demand, Jonathan Faull, Director-General of the JHA Directorate, told *European Voice* (10.7.03) that: "We would have done it without international pressure because we need more secure documents".

In 2002 the EU adopted two Council Regulations on a uniform formats for residence permits (1030/2002) and on uniform formats for visas (334/2002). However, the former expressly said that: "No information in machine-readable form shall be included in the residence permit". On 10 December 2002 the Benelux governments (Belgium, Netherlands and Luxembourg) called for an amendment to allow the inclusion of biometric data and on 28 January the German government called for biometric data in both measures.

Visa data is to be held on the new VIS database which will be integrated into new SIS II EU-wide computer system (Schengen Information System). In all likelihood the biometric data on EU citizens' passports will also be held on SIS II.

There are three forms of biometric data available: fingerprints, iris-scans and facial scans. Even though fingerprints are a universally available standard the ICAO (on the recommendation of the G8's law enforcement, security and intelligence agencies) has opted for "facial scans". The scans of people's faces will be held on a computer chip on passports or visas and also stored on national computer systems so that a person's identity can be checked.

The decision for the EU to adopt biometric data on EU citizen's passports, visas for those visiting, resident's permits for third country nationals (and moves for similar ID cards at national level) has already been taken in principle through international fora (G8, ICAO, WCO etc) without any public debate or parliamentary discussion at any level.

The ICAO statement says biometric documents although being developed for air travel would also be "effective" at seaports and land borders lead in time to a "global identification" system.

An in-depth analysis with full documentation is available on the Statewatch website at: www.statewatch.org/news/2003/aug/analy20.htm

IN THIS ISSUE

UK: Special Branch more than doubles in size see page 16

EU Constitution & Justice and Home Affairs see page 19

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CIVIL LIBERTIES

SPAIN/ARGENTINA

Argentinean torturer faces charges after extradition to Spain

Ricardo Cavallo, a former Argentinean frigate captain, was remanded in custody by judge Baltasar Garzón on 29 June 2003 in Soto del Real high security prison to the north of Madrid, following his extradition from Mexico the day before. He is charged with genocide, torture and terrorism during the years of the Argentinean military junta.

At the preliminary hearing, Cavallo refused to make a statement, an attitude that he justified on the basis of his membership of the military (implying that he must follow orders), and sought to involve the Argentinean government in his case by asking for instructions on how to behave and what to declare. This was rejected by the Argentinean government which denied him "any kind of official assistance".

The charges against him relate to the kidnapping and disappearance of hundreds of Argentinean left-wingers, many of whom were tortured in the *Escuela de Mecánica de la Armada*, (ESMA, Army Mechanical School), which became a centre for the torture of dissidents. Cavallo (aka Serpico), is accused of murder, the kidnapping of 110 people and the "disappearance" of 227. He also allegedly confiscated and falsified documents to appropriate the property of people that were murdered for himself and his fellow torturers, and was allegedly involved in handling some of the babies stolen from prisoners and given to families sympathetic to the military.

Cavallo was detained by Mexican police on 24 August 2000 during a stop-over in Cancún as he was flying to Buenos Aires when he was recognised by people alleging he had tortured them. They saw him on television as he defended his business enterprise, a national register for vehicles, which had been criticised in the press. In Argentina, he would be ensured immunity by legislation introduced under Raúl Alfonsín in 1987 (the laws of *Obediencia Debida* and *Punto Final*), that applies to crimes committed under the dictatorship, and are currently the object of appeals on grounds of unconstitutionality before the Argentinean Supreme Court.

Around 5,000 people were reportedly tortured in the ESMA during the junta's military dictatorship between 1976 and 1983, most of whom died. Some were thrown, sedated, out of military aeroplanes into the Río de la Plata. Collective proceedings were filed by Judge Garzón in November 1999 against 98 members of the Argentinean armed forces for crimes against humanity. The charges are not related to crimes committed against Spanish citizens, but rather they are the result of a sentence by the criminal section of the *Audience Nacional* (Spain's high court) in October 1998 ruling that the Spanish justice system has jurisdiction over "crimes against humanity" committed under the Chilean and Argentine dictatorships.

The question of the limits of Spanish jurisdiction will be looked at by the Supreme Court in relation to the case of another former corvette captain, Adolfo Scilingo, involved in the torture and killings of political dissidents in the ESMA. Scilingo handed himself in voluntarily in Madrid in 1997 to act as a witness, and confessed to participating in the flights during which dissidents were thrown into the Río de la Plata. He is held in the same prison as Cavallo, and recognised him in photographs he was shown by investigating judges. The ruling may affect the Cavallo case, although the main difference between the two cases is that Scilingo's victims were Spanish, so Spain's jurisdiction may apply even under a narrower interpretation than

is required for proceedings against Cavallo. Nonetheless, the lawyer acting in the case of two French nuns who disappeared in the ESMA in 1977 requested authorisation for a French judge to interrogate Cavallo in Madrid, and five Argentinean witnesses will travel to Madrid to take part in proceedings, according to defence sources.

Important precedents involving members of South American military dictatorships arrested outside their countries to be tried abroad include the cases of general Augusto Pinochet, arrested in the UK on 16 October 1998 on an international arrest warrant issued by Spain and the Argentinean army major Jorge Antonio Olivera who was arrested by Italian police on 8 August 2000 acting on an international arrest warrant issued by France for the kidnapping and torture of a "disappeared" French citizen (see *Statewatch vol 10 no 5*). Both were controversially allowed to return to their countries: in the case of Pinochet, a political decision by the Home Secretary, then Jack Straw, allowed him to return to Chile on "medical grounds" in spite of being sought for crimes against humanity (see *Statewatch vol 8 no 6*). In the case of Olivera, a judicial mistake by a court of appeal in Rome resulted in his release and the denial of the extradition request submitted by France, on the basis of a document that the Italian justice minister at the time, Piero Fassino, described as "clearly and blatantly false".

El País, 11, 30.6.03, 16.7.03; *El Clarín*, 2, 12, 13, 21.7.03.

UK

Surveillance of teenagers extended nationally

The Youth Justice Board's Intensive Supervision and Surveillance Programme (ISSP), which subjects juveniles to intensive supervision with close surveillance, including electronic tagging, is to be extended nationally. ISSP's were introduced in the summer of 2001 and currently cover three quarters of England and Wales with 50 schemes and 119 Youth Offending Teams (YOT). The YOTs programme, which includes police and probation officers, as well as education and health officials, will be extended to provide for another 36 teams in January 2004. Capacity will rise by 700 offenders, to 4,200. According to Home Office minister, Hilary Benn, the ISSP's are "a strong alternative to custodial sentences", but *NACRO* has recently accused the government of "failing in its own stated policy aim to limit the number of children being sentenced to custody."

In June a joint Commons and Lords committee raised serious questions about the Home Secretary's strategy for cracking down on "unruly youngsters" when it criticised the legality of the Anti-Social Behaviour Bill going through the House of Commons. The committee was particularly critical of plans to increase police powers to disperse "intimidating" groups of youths assembled in specific localities. It said that plans to remove difficult children from dysfunctional homes and place them with foster parents and powers to return children found wandering the street at night risked being incompatible with the European Convention on Human Rights. Liberal Democrat MP, Simon Hughes, said that the report brought some sanity into a debate dominated by authoritarian Labour and Tory MPs.

Nacro website: <http://www.nacro.org>; CJS online news May 2003; Independent 18.6.03; Select Committee; Simon Hughes website <http://www.simonhughes.org.uk>

Civil liberties - in brief

■ **UK: 2 million samples on DNA database:** In June the number of profiles on the National DNA Database hit the two

SPAIN/ITALY

Dinghy deaths continue

As EU governments prepared for a summit in the Greek seaside resort of Porto Carras on 20-21 June 2003 (where they agreed an increase in the level of funding allocated to combat illegal immigration) news filtered through from the southern borders of the Union reminding them of the human cost of the prohibitionist approach towards immigration.

A boat heading from Tunisia to the Italian island of Lampedusa laden with around seventy passengers sank on Saturday 13 June, according to the account of three survivors. Around seven corpses were subsequently found, while the remaining migrants are missing, presumed dead. Another boat, that set off for Italy from the Libyan coast, and carried over 250 migrants, sank on Friday 20 June in the high seas near the port of Sfax, in an incident that is believed to have caused over 200 deaths. Forty-one survivors were rescued, and 12 bodies were found during rescue operations.

In the run-up to the European summit, shipwrecks were also being reported from the Spanish coast, particularly the Canary Islands. On 2 June 2003, two dinghies carrying migrants travelling towards Fuerteventura were spotted by a high-tech integrated external surveillance system (SIVE) off the coast of Tuineje, on the southern part of the island. The official version of the accident, reported in *El País*, indicates that as a *Guardia Civil* launch approached, the passengers on one of the dinghies stood up, causing it to overturn. Survivors indicated that 12 people had fallen into the sea, one of whom was rescued. The dead bodies of nine of the remaining 11 were found in the following days.

The dynamics of another incident on 10 June, in which nine migrants are believed to have died (the bodies of two others are missing) were similar. As the passengers on a dinghy carrying 25 migrants were being lifted into a *Guardia Civil* rescue launch, they reportedly stood up because the dinghy looked like sinking. This caused the boat to overturn. Sixteen people were rescued. On 31 May, 15 migrants disappeared in similar circumstances off the coast of Fuerteventura.

In the early morning of 14 July, two migrants drowned in a shipwreck in Tarifa, and their bodies were found by *Guardia Civil* rescue launches. *El País* estimates that a minimum of 62 persons have died trying to reach Spain this year, although published figures tend to be lower than reality because a number of the corpses of migrants who die trying to reach Spain are never found. From the beginning of 2003 until 11 June, 5,159 migrants, in 286 dinghies, were arrested as they tried to land.

El País 3, 10, 11.6.03, 15.7.03; *il manifesto* 21.6.03; *Agence France Press* 17, 24.6.03.

See "Viewpoint" on page 22.

SPAIN

New reform of the *Ley de extranjería*

On 23 May 2003, two days before the last local and regional elections, the Spanish government again used immigration as an electoral issue, passing a new reform of the *Ley de extranjería* (the Spanish immigration law), and using an urgent procedure to do so. The proposed changes can be grouped into five areas:

1. *Strengthening policies to control entry into the country* by increasing the policing role of commercial carriers, particularly

million mark, and it is expected to increase by another million in the next year. The figures were announced at a talk to the Police Foundation by Home Secretary, David Blunkett, who presented a vision of the Labour government "harnessing new technology to keep ahead of the criminal" through "a range of technological equipment [that] is being developed and used by police to increase security for individuals and communities." Among these "key" technological developments are the national fingerprint and DNA databases. New powers under the Criminal Justice Bill will allow police officers to take DNA samples and fingerprints from anybody who has been arrested (rather than charged, as at present, (see *Statewatch* vol 13 no 2). Blunkett has also mooted the possibility that the massively expanded DNA database could be privatised under plans to sell off laboratories providing forensic evidence in order to "inject competition" into the industry. The expansion, which comes at a time when authorities in the USA are expressing increasing concern at "irregularities" in processing the data, has been described as "dangerous" by the human rights organisation Liberty. The inventor of DNA fingerprinting, Professor Sir Alec Jeffries, has condemned the retention of genetic profiles of innocent people as "discriminatory". *Home Office press release "High-tech tools to fight crimes of tomorrow" 25.6.03; Times* 15, 26, 7.03.

■ **Spain: two more Al Qaida suspects released:** Two North African citizens who were arrested in a police operation in Catalunya on 24 January 2003 (see *Statewatch* vol 13 no 2), were released on 19 May 2003 after paying 600 euros bail. They and 14 others were suspected of links to al-Qaida and of planning terrorist attacks. They were detained in the so-called *Operación Lago*, which included raids in a number of Catalan towns, involving 150 officers from the formation, GEO (*Grupo Especial de Operaciones*) and Tedax (explosive disposal) divisions. The other 14 suspects were released on 21 March after substances that were confiscated as possible chemical materials liable to be used in a terrorist attack turned out to be harmless. *El País* 20.5.03.

■ **Italy: Fifteen detained Pakistanis freed:** Fifteen Pakistanis who were arrested on the night of 4-5 June suspected of links with al-Qaida as they arrived on a Romanian ship were released by a judge in Caltanissetta on 24 June. The suspects were arrested on the basis of testimony by one of the Romanian crew members who claimed that he heard them talking between themselves, and that they were Taliban, although he didn't speak their language, Urdu. The 15 have been taken to a detention centre awaiting expulsion. *il manifesto* 25.6.03

Civil liberties - new material

Recent developments in European Convention Law, Philip Leach. *Legal Action* July 2003, pp. 18-24.

The ugly truth of America's Camp Cropper, a story to shame us all, Robert Fisk. *Independent* 22.7.03, p. 11. Fisk examines Camp Cropper and "America's shameful prison camps in Iraq" through the case of Qais al-Salman, a Danish citizen who was "disappeared" off the streets of Baghdad by US soldiers, "just as in Saddam's day".

Inside Camp Delta, Ted Conover. *Observer* 13.7.03. This piece, by a former guard at Sing Sing prison, examines the various internment complexes on Guantanamo Bay, Cuba. Although the author's perspective has a soft-focus, (he was the first journalist allowed to report from the illegal detention centre), there is enough detail to permit reading between the lines - necessary given the lack of alternative sources of information. Conover notes the ironic sign at the camp's main gate, which reads "Honour Bound to Defend Freedom", that has disturbing echoes of the nazi concentration camps which bore signs reading "Work makes freedom" (*Arbeit Macht Frei*).

airlines, which will have to provide the police with passenger lists and other information before passengers board the flight. The same applies to the use of return tickets, as not using them will become a justification for denying future applications. To make these measures effective, carriers are obliged to take responsibility for the costs of returning people where entry is denied. The system of penalties is also toughened.

On 27 May, the Spanish came to an agreement with the Romanian government, under which bus companies travelling to Spain must provide the Spanish police with information on the passengers that they are about to carry.

2. *Changes to make expulsion easier*, in cases where a migrant is charged or accused of crimes carrying a jail sentence of up to six years. It is not necessary to be found guilty, it is sufficient to be put on trial, even if the person is subsequently found to be innocent. Incarceration in a detention centre (*Centro de Internamiento*) is proposed while expulsion proceedings are underway, for a maximum period of 40 days.

3. *Strengthening controls on residence*, particularly for irregular migrants (without valid residence or work permits) migrants who are on the official register (*padrón*) of the local council. Registration with a local council is necessary to access healthcare, social emergency aid and social security (*renta básica*). From now on this data will be passed to the police.

5. *Elevating aspects of the Regulation* annulled by the Supreme Court to the status of law (see Statewatch vol 13 no 2).

6. *Modification of visa policy* that will result in an increase on the control of entries.

Currently there are around 600,000 people in an irregular situation on Spanish territory. This is the highest figure ever, in spite of the government presenting its reforms as a means to end "illegal" immigration and to promote legal immigration. At the moment, there are practically no legal routes of entry.

EU

Migrants to be expelled in unmarked police cars

The Italian Presidency of the Council of the European Union (the 15 EU governments) has put forward a proposal to: "terminate the illegal residence of third country nationals" by deporting them overland across the EU until: "the third country national has been finally removed from the territory of the Member States".

The proposal is for a Council Directive to be adopted that would be binding on member states (and is accompanied by another binding measure on joint returns by air, see below). As this comes under the Schengen acquis it is not binding on the UK (or Ireland) but the UK can opt in during the discussions or at any point in the future - in the past the UK has opted into a number of repressive EU immigration measures.

The Italian Presidency is proposing that migrants can be deported by land, to their country of origin or the last "safe" country they passed through, by use of:

public carriers such as scheduled buses, trains or unmarked police cars

"Unmarked police cars" could also include police vans. This would either involve a single vehicle from the deporting state passing through a number of EU states or migrants being passed over to vehicles from the state of transit.

