

# statewatch

monitoring the state and civil liberties in the UK and Europe

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## A PERMANENT “STATE OF EMERGENCY”

The attacks in the USA on 11 September have led to an unprecedented assault on civil liberties and democratic standards. In the US, the European Union and EU member states new laws are being rushed through to combat "terrorism". If the new measures were limited to dealing with terrorism that would be understandable but they are not. Many of the measures being undertaken have nothing to do with terrorism. What they are is the adoption of the most extreme demands of the law enforcement agencies and the security and intelligence services.

The trend to put the demands of law enforcement agencies above those of people's rights and basic democratic standards has been evident in the EU for several years, well before 11 September. What 11 September has done is that governments have now given the green light to these authoritarian instincts. 11 September has bequeathed the EU and its member states with the mentality of a permanent "state of emergency". The longer this prevails the deeper and more dangerous will be the infringement of rights and liberties and of fundamental democratic standards (like freedom of expression, freedom of movement and the right to protest).

Amongst the first to be affected are refugees and asylum-seekers at the EU borders, airports, sea-links and visa controls where discretionary powers are being applied to the full. Meanwhile across the EU they are the target of racist attacks. The emerging ideology being that greater checks on entry will mean fewer potential terrorists coming in. The Council of the European Union has called for an urgent review of "safeguarding internal security and complying with international protection obligations and instruments" a likely reference to the 1951 Geneva Convention and the effect of the European Convention on Human Rights.

The German government wants the EU to go even further and has proposed the creation of a centralised computer EU database of all third country nationals ("foreigners") resident in the EU. It has also put forward a proposal, backed the by Belgian

EU Presidency, to bring together all the national para-military police units to "police" protests (see page 19).

### Operational measures and surveillance

Equally dangerous are the new "operational" measures being put in place. A series of data-gathering and exchanges measures are being effected at a stroke and a number of permanent and unaccountable, secret, ad hoc groups have been set up including a "Heads of Security and Intelligence agencies working party". Another is the EU Police Chiefs Operational Task Force and its sub-groups to deal with public order at EU summits and other international meetings. When *Statewatch* applied for the agenda of a three-day meeting of the Task Force, held at the end of October, the Council of the European Union refused to supply the document saying it was not an "EU" body - *Statewatch* is appealing against this decision on the grounds that it was set up under Recommendation 44 of the EU Tampere Summit Conclusions.

The forces of *law 'n' order* are also using the situation to press their long-standing demands for the retention of all telecommunications data and for access to it. The demand for the retention of data in the EU has also been called for by President Bush who has written to the European Commission with more than 40 demands for cooperation on law and order - yet there is no corresponding legal obligation for such data to be retained in the US (even after the far-ranging "US Patriot Act" agreed in October).

In this bulletin there is an overview of post-11 September developments (page 19-23), and features from Norway (page 15) and Germany (page 12).

For up-to-date information and full documentation please see *Statewatch's* "Observatory in defence of freedom and democracy" on:

[www.statewatch.org/observatory2.htm](http://www.statewatch.org/observatory2.htm)

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## EU

### Council to renege on inter-institutional openness deal?

One of the "deals" done during the secret "trialogue" meeting which reached the later adopted "compromise" on the new Regulation on access to EU documents was an interinstitutional agreement between the Council (the 15 EU governments) and the European Parliament on access to classified information. The European Parliament negotiators in particular invested much in this idea.

Discussions were held between the parliament and the Council over a number of months and agreement appeared to have been reached in April this year. But in May, after the adoption of the "compromise" new Regulation on access the Council agreed a new draft at COREPER (the committee of high-level representatives of EU governments) on 11 May. This draft sought to only cover security and defence policies and to exclude police and judicial cooperation and even visa, asylum and immigration policies (by invoking Article 67 of the Treaty establishing the European Communities which only allows for parliament to be consulted for first five years of the Amsterdam Treaty).

To add insult to injury the Council said that it intends to adopt a "unilateral declaration", when the agreement is formally adopted, applying the Council's own security regulations prior to passing any documents to the parliament. This could render any agreement quite meaningless.

The Socialist (PSE) and conservative (PPE) groups in the parliament favour going along with the Council's proposal but the Green/EFA and the ELDR (Liberal) groups are very unhappy about the exclusion of "third pillar" issues (policing, legal cooperation and asylum and immigration) and with the "unilateral declaration".