The "escort personnel" of police officers will not carry guns but: "shall wear civilian clothes". They may also use "legitimate" force to:

deal with a serious immediate so as to prevent the third country national from escaping or from causing injury to himself [sic] or to others or damage to property

The police of the "requested state", that is, the state through which the unmarked police car is travelling, can:

use any possible legitimate "measure" to prevent or terminate acts of resistance offered by the third-country national when trying to evade the transit escort

Tony Bunyan, Statewatch editor, commented:

As we going to see people shackled to their seats on public trains and coaches or perhaps trains with "cattle trucks" chugging east, reminiscent of another time? How safe are migrants being transported in unmarked police cars or vans driven by plainclothes police officers going to be if they resist at any point? Will we ever know what happened to them if they do not arrive at their destination?

This proposal is indicative of a wider question, it is said that the EU tracks the whereabouts of every cow that leaves the Community to counter fraud but it has no idea where those expelled end up, whether they are alive or dead, free or imprisoned, fed or starving. Under this proposal responsibility ends when "the third country national has been finally removed from the territory of the Member States". Does the EU care more about cattle than people?

For full analysis and documentation see Statewatch News online: www.statewatch.org/news/2003/aug/01cattle.htm

UK

Citizenship ceremony

From 24 April 2004 a citizenship oath and pledge of loyalty will become compulsory for the 100,000 adult immigrants applying for naturalisation or registration as a British citizen each year. Under the current system immigrants can apply for British citizenship after living in the UK legally for five years (three years) if their spouse is British. The application can be made by post after a doctor or solicitor has verified details. Now the Government plans, announced in a Home Office Consultation paper on 25 July, anticipate applicants undergoing British language and citizenship education culminating in a "citizenship ceremony". During this ceremony immigrants will take an oath of "true allegiance to Her Majesty Queen Elizabeth the Second, her Heirs and Successors according to law". They will pledge their "loyalty to the United Kingdom" and "respect" for its "rights and freedoms". As a British citizen they will promise to "uphold its democratic values", "observe its laws faithfully" and fulfil their "duties and obligations".

The ceremonies will be adapted to give them a local flavour and it is suggested that they end with the singing of the "National Anthem". Home Officer Beverley Hughes said the new plans will make a "celebration" out of becoming a British citizen as well as underlining the "rights and responsibilities" inherent with citizenship.

See: www.statewatch.org/news/2003/jul/29cele.htm

UK-US

New Extradition Treaty

On 31 March, David Blunkett, UK Home Secretary, signed an Extradition Treaty on behalf of the UK with his United States counterpart, Attorney General Tom Ashcroft, ostensibly bringing the US into line with procedures between European countries. The UK parliament was not consulted at all and the text was not public available until the end of May. The only justification given for the delay was "administrative reasons", though these did not hold-up scrutiny by the US senate, which began almost immediately.

The UK-US Treaty has three main effects:

(1) it removes the requirement on the US to provide prima facie evidence when requesting the extradition of people from

the UK but maintains the requirement on the UK to satisfy the "probable cause" requirement in the US when seeking the extradition of US nationals;

(2) it removes or restricts key protections currently open to suspects and defendants;

(3) it implements the EU-US Treaty on extradition, signed in Washington on 25 June 2003, but far exceeds the provisions in this agreement.

The full analysis and documentation is on: www.statewatch.org/news/2003/jul/25ukus.htm

LAW

DENMARK

Fundamental legal principles under attack

"The seeds of more unjust verdicts have been sown" - Henrik Linde, chairman of the Dommerforeningen (Judges Association)

One of the latest laws to be passed by the Liberal-Conservative government, with the support of the Social Democrats and the Danish Peoples Party, extends police methods of fighting "Rocker criminality and other organised crime", ("Rockers" is an expression covering members of biker-gangs such as the Hells Angels, *Bandidos* and others). The three main changes concern a) the use of civil agents in criminal milieus with the right to initiate limited criminal activities in order to introduce undercover police agents; b) the use of anonymous witnesses in court room without the accused or the defence lawyer knowing their identity and; c) limiting access for the accused and their lawyer to general material which forms the basis for the specific charge.

Danish law allows the police to cooperate with criminal "informants" for limited information gathering, but under the new legislation police will be permitted to use them to instigate criminal acts. It is now possible for the police to involve a criminal as an "agent" in order to pave the way for a police officer to work undercover in a criminal gang and, if necessary, for the agent to take the initiative in committing a criminal act, such as ordering drug samples in order to secure his position in the gang.

In order to ensure the anonymity of a witness, an informant or an undercover police officer, it is now possible to withhold the witnesses identity from the accused. If the court finds that a statement from them is vital for a case it is for the police to decide if the charges should be dropped or the agent's identity revealed. The prosecution can also demand that the doors of the court be closed and the accused taken out of the courtroom during the agent's evidence.

Finally, limits have been put on defence lawyers' access to evidence if the police believe that it is necessary because of an ongoing investigation. Furthermore, the judge can also be barred from seeing the material if the police hold that it is necessary. After much criticism from legal experts, judges and others the government introduced a system whereby a "second" judge will review whether the information can be allowed to be presented before the "first" judge, or not.

After presenting the proposal at the beginning of May a storm swept through the legal landscape, the law faculties, the courtrooms and among the public. Professor Ms Eva Smith from Copenhagen University pointed out the peculiar origin of the proposals in an article in the daily newspaper *Politiken*. She wrote:

This proposal has been worked out by a working party consisting of representatives from the police and the prosecution. As a new

invention this group is anonymous.

She points out that this was not the only new factor concerning the proposals, since the working party drawing up the proposals deliberately excluded all the usual legal participants in the preparation process - defence lawyers, judges and academic legal experts did not have seats on the working party.

Shortly after the first reactions, the former head of the High Court, Niels Pontoppidan, attacked the government in a commentary in *Politiken* calling the whole project "Kafkaesque" in its construction. He continued:

The conflict [with the government] contains the seeds of a constitutional crisis. We are in the situation that the judges have warned against. Then the politicians say: We don't care. And then the judges say: Then we won't rule. This case should lead the parties to listen to each other."

The head of the Lawyers Council (*Advokatraadet*), Mr. Henrik Rothe, said:

We fear that this will lead to people, who should have been acquitted, being sentenced and we regard the proposal as throwing an unjust suspicion upon defence lawyers.

From the universities, Professor Vagn Greve of Copenhagen University, said that the proposal was critically close to violating Human Rights Conventions on fair trial and went on to criticise clauses that leave it to the police and the prosecution to decide which material both judges and the defence will be allowed to see:

Up to now now the principle in Danish law has been that everything shall be put before the judges and the defence. It is not the estimate of the police that shall determine what is of value, but the courts."

He continued:

Normally one says that there is no one above Folketinget (the parliament). But the constitution is above the parliament. The courts shall check the parliament just as the legislators shall check the courts.

The law was carried with the support of the government, the Social Democrats and the Danish Peoples Party. Against were individual members of the Social Democrats, the Peoples Socialist Party (SF), the Social-Liberals (*Radikale Venstre*), the Christian Democrats (*Kristeligt Folkeparti*) and the Red-Green Alliance (*Enhedslisten*).

ITALY

"Subversive association" proceedings continue

At a hearing on 15 July in Catanzaro (Calabria, in southern Italy), Cosenza prosecutor Domenico Fiordalisi submitted new evidence to suggest that a group of 20 activists from the *Rete del sud ribelle* network arrested in raids around southern Italy (in the regions of Campania, Calabria and Apulia) on 15 November 2002 are part of a "subversive association" (see *Statewatch news online, November, December 2002*). The hearing followed a ruling through which the Court of Cassation annulled a previous decision to free the activists taken by a court in Catanzaro in December, due to irregularities in the composition of the court (see *Statewatch vol 13 no 2*). The decision that was annulled, had also dismissed allegations that the activist network was in fact a "subversive association" as unfounded.

The second hearing to decide whether the activists should be free and if there is a case for them to answer, saw the prosecution use material, including telephone interceptions (some of which have not been allowed as evidence in other trials involving activists), video footage, material confiscated during raids and police reports by DIGOS (special operations police) to link different political actions and demonstrations undertaken in Italy

over the past few years. They included demonstrations held in Naples in March 2001, and in Genoa in July 2001 (see *Statewatch vol 11 no 3/4*) in which clashes occurred, and in relation to which evidence of widespread police brutality and abuse has also surfaced. The material was used to argue that the activists represent "a dangerous form of association, of a conspiratory and subversive character, that goes beyond a simple criminal organisation". Its scope, and this reflects the wording of the new European definition of terrorism, "is to block or at least to disturb the activity of the Italian government". The hearing was adjourned until 23 October 2003, to give defence lawyers the possibility to examine the copious new documentation that has been submitted.

Self-defence training sessions using plexiglass shields, foam padding and gas masks organised prior to the G8 on 16 and 17 July 2001 in the *Carlini* stadium in Genoa (one of the sites where activists were staying), at which journalists, including foreign correspondents were invited, were described as meetings to organise the destruction of Genoa. The arrested activists, who have been free since the December 2002 decision that was recently annulled, include members of the *Disobbedienti* (a group that has been organising several civil disobedience actions, particularly in opposition to detention centres for immigrants and more recently against the war in Iraq) and *Cobas* (a grassroots trade union), among others, but the trial seems to reveal the intention to deliberately confuse political activism with "subversive activity" or "terrorism".

Il manifesto, 22.6, 13.7, 16.7.03.

Law - in brief

■ **International Criminal Court: Blair accused of Iraq war crimes:** Greek lawyers have presented a dossier of 22 incidents, involving British troops in Iraq, to the new International Criminal Court (ICC) in The Hague, as part of a complaint accusing UK Prime Minister, Tony Blair, and other ministers of genocide and war crimes. Members of the Athens Bar Association lodged their 47-page complaint with the ICC's chief prosecutor, Luis Moreno Ocampo. Zoe Konstantopoulou, who helped compile the dossier, told the *Independent* newspaper that the allegations included three categories of offences: crimes against humanity, war crimes and genocide. The Bar Association says that the war against Iraq breached the Charter of the United Nations and the Geneva Convention as well as the ICC's statutes: "The repeated, blatant violations by the United States and Britain of the stipulations of the four 1949 Geneva conventions, the 1954 convention of the Hague as well as the charter of the International Criminal Court, constitute war crimes and crimes against humanity" (quoted in the *Guardian* 29.7.03). The ICC, which was established in 2002 to try cases of war crimes, genocide and crimes against humanity, will now decide if the Athens Bar Association has case. If it were to decide that there is a case to answer it would be referred to the UK's courts. If they refuse to take the case the ICC could start proceedings. Lawyers in the UK are also assembling evidence to evaluate whether "weapons or methods of attack used in the war came within the definition of war crimes" and should be presented to the ICC. *Athens Bar Association*, <http://www.dsa.gr>; *International Criminal Court*, <http://www.icc.int/>; *Independent* 29.5.03.; *Guardian* 29.5.03

■ **Greece: Concern over sentence:** On 19 March 2003 a Greek court sentenced a British lorry driver to 11 years in jail less than 24 hours after 19 Iraqi asylum-seekers were found in his truck. David Wilson was also fined £47,000 at the hearing which used new laws and fast track system. He was unexpectedly released on bail on the 23 May, pending an appeal on the 4 November. Pressure from the media and British politicians combined with scepticism over Wilson's complicity are said to

have provoked the decision. The case has highlighted concerns about the pending removal of procedural safeguards for suspects and defendants under the European Arrest Warrant and the EU mutual legal assistance convention, both of which have been agreed on the premise of "mutual trust" among EU legal systems. *Guardian*, 3.4.03, 24.5.03.

■ **French law and order:** Two teenage boys are the first to be convicted under a French law that makes "illicit occupation of communal areas of a collective building" punishable by a prison sentence. The teenagers from Roubaix in northern France were each sentenced to a month in prison after hanging around in the hall of an apartment block. The measure, part of a law and order act pushed through by French interior minister Nicolas Sarkozy, came into effect this spring. At the trial the magistrate refused the prosecutor's request for a suspended sentence as he 'wanted to set an example'. *Guardian*, 29.7.03

Law - new material

Blair was told it would be illegal to occupy Iraq. John Kampfner. *New Statesman* 26.5.03, pp16-18. When Attorney General, Lord Goldsmith advised Tony Blair that British military action in Iraq was lawful Blair published it. Such openness was not on display six days into the war when Goldsmith "told Blair and his senior ministers that all US and British activity in Iraq from the end of the war, beyond essential maintenance, would be unlawful without specific authorisation from the UN." This article has the full text of Goldsmith's "confidential" memorandum.

A Review of Recent Youth Justice Reforms in England and Wales, Shauna Mullan & David O'Mahony. *Northern Ireland Statistics & Research Agency* Report no. 8 2002, pp.64. Evaluation of the workings of criminal Justice reforms in England and Wales under the Crime and Disorder Act 1998 and the Youth Justice and Criminal Evidence Act 1999 and their impact on the Justice (NI) Act 2002.

MILITARY

EU

Convention a step backwards for European democracy

According to the website *europeansecurity.net* the Draft Constitution of the European Convention means a big step forwards for the EU's military plans but a step backwards for European democracy. The draft "gives greater powers to the executive branches of national governments in the areas of foreign security and defence policy without increasing their accountability to either their national parliaments or the European parliament."

The main changes to the Common European Security and Defence Policy (CESDP) as *europeansecurity.net* sees them, are:

* the existing so-called Petersberg tasks of the CESDP (peace-keeping, conflict prevention, peace-making) are extended with joint disarmament operations, military advice and assistance tasks, post-conflict stabilisation and contributions to the fight against terrorism including support for third countries in combating terrorism in their territories.

* the notion of "structured cooperation" allows a few member states to form their own new mechanisms in the security and defence field (a kind of advance guard).

* "ad hoc coalitions" of member states can act on behalf of the EU in the security field

* the introduction of a "mutual defence clause" comparable with Article 5 of the North Atlantic Treaty

* the introduction of a "solidarity clause" to support member states which fall victim to a terrorist attack or natural or man-made disaster.

* The creation of a EU Armaments Agency to strengthen common military capabilities [stimulating the buying of European arms].

Europeansecurity.web notes: "Once national governments have entered into multilateral [CESDP] agreements, they effectively gain extra executive power over their own national parliaments...The European Parliament has, if anything, even less power..."

See: *www.europeansecurity.net* "More security, less scrutiny", July 2003

EUROPEAN COUNCIL

Operations Artemis & Concordia

The Council of the European Union adopted on 5 June 2003 a Joint Action approving the deployment of 1,500, predominantly French, troops to the Ituri district of north-eastern Congo as an interim emergency multinational force. The immediate cause for the sending of troops was the massacre of over 500 civilians in the Bunia area in inter-ethnic fighting in the weeks before.

The EU-led Operation "Artemis" (called "Mamba" in France!) will be conducted under UN-mandate and will support and reinforce the existing UN peaceforce (MONUC) until a more robust MONUC force under Bangladeshi leadership can be deployed in September. France will act as the Framework (leading) nation for the operation. The operational headquarters are located in Paris and include staff members from the general Secretariat of the EU Council as well as officers from several participating member states. The headquarters of the military force itself is installed in Entebbe (Uganda) with an outpost in Bunia.

The EU's Political and Security Committee (PSC) will exercise political control and strategic direction of the operation. This is the first EU military mission outside the European continent. The force will not call on NATO assets.

In the meantime the first EU military mission "Concordia" in Macedonia has been extended from the 30th September to the 15 December. It started in March when the EU took over from NATO. Concordia comprises 380 military from 27 countries.

European Council press release; SHAPE News Summary and Analysis 5.6.03; Bonn International Centre for Conversion (BICC) press release 17.6.03; Le Monde 6.5.03 (Jacques Isnard); Telegraaf 21.7.03

UK

Police investigate British military atrocities in Kenya

The Metropolitan Police's SO13 anti-terrorist branch launched a war crimes inquiry in January into accusations that British soldiers were involved in atrocities during the 1952-1960 Mau Mau uprising in Kenya.

The uprising started after Kenya's largest tribe, the Kikuyu, were unable to persuade the colonial government to return their historical lands. By 1952, frustrated at their lack of progress, the Mau Mau launched an uprising demanding land and political freedom in the towns and countryside. It is thought that tens of thousands of Africans died, killed either directly by British security forces and their African supporters, or indirectly through starvation and illness. The use of "pseudo-gangs", groups of ex-guerrillas who changed sides after capture and were formed into gangs led by SAS officers in "unofficial" operations, has been blamed for many of the worst excesses.

The inquiry follows allegations made at the end of last year by the *Guardian* newspaper and the BBC and will run alongside a similar investigation carried out by the Human Rights Commission in Nairobi. There dozens of witnesses have already given evidence, reporting allegations of murder, deliberate starvation, rape, genital mutilation and beatings. Many of these acts were said to have been carried out at detention camps and police stations, where prisoners were tortured to force them to admit that they were supporters of the Mau Mau.

The UK inquiry will determine whether the Conservative governments of Winston Churchill, Anthony Eden and Harold MacMillan allowed the brutal suppression of the Mau Mau uprising. Foreign Secretary, Jack Straw, has been accused of trying to obstruct the investigation after a spokesperson for the Foreign Office said that responsibility for the atrocities passed to the Kenyans after independence. The legal firm Leight Day have had a bid for legal aid rejected after the government denied legal responsibility. The firm won a case on behalf of Kenyans injured by abandoned, unexploded British army munitions last year. The government was forced to pay £4.5 million in compensation to 233 local tribesmen who had received injuries. They are also fighting a case on behalf of women raped by British servicemen in Kenya over the past 20 years.

See Bloch & Fitzgerald "British Intelligence and Covert Action: Africa, Middle east and Europe Since 1945" (Brandon) 1983 for details of British military operations in Kenya; *Voice* 26.5.03; *Guardian* 14, 23.5.03

UK

Iraq veteran attacked Asian man

A soldier, recently returned from action during the invasion of Iraq, received 100 hours community service and a one-year rehabilitation order at Worcester magistrates court in July after a drunken attack on an Asian man in a restaurant in Worcester. Fleming, a private in 23 Pioneer Regiment in Malvern, but based in Oxfordshire, had been drinking before the attack. Restaurant staff had refused to serve him after he began arguing with them when he turned his attention to Mr Khalid calling him an "Iraqi bastard" and headbutting him in the face - Shazan is actually from Kashmir.

When police arrived Fleming was standing on a serving counter offering to fight all-comers. The sentence was condemned by Mohammed Aslam, chief executive of Worcester Racial Equality Council, who pointed out that the maximum sentence for racially-aggravated common assault is six months imprisonment. He said: "It's outrageous that he didn't receive a prison sentence for an unprovoked racial attack on an innocent member of the public." Major Dean Stevens, of the 206 Squadron, spoke on behalf of Fleming saying that he would keep his job, but his behaviour would be monitored. He added: "We take a dim view of what occurred, but he'll be encouraged to attend some counselling provided by the army."

In another incident, in Plymouth, Devon, four Royal Marines who had recently returned from Iraq were involved in a brawl with two Iraqi asylum seekers. The four commandos, claimed that they were defending themselves from the two Iraqi's. One soldier was stabbed during the fight and another has been charged with actual bodily harm. A friend of one of the soldiers told the *Sun* newspaper: "It's coming to something when the Marines are getting attacked by Iraqi's in their own country."

Worcester Evening News 5.7.03; Sun 19.7.03

Military - in brief

■ **NATO: Transport measures agreed:** NATO defence ministers agreed steps to improve the alliance's strategic airlift and sealift capabilities at the 12 June meeting in Brussels. A

letter of intent was signed by ministers of 10 European countries and Canada, coordinated by Norway to provide an interim capability of 12-14 chartered ships for strategic sealift, primary roll-on/roll-off vessels to transport the NATO Response Force. A Sealift Co-ordination Cell will be co-located with the Airlift Co-ordination Cell in Eindhoven in the Netherlands. In a move coordinated by Germany, 11 European ministers and Canada signed a letter of intent to provide an interim strategic airlift capability. This will be based on chartered An-124-100 aircraft to be available by 2005. This might be complemented by Boeing C-17 Globemaster and other suitable aircraft if there is more money. The UK was not mentioned as a signatory of the letters of intent although it was involved in an earlier memorandum of understanding on the Sealift Co-ordination Cell. *Jane's Defence Weekly* 18.6.03 (John Berg)

■ **Czech Republic: Army reform and Iraq support:** The Defence Minister, Miroslav Kostelka, has announced cuts and reforms in the Czech army. The parliament has already passed a motion to abolish compulsory conscription and introduce a professional army (now set to be implemented by the end of 2006). The current 64,000 strong force will be reduced to 23,000 professional soldiers and 7,000 civil employees. Jaroslav Tvrdik, Kostelka's predecessor, resigned in June in protest at the planned cuts. The country will also borrow supersonic jets in future to guard its airspace as well as sending 400 soldiers and military and medical officers to serve with the multinational force, led by Britain, in southern Iraq. *Guardian* 2.7.03; *Jungle World* 16.7.03

Military - new material

Terror at Dol Dol, Natasha Walter. *Guardian* G2 23.5.03. This piece examines claims by Masai women that, over the last twenty years, British soldiers stationed in Kenya have been carrying out rapes against local women. Walter interviews a number of the women and presents the evidence against the military.

European merger era is over, David Mulholland. *Jane's Defence Weekly* 9.7.03 pp. 20-21. According to senior executives in the European defence industry the days of big European mergers are over. There are now three major defence companies in Europe: BAE Systems, EADS and Thales. As "smaller but still sizeable" are mentioned DCN (France), Finmeccanica (Italy), Rolls-Royce and GKN (UK), Rheinmetall (Germany) and Saab (Sweden). BAE still does not rule out a merger with a US company but it is thought improbable that any of the US giants is interested, as many of BAE's attractive assets are tied up in joint ventures.

So were we misled? We need a full-scale inquiry, Charles Kennedy. *Independent* 3.6.03. The leader of the Liberal Democrats calls for an independent inquiry by a special Select Committee of the House of Commons to investigate the "alleged politicisation of intelligence" in light of the failure to find Tony Blair's much-publicised weapons of mass destruction in Iraq. Kennedy concludes: "Iraq has been under coalition command since 20 April. No weapons and no long-range missiles have been found so far."

Blair must quit if he is wrong about the weapons, Denis Healey. *Independent* 5.6.03. A former Labour government Secretary of state for Defence and Chancellor of the Exchequer says that he is "not convinced that there were any weapons of mass destruction in Iraq" and finds himself "disturbed by attempts to falsify evidence". He notes that the "One certainty which arises from the invasion of Iraq and the removal of Saddam Hussain is that there will be a great increase in Islamic fundamentalism." Rejecting inquiries by the Intelligence and Defence Committee and the Foreign Affairs Select Committee as "unconvincing" and inquiries "carried out by MP's, who are subject to ministerial pressure", Healey calls for "an independent inquiry, like the 1988 Scott inquiry over arms to Iraq or the Franks inquiry over the Falklands [Malvinas] war." He concludes by arguing that if "Blair is found out to have been wrong about those weapons - or worse, that he

knowingly made false statements - I believe he should be replaced as leader".

POLICING

GREECE

Thessalonika policing condemned

A series of press releases issued by the Legal Team 2003, set up in occasion of the Thessaloniki European Council on 19 and 20 June 2003 has highlighted instances during and after the summit in which the Greek police are alleged to have acted illegally, disregarding the rights of demonstrators.

On 19 June, seven people were detained following identity checks, although five of them possessed documents and showed them to officers. They were handcuffed, and driven in a police van to Thessaloniki police station, where they were videoed with a hand-held camera, their documents were photocopied, and four of them alleged being beaten, before they were released. The legal team statement stressed that the arrest in the absence of criminal acts and their treatment in custody were illegal, as was the failure to allow lawyers from the legal team access to the detainees, and the absence of official records of the detentions.

On 20 June, Greek special police force units (MAT) countering a protest on the Greek-Macedonian border at N. Marmaras in Chaldiki, were alleged to have indiscriminately used an "excessive" amount of teargas (resulting in burns and respiratory problems for demonstrators) as well as charging protestors to disperse a demonstration. The Legal Team's press statement stresses that the "demonstrators did not threaten public order by any means".

At the "Niki" borderpoint, demonstrators were prevented from crossing the border to express solidarity to a group of Kosovo Roma refugees, in the form of food, medicines and support, although their travel documents were in order.

The legal team statement also questions the detention of eight people on 20 June, some of them for carrying "suspicious leaflets" that turned out to be Legal Team leaflets, and for carrying gas masks. An "unprovoked beating" inflicted on two civilians by a Greek police officer in the early hours of 21 June resulted in an indictment that was filed with help from the Legal Team. Later that day the streets of Thessaloniki were full of teargas as clashes developed and numerous arrests took place, with police officers reportedly acting in a particularly violent manner, and denying access to lawyers from the Legal Team in police stations where protestors were detained, as well as failing to provide them with necessary information.

On 22 June, communications between lawyers and detainees were not allowed for over six hours, and detainees were dispersed to police stations outside Thessaloniki. Over 100 people were reportedly brought to police stations in the period between 21 and 23 June, and the Legal Team statement claims that their "appearance" or presence in a particular part of town was a determining factor for arrests. An attack by police on demonstrators protesting outside a court, saw teargas fired and truncheons used on protestors.

Of the 29 people who were eventually charged, two minors were set free, 19 charged with misdemeanour were set free on 24 June by unanimous decision of the examining judge and prosecutor (although 12 of them remain under restrictive measures), and seven, who pleaded innocent, have been charged with felony and remain in custody.

The 7 people who are under investigation face possible jail

terms of between 5 and 20 years in prison, with the charges including: possession, use and distribution of explosives; arson; participation in a demonstration that committed illegal acts; damages to property; disorderly behaviour; and possession and use of weapons.

Numerous allegations of beatings and ill-treatment surfaced following the arrests, and television footage indicated that the irregularities in police conduct included the fabrication of evidence. In the case of UK citizen Simon Chapman, one of the seven who remain under arrest, who is charged with possession of explosives (as molotov cocktails are considered), television footage shows his blue and purple rucksack being taken from him during his arrest, while three black rucksacks with molotov cocktails inside them were placed beside him, to be later used as evidence.

Legal Team 2003 press statements 19.6, 20.6, 21.6, 22.6, 23.6, 25.6; II manifesto, 1.7.03; Statewatch news online, May & July 2003; Statewatch vol 12 no 5 & vol 13 no 1.

UK

"Flying squad" corruption (under)exposed

In June "Operation Ethiopia", an inquiry into some of the most serious instances of police corruption among a group of elite Flying Squad officers since the 1970s, resulted in five police officers being jailed for up to seven years.

In 1998, at the launch of the investigation, Metropolitan chief constable Paul Condon had told a Commons Select Committee that his London-based force could have as many as 250 corrupt police officers. The convictions resulted from a series of raids by the Metropolitan police's internal investigation squad (CIB3), based on evidence from Detective Constable Kevin Garner, who turned supergrass after his conviction for 14 offences of corruption, theft and burglary (see *Statewatch* vol 8 no 1 and 3).

The Flying squad was formed in 1919 to investigate serious crimes in the capital, such as armed robbery. It was the first police unit to extensively use undercover police officers and employed a controversial "supergrass" system, whereby criminals received a reduced sentence in return for providing information on their colleagues. By the 1970s the squad's close proximity to the criminal underworld led to proven instances of corruption and in 1976 its commander, Kenneth Drury, was jailed for eight years.

His conviction led to the launch of "Operation Countryman" which resulted in nearly 500 officers leaving the police service. However, less than 80 were formerly dealt with through criminal or disciplinary action and only two officers were convicted of any offence.

While "Operation Countryman" was a landmark investigation, exposing the depth of corruption that in elite police units, its failure to secure convictions against all but a handful of officers became a template for later investigations. The extent of the problem was noted by former Metropolitan Commissioner Paul Condon when, in 1998, he informed a Commons Select Committee that his London-based force had up to 250 corrupt police officers. He expressed concern that some were delaying or escaping punishment, (a new expression, "the golden backache", entered the vocabulary, to describe corrupt police officers who retired on medical grounds rather than face prosecution). A dozen detectives from the Flying Squad had already been charged at the time of his comments and nearly 59 suspended.

The new convictions stem from the 1998 trial of three Flying Squad police officers, Kevin Garner, Terence McGuinness and Keith Green. The officers had been put under

surveillance by the police anti-corruption (CIB3) from 1995 following a tip off from within the Metropolitan police. They were arrested as part of "Operation Dubai", a "sting" in which cannabis was marked and deposited in a flat that had both audio and video surveillance; the three men were recorded stealing the cannabis. At their trial Green was acquitted by the jury after he denied any knowledge of or intention to take part in a burglary, (he had already retired from the force on the grounds of "ill-health"). Garner pleaded guilty to 14 offences between 1992 and 1997, including conspiracy to rob, handling stolen cash, perverting the course of justice and handling a stolen car. McGuinness pleaded guilty to burglary and conspiring to steal, handling stolen cash and perverting the course of justice. Rather than face prison sentences the men decided to cooperate with CIB investigators and were moved to safe houses and assigned police minders. The two men accused around seventy Flying Squad officers of corruption. McGuinness was later dropped as a witness.

A number of CIB undercover operations followed, resulting in a number unsuccessful prosecutions of police officers. In May 1999 suspended detectives John Redgrave and Michael Charman were charged with conspiracy to pervert the course of justice and breaches of the Official Secrets Act after an entrapment operation. The officers were cleared in the December after a magistrate refused to commit the case for trial. This led to an inquiry into whether the CIB sought to pervert the course of justice by withholding evidence. In September 1999 former Detective Keith Pedder was acquitted of conspiring to corrupt a police officer after another entrapment operation. Peddar claimed that he was set-up by the CIB to prevent publication of his book that was critical of senior officers. The CIB deny that they had a hidden agenda, but Commander Andy Haymen admitted that the case was correctly thrown out of court. In February 2000, Operation Nectarine, a joint CIB/Kent police force investigation against Detective Superintendent John Bull and others for conspiracy to supply £12 million of cannabis was thrown out of court after Judge John Crush identified a number of flaws in the police operation, including "financial inducements", "breaches of the law", the failure to disclose "highly significant" documents and "oppressive behaviour".

Despite having spent an estimated £23 million the CIB's lack of success at prosecuting corrupt officers led to a number of internal inquiries into the collapse of their cases. An investigation by the *Guardian* newspaper in March 2000 revealed that CIB officers were using the same discredited practices - including the supergrass system - as the officers that they were pursuing. However, successive Home Secretaries have resisted MPs' calls for an independent judicial inquiry, although the Home Office has since indicated that a new body will be established, with staff from the Inland Revenue, Customs and Excise and the Department of Social Services.

At the end of July a major corruption case, based on evidence supplied by Garner, collapsed at the Old Bailey after the judge was told that he was "in no fit state" to give evidence as he was suffering from stress. Detective Sergeant Michael Carroll, Detective Constable David Thompson, former Detective Sergeant Eamon Harris and Detective Constable Ian Saunders had charges of conspiracy to steal £35,000, handling stolen goods and perverting the course of justice, dropped.

In addition to Garner and his partner in crime, Terence McGuinness, three other Flying Squad detectives are serving prison sentences. Detective Sergeant Eamon Harris, who was cleared on separate charges of conspiracy to steal (see above), Detective Inspector Frederick May and Detective Constable David Howell were jailed in 2001 for conspiracy to steal £200,000 and conspiracy to pervert the course of justice.

Times, 8.5.03 & 28.6.03; Guardian, 20.3.03 & 28.6.03; Waltham Forest Guardian, 24.10.02; BBC News, 14.10.98 & 27.6.03; Statewatch vol 8 no 3/4, 1998.

UK

Liberty director joins IPCC

The Home Secretary is trying to give the new Independent Police Complaints Commission (IPCC) a credibility that all its predecessors have lacked by appointing known critics to top posts.

The IPCC was set up under the Police Reform Act 2002 and is described as "independent of the Government and the police" by the Home Office. This claim is has been the object of derision from community groups and the independence of the new body has already been questioned by the United Families and Friends Campaign (see *Statewatch* vol 12 no. 6).