The issue still lay on the table when the institutions broke up for their summer vacation period (August) and when they came back the events of 11 September put the issue on the back-burner.

#### European Parliament takes Council to court over "Solana Two"

The European Parliament is taking the Council of the European Union to the Court of Justice over its failure to consult the parliament over the adoption of a new classification code for access to documents it adopted in March 2001. The parliament argues that this was quite inappropriate as the institutions (the parliament, Council and the European Commission) were in the process of discussing a new Regulation on public access to documents.

The Secretary-General of the Council, Mr Solana, drew up the new classification code which was simply nodded through by the General Affairs Council of the Council of the European Union on 19 March (it was an "A" point, adopted without debate) - the European Parliament was not consulted. This followed the now infamous "Solana Decision" in July last year.

The Decision completely changed the Council's classification codes to meet NATO demands. Although it was presented as only covering "Top Secret", "Secret" and "Confidential" documents it also covers the lowest level of classified documents, "Restricted", and completely redefines this too. It also extends classifications to all areas of EU activity.

As noted in the Explanatory Memorandum of 18 January 2001 from the UK Foreign Office:

*the Regulation will also mean that sensitive documents in other fields*

*- justice and home affairs, for example, are kept sufficiently secure.*

This is a clear extension of classification rules and security procedures from the "Solana Decision" adopted in August 2000 which only covered defence and foreign policy (ESDP) issues.

There is a major change to the definition of "Restricted", the lowest level of classification, which in the previous code was defined as:

*RESTREINT: information the unauthorised disclosure of which would be inappropriate or premature*

In the Annex, page 19, to the proposed Decision this is redefined as:

*EU RESTRICTED: This classification shall be applied to information and material the unauthorised disclosure of which could be disadvantageous to the interests of the European Union or one or more of its Member States.*

Here "Restricted" is defined as applying to:

*The compromise of assets marked EU RESTRICTED would be likely to: adversely affect diplomatic relations; cause substantial distress to individuals; make it more difficult to maintain operational effectiveness or security of Member States or other contributors forces; cause financial loss or facilitate improper gain or advantage for individuals or companies; breach proper undertakings to maintain the confidence of information provided by third parties; breach statutory restrictions on disclosure of information; prejudice the investigation or facilitate the commission of crime; disadvantage EU or Member States in commercial or policy negotiations with others; impede the effective development or operation of EU policies; undermine the proper management of the EU and its operations. (page 78)*

This lengthy definition is clearly much, much wider than that of "inappropriate or premature" release of documents in the 27 July 2000 Decision. Furthermore, categories like "prejudice the investigation or facilitate the commission of crime" or "impede the effective development or operation of EU policies" or "undermine the proper management of the EU and its operations" are so wide as to be open to abuse.

*See for full background: [www.statewatch.org/secret europe.htm](http://www.statewatch.org/secret europe.htm); Council Decision concerning the adoption of Council Security Regulations (SN 5677/00).*

### JHA Council, 27-28.9.01

The scheduled meeting of the EU Justice and Home Affairs (JHA) Council at the end of September was largely pre-occupied with post 11 September measures to combat terrorism.

Three of the proposed measures discussed were directly related to the "anti-terrorist roadmap". The first, the Council reached "political agreement" on the first eight Articles on the Decision setting up Eurojust. The second was a report on steps being taken following the measures agreed at the special JHA Council on 13 July designed to protect EU summits and other international meetings from protests.

The third concerned amendments to the Europol Convention to extend its role. These include: Europol "participation" in joint investigative teams; the "right" of Europol to initiate investigations; and having a "role" in protecting EU summits (presumably through the provision of analysis files and intelligence).

The Council also discussed the proposed Directive on family reunification where there are "numerous problems for several delegations". On the table is a "compromise" on how to deal with three categories: i) the nuclear family; ii) direct ascendants and children of full age and iii) unmarried partners. Only the first category would be obligatory, the other two discretionary.

The proposed Directive on minimum standards for granting or withdrawing refugee status was discussed with the Council

hoping to reach agreement at its 6-7 December meeting. The Council reached "political agreement" on the draft Framework Decision on combating the trafficking of human beings, though the European Parliament had not yet delivered its Opinion.

*Press release, Justice and Home Affairs Council, 27-28 September 2001.*

## Europe - new material

**The European Union: a critical guide**, Steven P. McGiffen. *Pluto Press*, 2001, 182pp, ISBN 0-7453-1695-6. Provides a useful introduction to treaties, institutions, decision-making and all EU policy areas, raising many important issues and exposing dominant agendas in EU development.

## IMMIGRATION

### GERMANY

## Immigration bill restrictive and repressive

In August, almost a year after Chancellor Schröder announced a Green Card for IT experts, signalling a possible move away from restrictive immigration practices, Home Minister Schily presented a new Immigration Bill. In the intervening period, hopes had been raised that German immigration law would become more open by acknowledging migration as a matter of fact. An independent immigration commission headed by former CDU minister Süßmuth, and staffed by migration experts, employers, Greens and ethnic minority representatives was set up by the Chancellor to provide proposals for a new approach. But unknown to the public the Home Ministry had already drafted a bill, the "Draft act to guide and limit migration and for the regulation of residence and the integration of Union citizens and foreigners".

The bill is accompanied by an additional document which includes a new Residence Act, completely revised regulations on EU citizens, a total overhaul of the Asylum Proceedings Act and the Foreigners Act, changes to the Asylum Seekers Benefits Act and numerous changes to welfare and labour market legislation. Subsequently, a new centralised authority, the Federal Department for Asylum and Migration will be set up.

The bill is aimed to rapidly pass through the parliamentary process before the 2002 election campaign starts and become law at the end of 2001 or early in 2002. The overall tone explicitly, or between the lines, says former "guest workers" and today's ethnic minorities a) have not left the country with the end of the post-war boom; b) have instead brought in their families; and c) have failed to integrate.

The new law would replace the existing five immigration statuses with two, a temporary and a permanent status. It introduces a range of purposes (labour, education, family reunion, humanitarian reasons). It offers better conditions for highly-skilled labour migrants, entrepreneurs and, in some circumstances, an earlier entitlement to a permanent status. On the other hand it either confirms or introduces a range of serious conditions. Victims of non-state persecution and gender-specific persecution are not entitled to asylum. The administrative (first instance) adjudicators will lose their obligation for independent judgements and will become subject to directions. Accepted asylum applicants will be regularly re-examined after three years. The Asylum Seekers Benefits Act, which reduced benefits, is extended to other groups and will apply for the entire duration of an asylum claim. Potential persecution resulting from exile or political activities in the country of application no longer give

entitlement to asylum. Asylum seekers would be allowed to work after 12 months depending on a Labour Office means test.

The *Duldung* or "Tolerance" status, for those who are served with a deportation order which is not enforceable, (that is 250,000 to 350,000 people), will be abolished. It is feared that most of these people will become "illegal". In future, those served with a deportation order that cannot be enforced (for lack of documentation, unknown identity etc) will be detained in special detention centres.

Regarding immigrants the right to family reunion for children is restricted to the age of 12, although highly-skilled labour migrants are allowed to bring in their children until they reach the age of 18. Integration by way of language and political culture courses and written tests will be obligatory for many immigrants. On the other hand no obligations on the host society's side are acknowledged such as anti-discriminatory policies. Changes in immigration status will only be accepted for students but not for asylum seekers. Furthermore, despite the fact of a high number of undocumented immigrants (500,000 to one million) no provisions are offered for their regularisation as many organisations like the Jesuit Refugee Service, or Caritas and the Bishops Conference have been demanding. In future illegal immigrants may even be prosecuted and either fined or imprisoned before being deported. Deportation to any third country agreeing to admit the deportee, rather than country of origin or a country where the refugee has any links, is to be made possible.

An analysis reveals a number of provisions that contrast with EU policy documents and proposals for Council Directives. First and foremost, the entire tone contrasts with the Tampere Conclusions and the subsequent "EU Communication on a community immigration policy". It completely refuses to reflect the call for "welcoming societies", "a clear commitment to promote plural societies" and "partnership between migrants and host societies". In detail, the 12-years rule for children for family reunion contrasts with EU Directive Proposals on family reunion; the 12 month or more exclusion from the labour market contrasts with the Directive Proposal for Minimum Standards for the Reception of Asylum Seekers; the unlimited duration of reduced benefits contrasts again with the aforementioned Directive Proposal; the re-examination of refugee status after three years contrasts with the Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status; as does the first instance adjudicators becoming subject to directives. Finally, the exclusion of non-state persecution from asylum contrasts with the Directive Proposal for Minimum Standards on Procedures for refugees.