The government recently appointed Nick Hardwick, previously head of the Refugee Council, to be the chair of the IPCC. Now they have appointed the former director of the civil rights group Liberty, John Wadham, to become the deputy chair. Wadham, has been an outspoken campaigner on issues such as anti-terrorist legislation, DNA databases and identity cards joined Liberty in 1990 as a legal officer before becoming its head eight years ago. He represented the former MI5 agent David Shayler from 1998 and in his role as director of Liberty has been critical of police failures. He felt that there will be no "conflict of interests" in his new job, adding that he had been "campaigning for a genuinely independent police complaints system for many years and I think it is right that I should take up this new post."

His fellow deputy chair is Claire Graham, a deputy district judge and university lecturer. The pair will take up their positions in September and the IPCC will replace the Police Complaints Authority in April 2004.

The IPCC has also announced the names of 15 commissioners who will be based in five regional offices in London, Newport, Leicester, Manchester and Leeds. They are: Ian Bynoe, John Crawley, Tom Davies, Mike Franklin, Gary Garland, Deborah Glass, Len Jackson, Nicholas Long, Laurence Lustgarten, Naseem Malik, Rebecca Marsh, Mehmuda Mian Pritchard, Amerdeep Somal and Nicola Williams, (short biographies are given at the IPCC website: www.ipcc.gov.uk). A former head of the Metropolitan police's Professional Standards Unit, Roy Clark, has been appointed director of investigations at the IPCC. Clark who was a deputy assistant commissioner with the Metropolitan police, helped set up the force's anti-corruption unit and was responsible for the internal investigation of complaints and allegations of misconduct, unethical behaviour, crime and corruption in London. He left the Metropolitan police in 2001 to become the chief executive of the Crimestoppers Trust.

The question of whether new faces will lead to an effective police complaints system is an open question as their powers remain limited. In particular the power to directly refer cases for criminal prosecution to the Crown Prosecution Service. They will also have to restore credibility to the organisation following the decision of the current Police Complaints Authority to ignore the recommendation of the McPherson inquiry into the murder of Stephen Lawrence which said that officers who used racist language or conduct should usually be dismissed.

See *United Families and Friends campaign "Complaints against the police: framework for a new system"* (February 2001), website, <http://www.uffc.org>; IPCC press release 3.7.03; *Guardian*, 4.8.03.

UK

First verdict of "suicide by cop"

On 9 May 2003 a jury at Hornsey Coroner's Court in London recorded the first verdict of "suicide by cop" in the case of a person shot dead by police. Michael Malsbury was killed by a police gunman after a siege at his northwest London home on 14

November 2001. The 62-year-old taxi driver had barricaded himself in his house for several hours. Mr Malsbury was shot in the chest after going outside and pulling a gun on the police, two suicide notes were found.

Summing-up, Coroner William Dolman offered the jury the chance to return a verdict of suicide, asking them "particularly to bear in mind the words "suicide by cop"". The phrase, which comes from the USA, had earlier been described by a firearms officer as deliberate actions by a person to "cause a police officer to kill them" the verdict made legal history in the UK. Deborah Coles of *Inquest* called the verdict perverse:

Common sense says this was not suicide. He was shot dead by the police. How can that be suicide? It might well be lawful killing but it was not suicide...It almost gives an official seal of approval this was a suicide by cop because a person put himself in a position where he wanted to be shot. It is an extremely dangerous precedent. I am not sure of the validity of this verdict.

Nonetheless, there are strong indications that the verdict may be sought more regularly in the future. A recent review by the Police Complaints Authority of 24 police shootings suggested that "self-harm or suicidal intentions arose in 12/24 cases (including seven of the 11 fatalities)". However, it also noted "evidence of the person shot being affected by mental health problems in 11 out of 24 cases (with three more possible cases involving mental health issues)".

Times 10.5.03; Police Complaints Authority "Review of shootings by police in England and Wales from 1998 to 2001", January 2003, http://www.pca.gov.uk/pdfs/pca_firearms_report_2003.pdf

UK

High court upholds "name and shame" ban

In June the High court upheld an earlier ruling that Essex police's "name and shame" campaign, in which they proposed to publish a photograph of a convicted man on posters in the area where he lived, could not be put into operation as it may be illegal (see *Statewatch* vol 12 no 6, vol 13 no. 2). Emulating policing initiatives in the USA, where pictures of convicts displaying placards bearing the words "I am a burglar" are not uncommon, Essex police had wanted to place about 40 posters featuring the man's face and details with the words: "If you commit a crime in Brentwood your name and image will be on this poster." The scheme had been criticised as "utterly misguided" by criminologists and civil rights campaigners who pointed out that it would not only breach the man's human rights, but it could endanger members of his family as well. These point were picked up at the High court when Lord Chief Justice, Lord Woolf, spoke of his concern that the campaign could be "detrimental to the offender's rehabilitation" and that it might cause damage to his children. Woolf referred to the right to protection of their private and family life under Article 8 of the European Convention on Human Rights. "It does not need much imagination", he said, "to see how a poster campaign in relation to a child's father could produce unfortunate reactions in the playground of the child's school." However, he refused to rule out such poster schemes in the future, concluding that he could not give the campaign a "green light" - "it must remain on amber" until further safeguards are available. To this end Woolf refused to make an order outlawing the "maverick" campaign.

The decision was acknowledged by Essex chief constable Peter Coleman who said: "We are pleased that the High court has not closed the door on this scheme." Essex police interpret this as meaning that their "innovative" scheme is not unlawful, "but key points in the judgement said more needed to be done to consult with outside agencies such as Essex Probation Service, when it comes to the potential damage that could be done to [the victim's]

rehabilitation, and to the lives and of his ex-wife and child..." Essex police have stated that "this is not the end of the posters" and a new consultation process is already underway. As the Essex's Superintendent Peter Coleman put it: "I have had enquiries from other forces wanting to use it for all different reasons, from targeting football hooligans, anti-social behaviour, deceptions and street robberies. It is a really wide-ranging scheme."

Police Review 11.7.03; Standard 12.6.03; Independent 13.6.03

GERMANY

Undercover officers attacked

On 14 July, a Hamburg court sentenced three police officers to 12 months probation for beating up two plainclothes police officers at a demonstration in Hamburg in November last year.

The case highlights police violence by the Thuringian *Beweissicherungs- und Festnahmeinheit* (Evidence and Arrest Unit, BFE). It also created some political embarrassment when police and politicians tried to interfere in the legal proceedings and the chief of police gave false testimony in court (preliminary proceedings have been initiated against him). The public prosecutor and presiding judge were unusually outspoken when they said that the officers had only faced legal proceedings because the victims in the case were police officers themselves.

The scandal is, however, part of wider developments in Hamburg where the Senate, under the control of the right-wing *Schill Partei* party, has clamped down on any political expressions contrary to its liking.

The demonstration in Hamburg in November last year was held to protest at the Hamburg Senate's decision to forcibly remove long-established *Bauwagenplatz* (left-wing alternative urban caravan sites). The police raid triggered large-scale demonstrations. Later that month the Hamburg police asked for help from their colleagues from the special Thuringian BFE unit.

The BFE, like all special police units, specialises in public order training and has special equipment (bullet-proof clothing, radio communication helmets, marshal arts batons, gas and rubber bullet guns and machine guns). It has a reputation for the aggressive policing of left-wing demonstrations and its *corps d'esprit* has made any identification and/or prosecution of illegal conduct impossible.

The first BFE unit was created in Hesse in 1985 and similar units were formed in other *Länder* over the years (Bavaria: USK, Lower Saxony: ZSK & ZSNK, Hamburg: E-Schicht, Berlin: EbLT). In 1995, the annual Interior Minister's Conference recommended the nationwide creation of special evidence gathering and arrest units. Between 1992 and 1997, the Erfurt (Thuringia) BFE was deployed 519 times within Thuringia and 11 times in other *Länder*, arresting or keeping in custody around 900 people. The protests at which the BFE units are deployed are those where authorities expect "high potential for disruption". These are commonly fascist rallies, anti-fascist protests and football matches, but also anti-road and anti-nuclear waste protests and blockades.

As the court case revealed, last November two undercover plainclothes police officers were observing the demonstration from a parking lot, dressed in "scene" clothing (black hooded tops). A drunken man threw a beer can towards the police officers. Although it did not hit anyone, BFE officers started attacking anyone in their path. Erkan D., one of the undercover officers, was targeted and even when he shouted the codeword "*Mondlicht*", they continued to beat him up. When his colleague, Dirk R., told another BFE officer "we are colleagues", they started beating him as well. Both officers sustained injuries and were hospitalised, leaving them unfit for work for a week.

Thomas Semprich, the presiding judge, obviously did not

believe the statements of the officers on trial and in a telephone conversation with a defence lawyer, said that if the defence team chose a different "defence strategy" their clients would be able to remain within the police force (*taz Hamburg*, 4.7.2003), ie: that an admission would lead to a sentence below 12 months: if a police officer receives a sentence of 12 months or more, they have to leave the police force. This curious violation of the independence of the judiciary remained uncommented in the press, but it became clear that it was not the defence team of the accused who chose their defence strategy anyway, but the chief of police of Erfurt, who told the accused that if they admitted to the charges, they would lose their jobs.

Richter sent the three accused for medical examination in Erfurt and supplied medical reports excusing them from the trial on grounds of "psychological pressure". The reports were dismissed as "tokenistic" by the court because they were identical and neither provided a diagnosis nor a description of any medical examination. He then phoned the defence lawyers, instructing them to lodge a motion of bias against judge Semprich, before phoning him to ask him to stop proceedings on the grounds of the medical reports. He assured the judge that if he did not halt the proceedings, the accused would still turn up at the next trial day. They did not.

The presiding judge, outraged at the interference in the legal proceedings, ordered an arrest warrant against the accused BFE officers, which the Thuringian police did not act upon. By then, the case had become politically charged and Andreas Trautvetter (*Christlich Sozialdemokratische Union - CDU*), the Thuringian Interior Minister, wrote a letter to Roger Kusch (CDU), the Hamburg senator of justice, asking him to suspend the warrants until the next trial day, assuring him that the accused would be "able to travel". Trautvetter justified his intervention by arguing that the arrest warrants had been "disproportionate" and that he was "trying to de-escalate" the situation. As Kusch was on holiday, his spokesman Kai Nitschke had to point out to Trautvetter that in a democracy based on the independence of the courts, the justice department could not influence legal proceedings. He thought Trautvetter's letter was "absurd".

During the second trial day, the defence lawyer pointed out to the judge that his client "had obviously not decided himself if he would turn up today or not" and the public prosecutor also thought that "the accused are being severely influenced". The regional court ruled that the arrest warrants were justified, but suspended them until the next court day, when the accused turned up. Preliminary proceedings have started against the Erfurt chief of police for giving false evidence in court and the medical officers who wrote the reports could also face legal proceedings on grounds of the obvious non-medical motivation of their reports.

The judge also made critical statements about the police conduct, arguing that in a democracy it should be possible to make use of the right to demonstrate without fearing being beaten up by the police. What has been neglected during this case is the role of the right-wing *Schill Partei* since their election in Hamburg. Policies have become ever more repressive. Their reaction to increasing protests against social security cuts and anti-wars protests, has been to make demonstrations virtually impossible in the city centre with unrealistic legal demands imposed on organisers.

Demonstrations are marked by a large police presence and police encircle demonstrators, make mass arrests and beat up demonstrators. Different pressure groups in the city have therefore followed this court case with protests, pointing out that police brutality against demonstrators has become the norm in Hamburg.

The interventions in the legal proceedings, however, became the main focus of the trial, with the judge commenting that he had "never before witnessed such a thing". On 14 July, Steffen H. (19), Patrick R. (23) and Heiko R. (30) were

sentenced to 12 months on probation. The defence has lodged an appeal and Erfurt police, obviously astonished at the prosecution of their officers, commented that they would now think twice before following up a request for their presence in Hamburg.

For the Hamburg Senate raid of alternative living project "Bambule" and information on the court case, see: <http://www.bambule-hamburg.org/> and <http://germany.indymedia.org/2003/04/48533.shtml>

For the civil campaign against the growing repression in Hamburg, see the "Hamburg Declaration" on <http://www.nadir.org/nadir/kampagnen/hamburger-erklaerung/index2.htm>

The background on the BFE is based on information from the German police and civil liberties research organisation Cilip, see <http://www.cilip.de/ausgabe/61/bfe.htm> for the history of the BFE and the use of special police units at demonstrations in Germany. Indymedia Germany; taz 4, 5.7.03; Die Welt 26.6.03, 4.7.03

AUSTRIA

Paramedics watch death during police arrest

On 15 July, 33-year-old Mauritanian Cheibani Wague died after being injected with the tranquilliser Haldol when police officers were called to a dispute at his workplace. The incident was caught on camera and showed the police sitting on Mr Wague whilst he was handcuffed and lying on the ground - as well as paramedics standing on the victim and failing to give first-aid as he lay motionless.

Cheibani Wague, a former post-graduate physics student at the Technical University of Vienna, was in charge of the children's workshops in the *Afrikadorf* African cultural project in Vienna's municipal park. This opened on 28 May and hosted various events with the intention of promoting cultural understanding. On 15 July, there was a dispute between Mr. Wague and his employer, the manager of the cultural project, who called the police. On the site, Mr Wague was handcuffed by police and injected with the tranquilliser Haldol by an ambulance officer. According to eye witness reports, police beat the victim in the face and back and threw him to the ground. They sat on him to put him in foot shackles. The incident was filmed by a passer-by and the film was later screened on a national news programme. Apart from the violence of the police conduct, the footage raised serious questions about the conduct of the paramedics, who were seen standing on Mr Wague and "looking on with his hands in his pockets" whilst Mr. Wague's condition deteriorated. The paramedics failed to offer first aid when Mr Wague became motionless and even dropped him on the floor when they finally transported him to the ambulance.

The official reaction to the death was identical to previous incidents involving violence towards black people in Austria: the victim is described as violent and, if he died in the process, is said to have suffered from a heart condition. Racist stereotyping in particular of Africans is common, especially in official enquiries into the death of black people at the hands of white officials (see *Statewatch* vol 12 no 2). In this case also, mainstream media later described Mr. Wague as "raging" with a violent temper, an account which friends of the victim refute, pointing out that Mr Wague was popular at work and in his student life, where he was voted to represent the Afro-Asian Institute (from which he received a grant).

The death was followed by a vigil on 22 July and 25 July several thousand people joined a demonstration. The cultural project has suffered two arson attacks since the death of Cheibani Wague, but instead of supporting the project the city council has threatened to close it down on grounds of "public security".

Political reactions have been mixed. Elizabeth Pittermann, socialist city councillor responsible for health, has suspended the

paramedics in question but is holding the executive police officers responsible for Wague's death. Interior minister Ernst Strasser defended the police officers and demanded an apology from Pittermann, claiming her comments were politically motivated.

The regional court in Vienna has initiated a preliminary investigation against "unknown perpetrators" on suspicion of negligent death. Although interviews of around 30 witnesses, as well as the post-mortem examination of the victim have not concluded, police and prosecution claim it was a "death due to heart failure". In the past, officers have not faced prosecution on grounds of post-mortem examinations claiming the victim had had a "weak heart".

The anti-racist group GEMMI, which campaigns against institutional racism and violent police conduct against black people in Austria, has pointed out that far from being an isolated incident, drugs raids against Africans and other minorities are taking place almost on a daily basis in Austria and are marked by systematic violence. In their press release, the Vienna based Advice Centre for Witnesses and Victims of Racism (ZARA) further pointed out that their annual racism report 2002 shows that not only law enforcement but also medical officers are known for brutal behaviour towards black people. Their spokesman Dieter Schindlauer said it was

no "isolated incident", "coincidence", or "mistake", when a shackled, obviously sedated man of Mauritanian origin is treated by paramedics and enforcement officers in an incredibly inhumane manner, whilst the responsible emergency physician looks on impassively.