By rapidly introducing this legislation the government is attempting to challenge recent EU proposals on the right to family reunion; minimal standards for the reception of asylum seekers; common asylum procedures and procedures for granting and withdrawing refugee status as they stand from becoming Directives and call for stricter measures.

The Bill fails to address a range of topics (such as migration from EU accession states, seasonal or low skilled labour) or problems (such as demographic features, migration pressure, undocumented populations) identified at the EU level. It interprets EU policy debates in a restrictive manner opting for a "special" German form. The Bill is already facing protests from basically all NGOs such as churches (Protestant and Catholic Churches, Caritas, Diakonie, Jesuit Refugee Service); welfare agencies (AWO, Red Cross, DPWV, Umbrella Organisation of Welfare Agencies); legal practitioners (New Judges Association, Republican Solicitors Association, German Solicitors Association); human and refugee rights organisations (UNHCR, Amnesty, Pro Asyl, various refugee councils, The Turkish community); and others (the German TUC (DGB), the Greens, Berlin Senator for Justice, Ombudswomen for Foreigners).

In the latest move, in the wake of the attacks in the USA a range of further security measures have been added to the draft such as proposed finger printing of visa applicants; regular security cross-checks of all foreigners, visa applicants, naturalisation applicants, asylum seekers and migrants with the Central Foreigners Registrar (Cologne); regular checks of visitors from specific countries through the Constitution Security Service (*Verfassungsschutz*); fishing raids for suspected foreign terrorists (already implemented); restricting the right to organise for religious organisations with the prospect of banning them; and deportation of recognised but unwelcome refugees to third countries.

[www.proasyl.de/presse01/aktuell.htm](http://www.proasyl.de/presse01/aktuell.htm); [www.bmi.bund.de/Anlage8476/Gesetzesentwurf\\_als\\_PDF\\_Download.pdf](http://www.bmi.bund.de/Anlage8476/Gesetzesentwurf_als_PDF_Download.pdf) *Presidency Conclusion of the Tampere European Council 15 & 16 October 1999, SN 200/99; Commission of the European Communities (2000a): Communication from the Commission to the Council and the European Parliament, Communication from Mr Vitorino in agreement with Mrs Diamantopoulou: On a community immigration policy, Com 11, Brussels, 2000; Commission of the European Communities (2000b): Communication from the Commission to the Council and the European Parliament, Towards a common asylum procedure a uniform status, COM 2000, 755 (final), Brussels, 22.11.2000; Commission of the European Communities (2000c): Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, Brussels, 20.9.2000, COM(2000) 578 final, 2000/0238 (CNS); Commission of the European Communities (2000d): Amended proposal for a COUNCIL DIRECTIVE on the right to family reunification (presented by the Commission pursuant to Article 250 (2) of the EC Treaty), Brussels, 10.10.2000, COM(2000) 624 final, 1999/0258 (CNS); Commission of the European Communities (2001): Proposal for a Directive of the Council for Minimum Standards on the Reception of Asylum applicants in the member states, Brussels, 3.4.2001, COM(2001) 181 final, 2001/0091 (CNS).*

## GERMANY

### Police raid on-line anti-deportation demonstrators

On 17 October, police officers broke into the offices of *Libertad!* (a group founded in 1993 in support of political prisoners), and confiscated all of their computers as well as several hard-drives, cd-roms and other documents. The raid followed the online demonstration against the Lufthansa website on June 20 this year, which the German network "no one is illegal" and *Libertad!* organised, in order to protest against the deportation of refugees with the help of the airline *Deutsche Lufthansa AG*. In addition, the homes of those responsible for the websites of *Libertad!* and [www.sooderso.de](http://www.sooderso.de), were searched. Police confiscated six computers and more than one hundred cd-roms. According to the search warrant, issued by the administrative court in Frankfurt, 13,614 people had taken part in the 20 June action. Because Lufthansa claimed it had suffered economic damage by the more than 1.2 million page-hits, the police claimed that the online-action was putting Lufthansa under duress (*Noetigung*). Additionally, the call for protests by more than 150 participating human rights groups and Refugee Councils was interpreted as encitement to criminal damage, (*Anstiftung zu Straftaten*).