The question of police conduct against Africans in Austria, which reached its height in 1999 during the anti-drugs campaign Operation Spring. This saw hundreds of Africans arrested and criminalised as drug dealers and convicted on evidence provided by a single "informer", whose identity was never disclosed. Amnesty International and Austrian anti-racist groups have demanded an official investigation into this most recent death, with the involvement of the national human rights advisory committee, the European Human Rights Commission as well as the overdue introduction of anti-discrimination legislation in Austria.

www.no-racism.net/ <http://austria.indymedia.org/>

For more information on this case and racism in Austria see anti-racist organisation GEMMI: http://www.no-racism.net/gemmi/gemmi_index.htm

Advice Centre for Victims of Racism (ZARA): <http://www.zara.or.at/>, where their Racism Report 2002 can be downloaded in English.

GERMANY

From Gothenburg to Genoa: Anti-repression day and remembrance of Carlo Giuliani

On 20 July, the second anniversary of the Genoa summit protests, a national demonstration took place in Berlin. In Genoa, workshops and discussions were held during the week before 20 July. In Berlin, around 500 people marched from the Italian embassy to the Swedish embassy and the demonstration closed with a rally at the Brandenburg Gate. Speeches were made by different groups and victims of the Gothenburg and Genoa policing, making demands for the decriminalisation of protest and an immediate halt to the proceedings against protesters whose trials have been marked by fabricated police evidence and unusually harsh sentences (see Amnesty International's report on Gothenburg, summarised in *Statewatch* vol 12 no 5).

The rally heard about the court cases which are about to start in the Genoa and the Gothenburg trials which have more or

less concluded. The trials in Gothenburg saw unprecedented police cooperation and the exchange of information between Germany and Sweden. Some people were sentenced on video evidence alone. Germans who were present at the Diaz school in Genoa, against which Italian police launched a particularly brutal attack, have initiated legal proceedings against Italian police. Carlo Giuliani's mother spoke of her son's death (see *Statewatch* vol 11 no 5 and vol 12 no 1, 2).

The prosecutions and the police shots fired in Gothenburg and Genoa, have led to a new focus within left movements in Germany and elsewhere on developments at the European Union level with regards to internal security and moves to try and curtail EU-wide protests. Campaigns have started to focus on issues such as solidarity with prisoners, the demand for the deletion of all personal data from police data banks and the Schengen Information System (SIS).

1. *Information on Genoa prisoners: Germany: Rote Hilfe e.V., Kontonr.: 19 11 00 462, Postbank Dortmund, BLZ: 440 100 46 (Subject: "Genova-Gefangene"). Austria: Kontonr.: 000 786 538 43 BLZ: 60.000 (psk) (Subject: "noborder"). Switzerland: PC-Konto: G8 Solikonto Zürich 87-630087-0*

2. *German updates on court cases and developments in relation to Gothenburg and Genoa is available through the Gipfel-Soli Infogruppe from Berlin, which was formed by victims of the Genoa police attacks. They publish a newsletter and can be contacted via gipfelsoli@gmx.de*

3. See <http://www.nadir.org/nadir/aktuell/2003/07/21/17104.html> for the speeches given at Berlin demonstration

4. www.nadir.org, <http://de.indymedia.org>

Policing - in brief

■ **UK: Proposed extension of anti-terrorism powers:** In May home secretary David Blunkett presented proposals to double to 14 days the period that terrorist suspects can be detained without charge it would be addition to some of the world's most draconian legislation. *Liberty* described the proposals as "ill-considered, unnecessary and politically motivated". *Independent*, 12.5.03

■ **Police numbers:** In March 2002 the total number of serving police officers in England and Wales was 129,603 (27,000 in London) and a further 58,909 (10,700) civilian support staff and 1,165 community support officers. *Hansard oral answers* 24.3.03, p7, 12 CO0069-ORAL/4.

■ **UK: Firearms training on the increase:** The number of firearms training days given to Metropolitan police officers at the new purpose-built training centre in Gravesend, Kent, has soared by 40% since the Saudi terrorist attacks in the USA on 11 September. The centre was designed for 32,500 officer training days a year, but the figure has already reached 50,000 this year. *Police Review* 4.7.03.

■ **Northern Ireland: Police officers get corruption hotline:** Police Service of Northern Ireland (PSNI) chief constable, Hugh Orde, launched an internal corruption hotline to "help build morale within the service" in March. The initiative will be run by the northeast England company Safecall and serviced by former detectives. The Internal Investigations Department has also been involved in the initiative. The scheme is designed to compliment the PSNI's "code of ethics", unveiled in February, which requires officers to report any violation of it. Mr Orde said that there were a small number of people who do not make the grade; this facility will help identify this small number of people. It is unclear how the scheme will be accommodated by the Police Ombudsman's office. *BBC News* 4.3.03.

Policing - new material

A Study of complaints involving the use of batons by the police in Northern Ireland. *Police Ombudsman for Northern Ireland* March 2003, pp56.

Gadgets and gizmos, Lisa Bratby. *Police Review* 18.5.03, pp34-35. This piece, based on interviews with Mike McBride of *Jane's Police and Security Equipment*, reviews the "useful gadgets currently on the market, many of them widely used in the USA." It covers fingerprinting (PDA fingerprints, Livescan and the LSIT/LITE Livescanner), facial recognition (thermograms), torch light (Camlite, a torch that doubles up as a video and audio recorder), surveillance (Copcam), Infrared (FLIR Thermovision Scout), Harvey Wallbanger (a rapid-entry device developed in the UK), riot control (Iron Horse mobile barrier, PVC curtain system) and Less-lethal weapons (Taser, PepperBall system, CS and pepper sprays).

Lancashire hotspot, John Knowles. *Police Review* 18.7.03, pp.20-21. Considers "four tension areas within the town" of Burnley in light of "racial clashes" in June 2001. They are i. Economic tensions ("deprivation is a major issue for Burnley"); ii. Political tensions (following the election of racist councillors); iii. Racial tensions ("A small minority of white males in the town are overtly racist. They also have a propensity for violence, often fuelled with drink, which often manifests itself in a football related environment. It is a matter of fact that some of these men are connected to, or have leaning towards, the BNP"; iv. Criminal tensions ("illicit...white and black networks").

Drug-related deaths in police custody, Siobhan Havis & Dr. David West. Police Complaints Authority (May) 2003, pp. 23. This paper reviews 43 deaths in police care or custody between 1997 and 2002. Available from the PCA website: <http://pca.gov.uk>

RACISM & FASCISM

BELGIUM

Far-right Vlaams Bloc make gains

The Belgian general election in May saw the far-right *Vlaams Bloc* achieve its largest vote in its twenty-five year history, five months after "race riots" in the port city of Antwerp. The anti-immigration organisation increased its vote in its strongholds and received 18% of the votes in Flanders, the northern Flemish-speaking part of Belgium. This led the Belgian newspaper *De Standaard*, to warn that the impact of the far-right should not be underestimated. It has suggested that the Bloc will soon overtake the Christian Democrats in Flanders. The party's president, Frank Vanhecke, said that they had achieved "a great victory" and called for other parties to lift their block on working with the right-wing popularists. There is little likelihood of the mainstream parties lifting their boycott and the Bloc's leader, Filip Dewinter, has already acknowledged that "the chances that we will make it into government are very small."

The francophone National Front also made inroads in some areas of the French speaking Wallonia. The election results will see a continuation of the coalition between the free-market Liberals and the Socialists. The Green vote slumped and the party lost its seat in the governing coalition. Although voting is compulsory in Belgium up to 10% of voters were reported to have abstained in certain areas of the country.

Racism fascism - in brief

■ **UK: New police investigation into the extreme-right:** A police investigation into extreme-right organisations, coordinated by the Lincolnshire constabulary, made a series of

arrests at the beginning of July as part of Operation Scorpion. The operation began in February and has resulted in seven arrests. The first took place in south Lincolnshire at the beginning of May when a 37-year old man was arrested on suspicion of possessing and distributing racial and inflammatory material. Then Greater Manchester police arrested two men in the Oldham area in May on similar charges; a third man was arrested in the Urmston area in the latest round of arrests. The Manchester actions follow complaints of race-hate organisations targeting schools in the Oldham area and is line with the recommendations of the Ritchie report into the disturbances of 2001. Police also made arrests in Surrey, where a 36-year old male and a 37-year old women were arrested in the Egham area. In Bedfordshire officers arrested a 38-year old man. All were charged with the publication or distribution of racially inflammatory material. *Operation Scorpion press release 2.7.03; Lincolnshire police press release 2.7.03; BBC News 2.7.03*

■ **Spain: Racist attacks:** In the last few months, there have been several violent racist attacks in Spain. One of these had a symbolic significance as it occurred in Ca N'Anglada, a neighbourhood in Terrasa (Catalunya) - the scene of racist attacks in 1999 in which several local residents took part, and which received widespread media coverage. On this occasion, on 3 May 2003, a group of skinheads from various towns around Barcelona arranged a meeting in the neighbourhood and attacked a group of people from Maghreb countries, one of whom was seriously wounded, after being stabbed repeatedly. Two weeks later, police arrested 12 people who were accused of taking part in the attack. Another racist attack took place in Huelva on 17 April, when a hooded gang armed with sticks and iron bars, beat an immigrant to death and injured another two who were hospitalised.

Racism & fascism - new material

BNP charts new course, David Turner. *Labour Left Briefing* July 2003, pp. 9-10. Turner evaluates the "post-fascist" BNP's "race realism" in the context of the local elections last May. The results revealed that "The BNP's heartland is...the former mill towns of Lancashire and Yorkshire...in which industrial decline, poverty and social exclusion have combined with...racial segregation to produce a poisonous political cocktail". Under the leadership of Nick Griffin, the BNP has assumed the guise of a right-wing populist party in the continental tradition, disguising its racism behind slogans on asylum seekers. The BNP plans a push at the May 2004 council elections and Turner warns that the work to stop this happening begins now: "not only must the BNP's progress be impeded - its gains so far must be comprehensively rolled back."

CARF. no. 71 (Campaign Against Racism & Fascism) 2003, pp. 16. This issue has pieces on "Fortress America", the Israeli military offensive against members of the International Solidarity Movement, immigration detainees, racism and the media. In an editorial Sivanandan notes that "Racial superiority is back on the agenda" in the form of a "super-nation, super-people, a chosen people, on a mission to liberate the world." He finds "the closed circuit of thought" of the Bush junta - "religious conviction rooted in economic rationale backed by military might" - terrifying in "the certainty of their righteousness, the righteousness of their certainty."

Diario de un skin, Antonio Salas. *Ediciones Temas de Hoy*, 2003, pp. 358. The account of an investigative journalist writing under the pseudonym of Antonio Salas who spent nearly a year in the Spanish nazi skinhead movement, until his cover was blown by an unnamed police officer. Salas gained the confidence of several groups (including the *Hammerskins* and *Edelweiss*, a women's nazi organisation), and access to some of the nazi movement's leading ideologues (such as Chilean Miguel Serrano and Ramon B., formerly of CEDA and founder of the CEI, *Centro de Estudios Indoeuropeos*), as well as

football supporters groups (such as Real Madrid's *Ultrasur* and Espanyol's *Brigadas Blanquiazules*). He highlights the relations between supposedly "democratic" right-wing parties (*Democracia Nacional*, *Alianza por la Unidad Nacional* and *Movimiento Social Republicano*) and skinheads, the cross-membership between nazi skinhead groups and football supporters' groups, and the support given to such groups by some clubs. In the case of Real Madrid, it comes in the form of free tickets for games that are routinely re-sold at a profit as a form of financing, and the provision of a deposit/office within the *Santiago Bernabeu* stadium. It also looks at the Spanish nazi skinhead worldview, the music scene, and the cult for Third Reich texts and memorabilia.

Tyndall's last stand, Nick Lowles. *Searchlight* no. 338 (August) 2003. Lowles reports that Nick Griffin's British National Party is "planning to expel John Tyndall, Richards Edmonds and John Morse, the three men who ran the party until 1999." The decision "was taken at an extended Advisory Council meeting last month [July] in a hotel in the West Midlands."

Las fosas de Franco, Emilio Silva and Santiago Macías. *Ediciones Temas de Hoy* 2003, pp.374. The moving chronicle of efforts by the relatives of people murdered and buried in mass graves in fields around the country by Nationalists in Spain (estimated at around 30,000) during and after the civil war that opened the way for General Franco's dictatorship, to recover the remains of their murdered relatives. They set up an organisation, the *Asociación para la Recuperación de la Memoria Histórica* (ARMH) in order to help relatives to find the remains of their loved ones, and as a means to combat the veil of silence that surrounds the events they are investigating. Over twenty years after Franco's death, they find that people are still frightened to talk about this hidden history. Silva and Macías express surprise about the enthusiasm of Spanish public opinion when judge Garzón sought to prosecute Chile's general Pinochet, wishing there was "similar enthusiasm for the case of our own disappeared". After March 2000, when the remains of the grandfather of one of the authors was found in the province of León (north-west Spain), they have been seeking support to excavate more mass graves. They have been putting pressure on the Spanish government to take on what has become a massive task, and have brought the case before the United Nations High Commission on Human Rights working group dealing with forced disappearances. *Asociación para la Recuperación de la Memoria Histórica, Apartado de correos n.7, Poferrada, 24400 Leon, España; www.memoriahistorica.org*

nions face up to the BNP. *Labour Research* June 2003, pp.15-16. This article discusses the "new level of anti-racist activity by unions and trades councils" faced with British National Party's recent local election challenge. The unions are also facing a renewed threat from the fascists who have adopted the strategy of joining unions in order to win legal damages when they are expelled.

Fascism: Keep the South-West a Nazi-Free Zone. South West TUC, 2003, pp.12. This is a useful guidebook by trade unionists that became necessary following an increase in racist attacks in the south west. It confronts the new-found "respectability" of the British National Party assumed since a number of their policies - particularly those relating to asylum seekers - were repackaged by new Labour. The BNP's policies on asylum have long been advocated by the UK's tabloid gutter-press. The booklet is available from: South West TUC, Church House, Church Road, Filton, Bristol BS34 7BD, southwest@tuc.org.uk

SECURITY & INTELLIGENCE

Security - new material

Intelligence failure. No weapons of mass destruction, Stephen Dorril. *Free Press* (Campaign for Press and Broadcasting Freedom) June 2003. Part of a special edition of the CPBF's journal. Dorril describes the failure to find Saddam Hussain's weapons of mass destruction "as one

of the great intelligence disasters of the last fifty years." He is sceptical of the argument that politicians over-hyped MI6 intelligence" reports and politicised them. Citing Seymour Hersh, he says that MI6 "resorted to spreading false information about Iraq through its I/Ops unit" after divisions arose at the UN over the Iraq weapons inspections.

Stevens Enquiry 3: Overview & Recommendations, Sir John Stevens. 17.4.03, pp. 20. This is the public summary of Metropolitan police chief constable John Stevens' third report into collusion between security forces and loyalist paramilitaries in Northern Ireland. Its 20 pages covers The Murder of Pat Finucane, The Murder of Brian Adam Lambert and William Stobie. It has sections on "Investigation of Agents", "Intelligence Material" and other matters concerning collusion. The report contains 21 recommendations.

Turning a blind eye to murder, Peter Taylor. *Guardian* 18.4.03. Considers the Steven's report, "the most damning indictment ever made of British intelligence in the province" of Northern Ireland. The report confirms "that the army's top secret agent handling unit, the Force Research Unit (FRU), used loyalist proxies to do the state's dirty work by assassinating republicans. Elements of special branch were also involved." It presents "a shocking picture of sections of [British] army intelligence and RUC Special Branch not only out of control, but turning a blind eye to murder."

The Doughnut, the less secretive weapon in the fight against international terrorism, Richard Norton-Taylor. *Guardian* 10.6.03, p.3. Article on the "doughnut", GCHQ's new eavesdropping centre at Cheltenham, which was constructed by a consortium of Carillion, Group 4/Falk, a Danish security company and British Telecom in the government's biggest "private finance initiative". The consortium will receive £800 million over 30 years to maintain it.

This story of Stakeknife is full of holes, Danny Morrison. *Guardian* 16.5.03. Article by Sinn Fein's former publicity director on allegations of a high profile IRA informer (named in the Irish press in May as Freddie Scappaticci) codenamed Stakeknife. Morrison concludes: "Stakeknife, if he exists, can do little damage to the IRA. But if what is attributed to him is true - that he was allowed to cull informers who were no longer of any use to British intelligence - then he is a huge liability to the British MoD and the British government because he can reveal many truths about their dirty war in Ireland."

Secrets and Lies, Richard Norton-Taylor. *Red Pepper* June 2003, pp. 18-21. He discusses how the prime minister and the Iraq war."

PRISONS

UK

Prisoners regard HMP Parkhurst as "institutionally racist"

Black and Asian inmates at Parkhurst prison regard the jail as "institutionally racist" according to a report by Anne Owers, the Chief Inspector of Prisons. Conditions were found to have deteriorated at the 500-inmate jail since the previous visit two years previously. Ms Owers said:

It does not appear that Parkhurst has properly adjusted to its role as a training, rather than a high security dispersal, prison.

Inspectors found newly arrived prisoners and those seeking protection, including young adults on remand, were held with disturbed and difficult inmates in the segregation unit. Black and minority ethnic prisoners "felt powerless." There was no race relations officer, a race relations management team which had not met for 11 months, and no information about racial incidents investigated over the previous six months.

In a high court decision in June 2003, four Parkhurst prisoners - Patrick Petrie, Paul O Toole, Darren Nash and Robert

Kakoo, received punitive damages after suing the Home Office for assault, malfeasance and malicious prosecution. In June 1997, Petrie and his fellow prisoners were moved to the segregation unit at Parkhurst after a negotiated end to a stand-off between staff and the prisoners following an assault on Petrie by prison staff. All four were assaulted by staff in the segregation unit - Petrie was punched, kicked and beaten with a riot shield, his co-claimants were variously tormented by having their testicles squeezed and having food and water thrown at them. Kakoo, Petrie and Nash were then charged with grievous bodily harm with intent, violent disorder and affray. After being acquitted in 1999 they began their civil action.

The Prisoners Advice Service commented:

We receive constant complaints from prisoners at HMP Parkhurst, the majority of which concern arbitrary or extended detention in the segregation unit, the conditions of segregation and the treatment of prisoners there. In particular we receive repeated complaints about racism and would concur with the description in the recent Inspectors report that HMP Parkhurst is "institutionally racist".

MOJUK; BBC News Online 4.6.03; HM Prisons Inspectorate; *Guardian* 1.7.03

UK

Prison Service in crisis

By July 2003, with the prison population rising to over 74,000, there appeared to be a general recognition amongst criminal justice professionals and prison reform campaigners that the prison service was sliding into crisis. The prison population was increasing by an average 15 prisoners a week, and even on its own terms the prison service is struggling to cope. The UK has the highest imprisonment rate in the European Union at 139 per 100,000. Internal Home Office security reports, produced weekly by the prison service security group, show up to six serious security alerts each week, with more than 1,200 security incidents over a snapshot 14 days inside the 135 prisons of the England and Wales prison estate. The Chief Inspector of Prisons, Anne Owers, warned that overcrowding means that the prison service is heading for "crunch point."

The Lord Chief Justice, Lord Woolf, speaking in the House of Lords on 16 June, warned that David Blunkett's Criminal Justice Bill will, if implemented, drive up prison numbers still further. The Prison Reform Trust warned that the bill would bring an extra 14,000 inmates into the prison system over the next decade. The increasing toll of inmate deaths indicated moreover that the crisis caused by overcrowding was manifested not only in terms of the Home Office's main concern - prison security, but in serious risk to the physical and mental wellbeing of prisoners.

In the first week of June alone there were seven deaths within the prison estate - at HMPs Blakenhurst, Styal, Wealstun, Leyhill, and Sudbury. At HMP Blakenhurst, four prisoners have committed suicide and at least two others made serious suicide attempts in the 3 months up to 10 June 2003. The Howard League for Penal Reform has called for an independent inquiry into HMP Styal, where five inmates have committed suicide in the past 10 months. Styal takes recently convicted and remand prisoners and has a fast population turnover with little opportunity for prisoners to form friendships. By all accounts it has an entrenched drugs and bullying culture.

Among the failures in care highlighted in relation to Styal campaigners have sought to highlight the death of Sarah Campbell on January 18 2003. After her first night at the prison, Sarah asked to see a prison officer. When an officer arrived an hour later, she had already taken an overdose of anti-depressants. Sarah Campbell had been identified as a suicide risk but had either managed to obtain over 100 anti-depressants upon arrival

at Styal or been able to smuggle them in undetected. Deborah Coles, co-director of INQUEST, noted:

With Sarah Campbell there is already a question about why she was sent to prison in the first place when she had a recognised mental health history. Women in prison are an invisible issue. Many suffer terribly; the regimes are more restrictive than in mens' prisons and staff are not being trained to cope with such damaged people. Yet more and more women are being sent to prison when clearly they should be being treated for mental illness.

Research conducted by the Prison Reform Trust suggests that tougher sentencing by judges, rather than a rise in crime has led to the record increase in the prison population (up 71% since 1991.) The report notes that the rise in prison population was due to a "misplaced emphasis on toughness rather than effectiveness", with courts sentencing more to prison, and for longer terms. High sentencing rates were influenced by the "increasingly punitive climate of political and media debate about crime and punishment." As the report indicates - the welfare of a substantial number of poor, damaged vulnerable men, women and children has been put at risk by a determination by the government to be seen as "tough on crime". Thus, the most disadvantaged are thrown to the wolves, even as crime rates fall. The Prison Reform Trust said:

The courts will continue to make everincreasing use of prison unless this climate of opinion changes, and clear and consistent political leadership is needed to make this happen.

Juliet Lyon, director of the Prison Reform Trust, said:

This new record (prison population) is a damning indictment of a government supposedly committed to social inclusion, and makes a mockery of its stated aim of rebalancing the criminal justice system. If anybody thinks that overcrowded jails can reduce crime, they are in for a shock.

Times 25.4.03; Guardian 5.5.03 & 16.6.03; BBC News Online 9 6 and 1.7.03; Independent 9, 18.6, 12.7.03; Observer 15.6.03; INQUEST;

Howard League for Penal Reform; Prison Reform Trust "The Decision to Imprison: Sentencing and the Prison Population"

Prisons - in brief

■ **UK: Prison authorities breached Article 3.** The European Court of Human Rights concluded that the prison authorities treatment of Judith McGlinchey contravened the prohibition against inhuman and degrading treatment contained in Article 3 of the Convention. After having been convicted of theft, Judith McGlinchey was sentenced on 7 December 1998 to four months imprisonment. On 10 December 1998 Judith called her mother to say that she was receiving no help to cope with withdrawal from heroin and could not stop vomiting. On 12 December she was still vomiting and suffered from diarrhoea and abdominal pains. On 14 December she collapsed and according to prison staff, "appeared to be having a fit." She suffered a cardiac arrest, liver and kidney failure and was placed on a ventilator. She died on 3 January 1999. The Court ruled that in failing to monitor and treat her withdrawal, the UK had violated Article 3 of the European Convention on human rights, the ban on inhuman and degrading treatment, and that the lack of a route for compensation for her mother and children under UK law violated Article 13 of the European convention, the right to effective remedy. *Guardian 30.4.03.*

■ **UK: Prisoner's rights breached:** The European Court of Human Rights in Strasbourg has handed down a judgement finding the UK guilty of breaching Ronnie Easterbrook's rights regarding the procedure adopted in fixing the applicant's tariff, under Article 6.1 of the Convention - as there was a delay of 9 years causing the applicant to suffer feelings of frustration, uncertainty and anxiety. Ronnie - who represented himself - was awarded 2,200 euros for non-pecuniary damages and 5,800 euros costs. *Miscarriages of Justice UK 17.6.03.*

UK: Special Branch more than doubles in size

Examines the Special Branch's role in surveillance for MI5 ("national security") and maintaining public order

The Special Branch was set up in 1883 and until the mid-1960s was solely based in London's Metropolitan Police force (when it had around 300 officers). Out of London police forces only started to create SB branches of their own after the mass protests of 1967 and 1968. Over the years the number of Special Branch officers has been hard to establish.

In 1977 Statewatch's predecessor State Research carried out a survey of Chief Constables' annual reports and worked with MPs to try and establish the facts.

In May 1977 Dr Summerskill MP answered a parliamentary question for the Home Secretary (then Labour's Meryln Rees) which said that the size of the Special Branch was: "1% of the total size of the police force". On this basis it was possible to estimate that the approximate strength of the SB was 550 in the Metropolitan Police Special Branch (MPSB), 550 in the other 42 police forces in England and Wales and a further 80 SB officers in Scotland.

By 1980 a fuller and more accurate picture had been compiled especially as a number of Chief Constables' reports now included the number of SB officers in their forces. Following much public discussion and criticism, the overall figures were finally provided by the Home Secretary, Meryln Rees. There were 1,259 SB officers in England and Wales (*Hansard, 24.5.78*) and 279 SB officers in Northern Ireland (*Hansard, 13.6.78*). The numbers for the eight Scottish police forces of 100 SB officers was still an estimate although it was known that the Strathclyde force (the largest) had 60 SB officers. Thus for the first time it was possible to give a breakdown of SB

strength:

England and Wales

Met (MPSB): 409 (Hansard, 24.5.78)

42 out of London forces: 850

Scotland: 100

Northern Ireland: 279

total: 1,638

Lest it should be thought that in comparison to the present day that these were quiet times it should be remembered that in the late 1970s the Cold War was still in full swing, that industrial strikes were commonplace, the conflict in Northern Ireland was ongoing and the TUC annual conference had passed a resolution highly critical of the role of the Special Branch. Mass confrontations at Grunwick's factory and the enormous anti-racist demonstration in Southall in 1979 (where Blair Peach was killed by a Special Patrol Group officer), the deportation of ex-CIA agent Philip Agee (whose book the "CIA Diary" was published in the UK and became a world-wide best-seller) and Mark Hosenball, a journalist, the subsequent "ABC" (Aubrey, Berry, Campbell) Official Secrets Act trial and "uprisings" in 26 British cities in 1981 meant these were turbulent times.

Her Majesty's Inspector of Constabulary's report for 1988, which covers all the forces in England and Wales except the Met Police said there were "about 700" SB officers in the 41 provincial forces. However, to this figure must be added a

proportion of the 738 officers permanently employed in the UK the National Ports Scheme (NPS, which covers ports and airports, this role was provided nationally by the Metropolitan Police Special Branch, MPSB, until 1978).

Figures in the 1990s showed that the size of the MPSB had risen to 523 plus 124 civilian staff (Met Police, November 1992). However, it should be noted that by this time a number of its functions had been hived off and assumed a life of their own, for example, the Anti-Terrorist Branch (SO13) had 93 officers and 16 civilian staff and the Royalty and Diplomatic Protection Squad (SO 14/15/16) 847 officers and 33 civilian staff. Most significantly the Met Special Branch's original nineteenth century role of gathering intelligence on Irish Republican activity in mainland Britain was taken away from it in 1992 and handed to MI5 (it retained a secondary role in support of MI5 on this issue and international terrorism in general).

Amending the 1978 figures at the beginning of the 1990s gives the following:

England and Wales

MPSB:	523
42 outside/London forces:	1,318 (700 plus 618 (NPS))
Scotland:	100 (later figure not known)
Northern Ireland:	279
total:	2,220

Apparently prior to 11 September 2001 some local forces were "down-sizing" their Special Branches (HMIC review below). However, in October 2001 a Home Office Minister in answer to a written question said that there were 552 SB officers in the MPSB. Another answer elicited the number for the RUC in Northern Ireland as being 684 SB officers at 1 February 2000. A further overall figure was confirmed in a written answer in February 2003, namely that as at 31 March 2002 there were a total of 3,463 SB officers in England and Wales including 619 NPS SB officers (HMI). The figures can thus be amended again as follows:

England and Wales

MPSB:	552
42 outside/London forces:	2,911 (including 619 NPS officers)
Scotland:	100 (later figure not known)
Northern Ireland:	684
total:	4,247

The figure for Scotland is almost certainly an under-estimate as no concrete figures have ever been provided by the government.

The 1999 Patten Report on policing in Northern Ireland said the RUC Special Branch was 10% of the regular force, that is, 850 officers - this SB is very much a "force within a force" (see *Statewatch* vol 12 no 1)

What is absolutely clear from these figures is that there has been an unprecedented expansion of the Special Branch (including NPS) outside London from 1,318 at the beginning of the 1990s to 2,911 by 31 March 2002. Whereas the comparable increase in the MPSB is from 409 to 552 officers.

The size of the Special Branch has risen from 1,638 in 1978 to 2,220 at the beginning of the 1990s to at least 4,247 by February 2003. These figures also excluded the increasing role played by civilian staff such as intelligence analysts.

Overall it can be said that the Special Branch of today in the "war against terrorism" and EU demands for the surveillance of potential travelling protestors is more than two-and-a-half times larger than it was during the Cold War era and the conflict in Northern Ireland.

"A need to know": HMIC thematic inspection of Special Branch and Ports policing

In January 2003 a rare report on the activities of the Special Branch prepared by Her Majesty's Inspector of Constabulary (HMIC) was published and received surprisingly little attention in the media. The remit of the review was to look at the SB's contribution, post 11 September, to "the national security structure of this country" and "the prevention and detection of serious crime and public disorder".

The review makes a number of recommendations the most controversial of which is the proposal that local Special Branches should no longer be accountable to the Chief Constable on operational matters which would mean they would no longer be accountable to local police authorities. Other ideas include the creation of regional SB offices and a National Coordinator. Out of London officers will be seconded to SBs for a minimum of five years and be expected to speak a foreign language (like the MPSB officers). How these would square with the SB being the local "eyes and ears" is unclear.

More importantly the review presents an opportunity to look at the current role of the Special Branch covering national security and public and its relationship with MI5.

Structure

Each local Special Branch is part of the local police force, for example, Merseyside or Greater Manchester, under the direction of the Chief Constable. Each of the 43 police forces in England and Wales have Special Branches which vary in size from a couple of dozen to several hundred. Within their force area the SB also cover sea and air ports to surveil those entering and leaving (the National Ports Scheme, NPS).

Special Branch officers are police officers with powers of arrest. For this reason they are a natural complement to MI5, the internal Security Service, who do not have powers of arrest. Thus MI5 operational teams will bring in the local SB to carry out arrests and to present evidence in court.

The Special Branch's primary roles concern national security (especially terrorism and "subversion") and the maintenance of public order. Special Branch officers are subject to "positive vetting". Outside London this means that the Head of Special Branch and their deputy get "Developed Vetting (DV)" while the remainder are "Security Checked (SC)". In the MPSB the majority of officers are subject to "DV". Special Branch officers are trained on a national basis by the MPSB and MI5.

The Special Branch provides officers at ports and airports which "is an integral part of their counter-terrorist role". Larger air and seaports have a "dedicated Special Branch presence" including the designated nine major airports (Policing of Airports Act 1974) which are centrally funded. Other "Ports Units" are drawn from local Special Branches. An example is given where MI5 put through an urgent request for the stopping or surveillance of target(s) where it is not "possible for a member of the Security Service to reach the port in time".

MPSB

By far the largest SB in the country is MPSB which carries out numerous national roles (in addition to surveiling groups and activities in the capital). Their national roles include:

1. The National Public Order Intelligence Unit (NPOIU) which co-ordinates:

the collection, analysis, exploitation and dissemination of intelligence on the extremist threat to public order

2. The National Terrorist Financial Investigation Unit (NTFIU)

3. The National Joint Unit (NJU) advises round-the-clock on terrorist legislation, detentions and coordinates particular

national operations.

4. The Communications Intelligence Unit which deals with interception warrants and forensic recovery of computer disc data.

5. European Liaison Section (ELS) providing a "conduit" to Europol and equivalent agencies in other EU states. Its counter-terrorist role has been extended to cover "non-sporting public order matters".

6. Irish Republican terrorism in mainland Britain (though MI5 now has the lead role).

7. It provides surveillance teams of smaller out of London forces.

The role of Special Branches

Although their remit is local there are: "tensions between the national and local roles of the Special Branch". This is because on the one hand they are close to ground, the "eyes and ears" of local intelligence-gathering (from uniformed police as well as their own sources). On the other hand there are the demands placed on them by MI5. The SBs' role is to support MI5 which effectively coordinates "much of Special Branch's intelligence and operational work".

At the operational level the SB will pass all intelligence "up" to MI5, will conduct surveillance and tracking on their behalf and "provide local support for Security Service operational teams". The review notes that there are some areas of friction between Special Branches and MI5, "rubbing points", for example:

currently one such is the issue of ownership of joint agent operations

The review says that a key aspect of:

Special Branch intelligence gathering is that it extends the reach of the national agencies by utilising the close links between local police and the communities they serve

This intelligence gathering whether solely by the Branch, or jointly with MI5, involves surveillance and "the management of human sources" - a euphemism for infiltration by undercover officers, paid agents or the recruitment of informers. The latter is termed "Covert Human Intelligence Sources - CHIS" and are meant to be authorised under the Regulation of Investigatory Powers Act 2000. Intelligence gathering is directed at threats to national security, serious crime or public order - nationally the latter is coordinated through the "National Public Order Intelligence Unit" (NPOIU) which according to the review conducts intelligence gathering:

in relation to politically motivated disorder (not legitimate protests)

One of the key lessons, the review says, of the investigation into 11 September:

has been the vital importance of extending the reach of the national security agencies by furthering utilising the close links between local police and the communities in which they work

The "golden thread" provided by the Special Branch works through briefing "front line police officers" (those out on the streets) on the intelligence role they can play "arising from their position in the community". The SB's role in providing intelligence for MI5 is based on their local knowledge, "community awareness" and "invaluable contacts", they are the "eyes and ears" of intelligence which "must be retained at all costs".

The review says that in the 1990s, despite the end of the Cold War and the IRA ceasefire in Northern Ireland, new threats for the SB to monitor were emerging like Islamic extremist terrorist groups and:

the emerging threat to public order by extremists such as those within the animal rights movement and others intent on the violent disruption of the global economy

11 September 2001 demonstrated:

the urgent need to monitor those who abuse democratic liberties to further their terrorist intentions

Special Branch operational work is:

directed towards counter terrorism, followed by public order.. the two main methods of targeted surveillance collection being through human sources and surveillance

The term "surveillance" here refers to physical surveillance, that is, observing, following, bugging (homes, offices etc), and tracking (bugs on vehicles). Whereas more sophisticated "technical intelligence collection" (see below) is "costly" and "most Branches prefer to rely external assistance".

Human sources - CHIS

most Special Branch human resource intelligence collection involves the recruitment and running of Covert Human Intelligence Sources (or CHIS), which in the national security context are usually referred to as "agents" by the intelligence community

The local knowledge of Special Branch officers makes them ideally suited to "the identification or "targeting" of potential CHIS". Once recruited "agents" are either run by the SB or run jointly with the:

Security Service or NPOIU

The inclusion of the NPOIU, the national public order intelligence unit, here is interesting because the "maintenance of public order" is a primary function the SB and also fits into a broad definition of "national security".

The number of agents a local Special Branch can run is limited by the number of "handlers" it has. In smaller Special Branches care has to be taken in "the exposure of case officers operating in small communities or geographically confined areas".

CHIS operations have to be authorised under the procedures laid down in RIPA 2000. As MI5 is subject to RIPA too it is apparently a practice for them to "authorise joint cases under the Act thus providing cover for participating Special Branch officers."

CHIS handlers have to be properly trained and "accredited" under RIPA 2000 and this is done through courses:

often delivered in partnership with universities

The review makes no mention at all of the ways in which "agents" are recruited nor what financial inducements may be made. Broadly "agents" that are "recruited" fall into two categories: a) those who are politically/ideologically opposed to the individual or group they are spying on because of disillusionment or personal differences and b) those who are in effect blackmailed into becoming "agents", for example, in return for dropping charges (drugs) or embarrassing personal information. Both categories may receive regular payments.

When it comes to demonstrations, local or national, when *ad hoc* groups come together to plan the event, undercover SB officers often attend meetings and may volunteer to help. In this way they can not only monitor the immediate event but can use the opportunity to spot potential "agents". In this situation loose talk by participants means SB officers can pick up useful intelligence.

Nor is there any mention in the report about financial inducements given to "agents", this may be one-off or a regular weekly/monthly payment. Back in the 1970s payments were usually quite small like £5 or £10 a time. Now it appears that regular weekly payments of £100 are not unusual and in one instance cited on the TV programme "True Spies" a current "agent" is being paid £1,000 a week.

Surveillance:

Surveillance, the review says, is in some cases the: "only means of acquiring or developing vital intelligence or of monitoring

potentially threatening activity" As this is expensive and involves a lot of resources only the Special Branches of the: "largest metropolitan forces have dedicated full-time surveillance teams". Smaller SBs call in outside help. This may take the form of a surveillance team from a neighbouring force or MI5 may provide teams where "national security targets" and where:

the operation meets the Service's threshold for deployment; the response generally includes one or more surveillance teams, a control element and perhaps additional specialist capabilities

The review recommends that the criteria for assessing Special Branch work on national security and terrorism should be:

1. number of intelligence reports submitted
2. number of reports to Security Services
3. number of sources identified/recruited
4. number of threat assessments prepared
5. number of persons interviewed at ports

The second major role of the Special Branch is the surveillance of demonstrations. This is set out in the 1994 Guidelines which formalised their role in surveilling demonstrations since the beginning of the last century. The review says that Special Branches are responsible for "maintaining the Queen's Peace by providing accurate assessments of public order implications of events such as marches and demonstrations". To this end the review says that this should be measured by:

1. number of intelligence reports assessed relating to public disorder
2. number of public order operations ongoing/pending/concluded

Special Branches are also expected to "gather intelligence on animal rights extremist activity and seek to prevent attacks on persons and property by such extremists".

The distinction between "national security" and public order is blurred in some areas. The concept of "national security" includes "subversion" which is defined as activities intended:

to overthrow or undermine parliamentary democracy by political, industrial or violent means

Although the review makes no mention of it, the Special Branch's "national security" role is not limited to anti-terrorism, but it includes placing "subversive" groups and individuals under surveillance in addition to its public order role. MI5 is not primarily concerned with public order but it is with "subversion". As the Intelligence and Security Committee Annual Report 2002-2003 puts it MI5 is not directly concerned with threats to public order:

the Security Service would not investigate these bodies unless they posed a threat to national security

This failure to mention "subversion" in the review is part of a wider attempt to downplay the concept. For example, the annual reports of the Commissioner for the Interception of Telecommunications has claimed for a number of years that few, if any, warrants have been issued to combat "subversion". This is because of a conscious policy decision to re-define alleged "subversive" activities as criminal activities.

A BBC series of three documentary programmes last year, "True Spies", showed a catalogue of cases where the Special Branch infiltrated left groups and trade unions and recruited paid agents. The programme's presenter, Peter Taylor, said: "All the conspiracy theories about the security services tapping phones and so on that we all dismissed turned out to be true".

Taking the Special Branch's national security (including "subversion"), anti-terrorist and public order roles together means that they have to place under surveillance and recruit "agents" in all local political and trade union activities - to meet domestic and EU demands - they are in effect, together with MI5, the UK's political police.

"Guidelines on Special Branch work in Great Britain", 1994; HMIC review: "Need to Know", HMIC thematic inspection of Special Branch and Ports policing, January 2003; "The Political Police in Britain", Quartet, 1977, Tony Bunyan; State Research, 1977-1981.

EU

The EU Constitution and Justice and Home Affairs: the accountability gap

The draft EU constitution, agreed in the EU's constitutional Convention in July 2003, will now be subject to an Inter-governmental Conference starting in October, at which Member States' governments will consider whether they will "unpick" the text or not. The issue of Justice and Home Affairs (JHA), where the Constitution is particularly ambitious, will likely be a major issue. What strengths and defects does the Constitution have in this area?

First of all, there would be a number of striking changes regarding the decision-making process and judicial control over JHA matters. All measures concerning border controls, immigration and asylum would shift to a qualified majority vote in the Council (made up of delegates from Member States' governments). Furthermore, in all cases except one (emergency asylum decisions) there would also be co-decision with the European Parliament (EP), giving the EP joint decision-making powers with the Council. As for criminal law and policing, the majority of legislation would be subject to qualified majority voting with co-decision, excluding only creation of the European Public Prosecutor, cross-border actions by police and operational police measures (concerning such matters as the use of joint investigation teams). The Commission would be given the exclusive power to propose immigration and asylum legislation

(this will already be the case by 1 May 2004) and the dominant role in proposing criminal and policing legislation, sharing its power to propose only where by a quarter of Member States make a proposal, rather than any one Member State, as at present. Also, criminal and policing legislation would take the form of "normal" EU laws (Regulations and Directives, to be renamed "laws" and "framework laws") with their normal legal effect, rather than framework decisions, decisions and Conventions as at present.

Judicial control would be expanded by applying the normal rules on the Court of Justice's jurisdiction (including the possibility for all national courts or tribunals to send questions to the Court of Justice) to all JHA matters in all Member States, with the exception of the validity and proportionality of policing actions, where this is a matter of national law (Article III-283).

Secondly, the extent of the powers of the "Union" (which replaces the current "Community" and "Union") would also change in all of these areas. In the areas of immigration and asylum (Articles III-166 to 169), visa and border powers would be revised to grant broader powers over visa policy and powers over freedom to travel, and to provide for power to set up an "integrated border management" system (but with no express reference to the idea of establishing a European border guard).

Member States would retain the right to determine their geographical boundaries. Immigration and asylum policies would be “common”, rather than concerned (at present) with establishing minimum standards in most areas. The EU’s asylum powers would be revised to include some of the principles established by the Tampere European Council (summit meeting) of 1999, to give the EU power to adopt rules on a “uniform” status of asylum and to set out “common” rules in various areas, to state more expressly that all of the EU’s powers extend to subsidiary protection (a status granted to those who need protection but who do not meet the definition of “refugee” in the 1951 Refugee Convention), and to add a power concerning external cooperation on asylum (at the urging of the UK government in particular).

As for the EU’s immigration powers, again some Tampere principles would be included in the constitution (for example, “fair treatment” of third-country nationals), but not all (the Tampere reference to equal treatment of long-term residents does not appear). The EU would have new express powers to define the rights of third-country nationals in a single Member State, and the powers over irregular migration would be revised so that the EU could act against anyone resident without authorisation (rather than illegally resident) and would have express powers over removal of such persons. It would also have express power over readmission agreements and the power to adopt incentive measures concerning integration of third-country nationals. However, the EU’s immigration competence would be limited, in that it would not affect Member States’ power to control the volumes of third-country nationals coming from third countries in order to work or obtain self-employment. Finally, there would be a general clause on the principle of solidarity (sharing of persons and funds), which would apply to this entire area, replacing the specific current power to adopt measures on burden-sharing related to asylum.

Policing and criminal law

In the areas of police and criminal law, the EU’s powers would be more precisely defined. The criminal law powers would cover three areas: cross-border cooperation (Article III-171(1)), criminal procedure (Article III-171(2)), and substantive criminal law (Article III-172). In addition, there would be powers to adopt incentive measures concerning crime prevention (Article III-173), to regulate Eurojust (Article III-174) and to establish a European Public Prosecutor (Article III-175). As for policing, there would be powers over police cooperation, Europol and cross-border activities of police forces (Articles III-176-178).

The cross-border criminal cooperation powers would focus explicitly on ensuring mutual recognition of judgments and other judicial decisions (such as decisions on freezing of assets or orders to search homes and seize evidence). Powers over criminal procedure would concern admissibility of evidence, the rights of individuals in criminal proceedings and victims’ rights; in order to extend these powers, the Council would have to agree unanimously with the consent of the European Parliament. A similar solution is proposed for substantive criminal law, where the EU would have powers over ten specific crimes: terrorism, trafficking in human beings; sexual exploitation of women and children; drug trafficking; arms trafficking; money laundering; corruption; counterfeiting of means of payment; computer crime; and organised crime. Again, the Council can extend these powers if it agrees unanimously with the consent of the European Parliament. It will also have powers to adopt criminal law to assist implementation of another Union policy (for example, environmental law or the euro) subject to harmonisation measures. As for Eurojust, the Constitution will allow it to initiate prosecutions (although formally all acts will be taken by national authorities). Finally, the wholly new power to agree to creation of the European Public Prosecutor will allow

the Council to establish the Prosecutor with broad jurisdiction to investigate and prosecute not only crimes against EC financial interests, but any serious crimes affecting more than one Member State. Prosecutions will have to be brought in the courts of a Member State.

The EU’s powers over national police cooperation would be broadly unchanged, but the powers and remit of Europol would be expanded to cover all serious crimes with a cross-border element and to permit Europol to coordinate, organise and implement investigations and operations in conjunction with national forces. However, any “coercive action” (eg.: arrests) must be carried out by national forces.

New standing committee on “internal security”

The new Chapter would also contain general Articles applicable to all areas of JHA. First, the general objectives of JHA policy (Article III-158) would include respect for fundamental rights and fairness to third-country nationals, along with the goal of “a high level of security”. The European Council would define strategic guidelines for legislative and operational planning (Article III-159). There would be general powers to adopt evaluation mechanisms (Article III-161) and to establish a standing committee to ensure operational cooperation in internal security (Article III-162), which will coordinate activities of EU and national bodies dealing with the all-embracing concept of “internal security” (including police, customs, border police, possibly even security and intelligence agencies and the use of the military inside the EU). The power to adopt rules on administrative cooperation (current Article 66 EC) would be extended to third pillar rules and such rules will be adopted by QMV with consultation of the EP (Article III-164). At the moment, this power is used to adopt measures concerning the Schengen Information System (SIS). National parliaments have the right to receive information about evaluation mechanisms (Article III-160) and to be kept informed on the standing committee. In areas of police and criminal law it will be slightly easier for a group of them to invoke the (non-binding) system to be set up to ask the Commission to rethink its proposals on grounds of subsidiarity (the principle that EU activity should “add value” as compared to Member State activity).

What is the likely impact of the new rules, if adopted in the form proposed? The moves toward qualified majority voting in the Council will likely mean quicker adoption of legislation, and furthermore adoption of legislation that would not have had any chance of success otherwise. This will particularly be the case where the Council currently uses Conventions (most importantly the Europol Convention), where any change in the rules will also require ratification by all national parliaments. National scrutiny reserves which have been used to delay adoption of JHA legislation will not mean much when the Council can override them by QMV. Clearly the powers for national parliaments foreseen in the new rules are very weak compared to parliaments’ current position. For the Schengen Information System (SIS) and possibly similar information and database systems, there is a risk that the “administrative cooperation” power will be used, so that neither national parliaments nor the EP will have any control over measures.

Co-decision with the European Parliament would mean, if future EPs maintain the EP’s voting record, a considerably more liberal approach to immigration and asylum law but an uncritical approach to the risks posed by mutual recognition in criminal law. There are widespread doubts about the necessity for the European Public Prosecutor in a number of Member States, particularly if its remit will extend well beyond crimes against EU financial interests and counterfeiting the euro. A likely scenario is provision for the Prosecutor to have powers only in those Member States which consent to it, but this raises complex and awkward questions about its jurisdiction regarding those

Member States which object to the Prosecutor, as they will be in a situation similar to the United States as regards the International Criminal Court.

The accountability gap

There is no effective system of accountability for the standing committee on operational cooperation in internal security planned by the new Constitution. National parliaments and the European Parliament will only be informed of its activities, but that does not give them any power to control it. Who will the committee be accountable to, and who will be liable if something goes wrong? (see critique in *Statewatch* vol 13 no 1, p21). The planned rules on access to documents (Article I-49) will apply more fully in the case of legislative activity (Article III-305) so there is a big risk, based on present practice, that the Council will

not disclose to the public what is going on in this standing committee. Similarly the provisions on effective control and accountability of Europol, Eurojust and the Public Prosecutor are very vague.

Taken as a whole, the Constitution would create a system where much JHA legislation would be subject to joint control by the European Parliament and full judicial control would be exercised by the EU courts. However, the powers of national parliaments would be dramatically weakened, some important legislation would escape effective controls, and the extended powers for EU bodies, agencies and/or Member States collectively to engage in joint operations would not be subject to sufficient accountability.

CONV 850/03, final text of Constitution submitted to Italian Presidency

Viewpoint

Euskadi: AuB ban puts legal principles under attack

by Peio Airbe

The drift towards authoritarianism, under the pretext of combating ETA's violence, is bringing into question a large part of the legal framework erected during the political transition that followed the Franco regime. The law on political parties criminalised the Basque political organisation *Batasuna* - which was accused of being a front for ETA or even of belonging to ETA's infrastructure - and effectively made it illegal. Later acts focused on preventing nationalist left candidates from standing in the last municipal elections. The AuB electoral platform, and another 245 electoral lists, were invalidated by summary procedures in which, within short, peremptory fixed deadlines, judges decided who could and could not stand. The decisions were based on police reports, which were the only source of information. Guilt was confirmed by evidence that a candidate had been on the election lists of any of the political organisations from the nationalist left (*Batasuna*, *Euskal Herriarrok*, *Herri Batasuna*) at any time. Apart from the fact that this procedure occasionally resulted in the exclusion of candidates with no affinity to the nationalist left, it also disenfranchised an entire social sector which was denied the possibility of expressing its electoral choice. By any reckoning, it stretches legality to the point where it becomes a caricature.

The nationalist left responded by campaigning for votes for the annulled lists. It printed ballot papers, so that it would be possible to count their support accurately without including spoiled papers in the total. A Guarantees Commission (*Comisión de Garantías*) was set up, formed by trades unionists and members of social or cultural organisations, with four objectives: 1. To produce a legal study on how the criminalisation process infringed fundamental rights and freedoms envisaged in European norms; 2. To participate in the election campaign in order to present a formal statement on the restrictions imposed on freedom of association, expression and political information that these election candidates may suffer; 3. To guarantee an accurate counting of the votes gained by the disqualified candidates and to publish them; 4. To submit the documentation to different organisations and associations in *Euskal Herria*, Spain and internationally. To count the votes, the Guarantees Commission put together a list of 3,500 observers and established a public protocol. The observers reached all of the existing polling stations without significant problems. Among those who were part of the Guarantees Commission, were Lloyd Quinan from the Scottish parliament and Gerry McKernon, a Derry councillor and member of Sinn Féin.

The electoral lists linked to AuB obtained 153,497 votes,

which would correspond to 579 councillors. Only 182 have been recognised, the rest belonging to lists that were disqualified. These figures suggest their share of the vote - at a time when, ETA had called an end to its ceasefire and had suffered a considerable downturn in support - held up. One way in which this can be interpreted is that the nationalist left is a structural phenomenon in *Euskal Herria*. While signs of erosion in its support can be perceived, it is difficult to imagine that there can be a viable solution to the problems of the Basque country without accommodating the organisations, and aspirations of their supporters, within the political structures that are customary for democracies.

Another significant confrontation has been developing between Basque institutions and the Spanish judiciary. After the criminalisation of *Batasuna*, the Supreme Court ordered the president of the Basque parliament to "bring into effect the dissolution" of the parliamentary group formed by former *Batasuna* representatives in the Basque parliament through "the *Mesa* (cabinet) of that House". As the seats do not belong to the parliamentary group, there is no scope for the suspension of parliamentarians exercising their functions, rather they would become part of the mixed group. The Basque parliament, with the support of several renowned jurists, felt that this was its prerogative, and that the Supreme Court's decision breached the separation of powers fundamental in a democratic state. It considered that compliance was not due.

From this point the confrontation intensified. A formal complaint brought by the general prosecutor against the president of the Basque parliament, calling for him to be prosecuted, is under scrutiny. This can be interpreted as a direct attack on the inviolability of parliamentarians exercising their powers. The Statute on Autonomy states that: "the members of the Basque parliament will be inviolable for the votes and opinions that they issue in the exercise of their position". It has reached the point where the president of the Court of Justice for the Basque Country has been stripped of his authority by the *Consejo General del Poder Judicial* (General Council of Judicial Power) to appoint the judges who were to examine the case. This has escalated the dispute further.

In this climate, statements by Mayor Oreja, the leader of the *Partido Popular* (PP) in *Euskadi*, who threatened to invoke the Constitutional article that permits the suspension of Basque autonomy, has had the effect of making it clear that there are no limits to the downward slope that the PP will descend in imposing its view of political "normalisation" in *Euskadi*.

"Nothing is true, nor is it a lie?" by Nieves García Benito

- a powerful and moving essay on the indifference of Europe to dead migrants on Spain's beaches "

Introduction

The following essay is a testimony from Tarifa, Spain, the nearest point to Africa in mainland Europe, by Nieves García Benito, who works for the Asociación Pro Derechos Humanos - Andalucía (Association for Human Rights - Andalucía). She addresses a debate that took place in Spain about whether there is indifference by the West towards the deaths of African would-be migrants, that started around a picture that was shot by photographer Javier Baluz of two tourists sunbathing while the corpse of a man who died trying to make the crossing from Morocco lay further along the beach. Looking at the situation in the Strait of Gibraltar, Nieves García Benito argues that there are hidden interests served by the current situation, and that while there there are hundreds of dead people who are not killed by anybody, a different immigration law, or even the absence of an immigration law, would save hundreds of lives.

"Nothing is true, nor is it a lie?" Nieves García Benito

"On 13 July 2001, photographer Javier Bauluz shot the image, on a beach in Tarifa, of a couple of beach-goers - on the left - sitting under an umbrella and, somewhat further - to the right - the dead body of a drowned immigrant man. The author entitled the photograph "The Indifference of the West". The picture travelled all around the world, and was even published in the New York Times.

The journalist Arcadi Espada, winner of the Espasa de Ensayo prize for his book "Diarios", wrote an article about this picture in which he tries to discredit the image itself by stating that it is fictitious, and as such, doesn't show the truth. That, as a result of being taken from a deceptive angle, it doesn't show a real image, and much less the indifference of the West towards the deaths in the Strait of Gibraltar.

The debate itself may seem the typical exchange of blows between colleagues from the same profession, or the old dispute between truth and fiction, which besides, is very much a current debate. If I may, it could even seem to be a discussion at the bar of a pub. Nonetheless, as the object of contention are different points of view, different glances, over a space, the Strait of Gibraltar, where, for the last 14 years, there has been no stopping the flow of corpses arriving to its northern shore, from here, from Tarifa, we want to contribute a little more information, so that the readers' glance may be enriched and may start building up its vision from a wider foundation. This is our hope.

What is happening in the Strait of Gibraltar?

As a result of the Spanish Ley de Extranjería 4/2000, whose origins lie in the 1990 Schengen European Treaty, the large majority of sub-Saharan and Moroccan citizens who apply for entry visas to Europe have their applications denied. With a visa, they would cross the Strait in a ferry, which would result in the problem of the corpses disappearing. As the law precludes this possibility, the citizens, who are pushed to migrate by the economic conditions in their country, and are aware of economic circumstances in Europe, where there is wealth, and consequently employment, see themselves obliged to make contact with groups who own other means of transport - dinghies or zodiacs - with the aggravating circumstances that it is more expensive and dangerous for their own lives. This illegal crossing of the Strait entails exorbitant benefits to those who control it, as a result of the abundant and urgent demand (for their services). The average number of persons on a zodiac is 55.

The cost of the trip is around 1,500 euros. This means of transport has been in use since 1989, which gives us an idea of the economic sums that are at stake, without taking into account the second part of the journey - from Tarifa to the workplace - which, according to information obtained from Moroccan workers, is around 600 euros.

On 2 November 1989, eighteen dead bodies appeared on Los Lances beach in Tarifa. Since then, until 2 January 2003 when seven drowned persons appeared, the number of deaths has been impossible to count. The interior ministry has given a figure of eight hundred proven deaths. The Andalusian Defensor del Pueblo (Ombudsman), taking into account the real nature of the Strait - with currents, 100-km/h winds, cetaceans, cargo ships, petrol tankers, bodies appearing on the northern coast of Morocco - claims that the deaths during these fourteen years could be over two thousand.

Living on the beaches of the northern shore, there are hundreds of us Europeans - fishermen, workers, officials, doctors, windsurfers, tourists - who know all about the constant appearance of dead bodies, from what we have experienced with our own senses. The media have been informing all of Europe about these events for the last fourteen years. When citizens from this shore have taken care of shipwrecked persons they have been called charitable, and have even received official awards; when the Guardia Civil take the dead bodies out of the way, they are told that they are undertaking humanitarian tasks; when professional photographers have shot certain images - rather horrifying - they have repeatedly been awarded prizes.

If I may, as a citizen living on the beach front and who has seen more than one dead body, as a result of my nature, as a human being, I wish never to see any more corpses on our beaches. However, since that 2 November of 1989 this wish has not been fulfilled. The situation seems unchanging and is reaffirmed by events, on a daily basis. It appears that the illegal crossing of the Strait produces some important economic benefits, in spite of leaving hundred of dead bodies in its tracks.

The strait of Gibraltar: a space of indifference

Not for the economic goals of the electrical companies that have planned the transnational energy network for multinationals from the energy sector for which a 400,000 volt cable has been made to pass under its waters, in spite of opposition by towns on its northern shore, and a second one is currently being laid. They also maintain a gas pipeline in its waters which supplies natural gas drawn from Algeria to the rest of Spain, except for the coastal towns. It is said to be not for NATO, which is examining the possibility of expanding its operation to control merchant traffic to the Strait of Gibraltar. Not for the great multinational oil companies for whom its waters represent a safe and short passage to transfer crude oil from its places of origin to the places where it is refined. Not for hundreds of entrepreneurs - in the primary sector and in prostitution - who have provided themselves with a supply of illegal sub-Saharan and Moroccan workers, as very cheap labour, for the last fourteen years. In actual fact, these financial groups are not indifferent to the Strait of Gibraltar, as it brings them substantial economic benefits. These financial groups keep, and will continue to keep, this Strait just as it is. Like this. That is, it is in their interest to do so. It is obvious that they will not push for a change - something different. Their indifference towards the dead persons is real.

They don't even remotely consider the possibility of experiencing any change in the sum of their profits.

For the authors of the Ley de Extranjería (European governments) it does seem to be a space of indifference, when this very law, the law on immigration (or its absence), with different wording, would prevent the certain death of thousands of Africans.

Yes it is (a space of indifference) also, for the millions of citizens of democratic Europe who, in spite of being people of good will, have not prevented, not with their words nor with their deeds, the implementation of a Ley de extranjería that carries, inherent within it, the real death of thousands of persons. Many among us, from Tarifa, have asked for this law to be derogated. What we got as a reply was silence. After fourteen years the problem is not being resolved: it is getting worse. Is this not indifference, by any chance?

The Strait of Gibraltar: a space of fiction

A fictional space is a space of lies. Even if it is pitiful, it still remains a lie. In the Strait, on the beaches of Tarifa, terrible things are happening that the person on the street is unaware of. It seemed like pure theatre. The sea brings drowned persons, almost never when there are storms, in which case they drown among the rocks that are three metres away from the shore. The persons who are making the crossing have paid exorbitant sums of money although it is very difficult for them to earn it. Dead people appear, who haven't been killed by anybody. Who truly kills them? The dinghy-captain, another wretched person who undertakes the journey as well? The law? Rather, it seems like a horror story in which the culprit fails to appear. They say that the local people are showing solidarity, when what they are doing is cleaning up the beaches of dead people. The complaints that are voiced never receive any answer. Those of us who help the "illegals", to stop them dying at the next attempt, are fined. Using the same camera angle, in the daytime it is possible to photograph Europeans with splendid smiles setting out for Tangiers on a ferry and, in the early morning, generally, the Moroccans arriving in a zodiac with hypothermia requiring their immediate hospitalisation, or with first-degree burns on their legs and buttocks. Without setting it up, without a special angle, with a special angle, in the daytime, at night, anyone can take a picture of a drowned person. Journalists recount the tragedy, some people who accuse the West are accused of being liars. And it has been like this for fourteen years.

The trick

Where is the trick in this photographic drama?

Some may say that a photograph like the one shot by Javier Bauluz is one more cloud in the fog that is falsifying history, little by little. Because the fact that two persons appear to be indifferent doesn't mean that all the people are indifferent. Others may hold the opinion that it's lucky that there are photographers like Javier Bauluz, who recount what is happening, and draw conclusions indicating that concrete events have global implications, that it goes beyond the instant that has been captured.

Where is the trick in the drama of the dead persons?

I often ask myself, every time that drowned persons appear, every time that I see live persons who have arrived on the zodiacs, if what I am living through is the product of a bad dream and in reality, it is just a lie. There are no drowned persons. They come over in a ferry to work. That on 2 November of 1989 I didn't see eighteen corpses in front of my terrace. The women who arrive do not become prostitutes. The Moroccans who call me from Almería all have their papers in order. They go on holiday to their countries and can bring their wives if they want

to. There aren't any minors under the axles of lorries or hidden in the fields of Tarifa. Fatima wasn't kidnapped so that her family would send over the 100,000 Ptas (600 euros) to pay for the trip from Tarifa to Almería ... I answer myself, "If it wasn't for indifference and hidden interests, this would have ended long ago". Nonetheless, I read the press titles from 2001, "Avalanche of migrants in Tarifa", and also, more recently, in 2002. Of course, if the country's government considers the number of people who make the crossing between the 700 million Europeans and the 800,000 Africans an avalanche, what am I to think? Why does the government lie? Or would it have been better if more of them had drowned, so that only half of them would arrive?

With the photograph or without it. Whether the issue is written about, or it isn't, here, in Tarifa, hundreds of drowned persons have arrived. Thousands, in the waters of the Strait. And these beaches represent indifference. The head-on violence, the separation between living and dead. There are live persons who are tranquil, and dead persons who are very dead indeed. The live persons who are here can't do anything because they are already dead when they arrive. Other "live persons" can do something about it. They don't. From the absolute subjectivity of titles, here we are aware that if it wasn't for the indifference/interests of the governments of the West there would not have been any more dead persons in the Strait for a long time.

I wish the the photograph by Javier Bauluz had been a lie. I wish it was a product of his imagination and that it was "immortal blackmail" as Arcadi Espada said. In the strait of Gibraltar there would never have been drowned men and women. The dead persons would have only been fakes. Fiction."

Nieves García Benito

Asociación Pro-Derechos Humanos de Andalucía, Tarifa

The pictures of: i) two people sunbathing while a dead migrant lies nearby and ii) a coffin being taken from a beach where people are playing were by Javier Balauz and can be seen on: http://www.agenda-upifc.org/upifc/sumario/opinion/opinion_01.htm

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CONTENTS

The surveillance of movement: Biometric ID documents herald a global identification system	1
Civil liberties	2
Spain/Argentina: Argentine torturer faces charges after extradition to Spain	
UK: Surveillance of teenagers extended nationally	
Immigration	3
Spain/Italy: Dinghy deaths continue	
Spain: New reform of the <i>Ley de extranjeria</i>	
EU: Migrants to be expelled in unmarked police cars	
UK: Citizenship ceremonies	
UK-US: New Extradition Treaty	
Law	5
Denmark: Fundamental legal principles under attack	
Italy: "Subversive association" proceedings continue	
Military	7
EU: Convention a step backwards for European democracy	
European Council: Operations "Artemis" & "Concordia"	
UK: Police investigate British military atrocities in Kenya	
UK: Iraq veteran attacked Asian man	
Policing	8
Greece: Thessalonika policing condemned	
UK: "Flying squad" corruption (under) exposed	
UK: Liberty director joins IPCC	
UK: First verdict of "suicide by cop"	
UK: High court upholds "name and shame" ban	
Germany: Undercover officers attacked	
Germany: From Gothenberg to Genoa	
Austria: Paramedics watch arrest death	
Racism & fascism	13
Belgium: Far-right makes gains	
Security & intelligence.....	14
Prisons	15
UK: HMP Parkhurst viewed as "institutionally racist" by prisoners	
UK: Prison Service in crisis	
FEATURES	
Special Branch: large increase in numbers and extended roles	16
The EU Constitution and Justice and Home Affairs	19
Viewpoint: Euskadi - AuB ban puts legal principles under attack	21
Viewpoint: "Nothing is true, nor is it a lie?" Europe's indifference to dead migrants	22

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