Around 40,000 rejected asylum seekers are deported from Germany every year. Most of the deportations by air are carried out by commercial airlines for profit. The "deportation business" has increasingly come under attack by campaigners (see *Statewatch* vol 10 no 3 & 4), in particular after the death of the Sudanese asylum seeker Aamir Ageeb on board a Lufthansa plane in 1999. As a response to the protests, the German pilot association Cockpit has issued a recommendation to their pilots to refuse the deportation of refugees against their will (see *Statewatch* vol 11 no 1).

Contrary to Lufthansa's promises to end their involvement in

forced deportations, reports suggest otherwise, which is why anti-deportation protesters continued their *DeportationClass* campaign against Lufthansa. "This is an attack on the freedom of demonstrations", said Anne Morell who had officially announced the online demonstration on June 10 to the municipal administration office (*Ordnungsamt*) in Cologne. "It is a scandal that 13,000 demonstrators are criminalised, whereas enterprises, making profits from deportations, can do their business on the internet", an activist said. Meanwhile, a software-toolkit for online-demonstrations has been put on the web on the homepage of the online-demonstrators. "We hope, that e-protest in the age of e-commerce will rise" said Morell, "and we call on all democrats and those opposed to deportations to protest against this mentality of a police state".

see <http://www.deportation-alliance.com/>, [http://www.noborder.org/news\\_index.php](http://www.noborder.org/news_index.php) and <http://germany.indymedia.org/> for more information.

## UK

### London snatch squads to deport "failed asylum seekers"

The UK Immigration Service has announced plans to dramatically increase the number of "failed asylum-seekers" detained and/or deported from 10 a day to 80-100 a day. In the past such raids have required the presence of Metropolitan police officers to effect detention, now the Immigration Service are going to undertake this role alone with appropriately trained officials. Asylum-seekers will either be taken to an airport for immediate removal or to a central detention centre in an empty police building in north-west London.

Three reports on the initiation of "snatch squads" were discussed by the Metropolitan Police Authority (MPA, part of the Greater London Authority) in September. The MPA's own report says that such raids are: "likely to generate community tension and possibly a requirement for public order maintenance". The report further observes that: "In the event of a death or serious injury occurring while a person is detained it is highly likely that there will arise a public perception that the fault lies with the Metropolitan Police Service".

See article and full-text reports on *Statewatch News Online*: <http://www.statewatch.org/news/2001/oct/06snatchsquads.htm>

## Immigration - new material

**Government programmes on Roma.** *Roma Rights*, nos 2 & 3 2001, pp104. This issue lists attacks and instances of abuse and discrimination against Roma throughout Europe. In the UK, ethnic discrimination by immigration officials is allowed by excluding them from the scope of the Race Relations (Amendment) Act 2000, and a Ministerial Authorisation signed by Barbara Roche in April requiring "a more rigorous examination than other persons in the same circumstances" for Kurds, Rom, Albanians, Tamils, Pontic Greeks, Somalis and Afghans. Special reports look at government programmes on Rom in Slovenia, Bulgaria, Spain, Hungary, Greece, Czech Republic and Slovenia. Available from: ERRC, 1386 Budapest 62, PO Box 906/93, Hungary.

*Mugak* no 12 (April/June) 2001, Centro de Estudios y Documentacion sobre el racismo y la xenofobia, pp59. This issue focuses on the massive numbers of expulsions taking place (17,623 Moroccans from January 2000 to June 2001) in Spain and the way in which they do not arouse concern in the media except for extreme cases and mass expulsions. The mass expulsion of 37 Nigerians, most of whom were detained in a CETI (Centre for the Temporary Reception of Immigrants) for over six months, undergoing Spanish language classes and work training courses, aroused some criticism, although it is argued that such expulsions form part of the government's policies. Includes a report from the Belgian section of Amnesty International on lethal expulsions in

Switzerland, an account of a *Collective Anti-Expulsions* (CAE) action in Roissy airport in Paris to inform travellers and airport staff about expulsions urging them not to cooperate, a practical legal guide on how to avoid expulsion (a practical guide for intervening in airports, elaborated by CAE is available on: <http://bok.net/pajol/ouv/cae/intervention.html>), a table on access to the labour market for third country nationals, reports on the relationship between education and migration policy and the construction of difference and denial of rights in institutional policy in Spain, and the integration of Muslims in Europe.

## LAW

### ITALY

## New anti-terrorist law decree

A law decree amending anti-terrorist legislation to introduce the new criminal category of "association with the aim of international terrorism" was approved by the Berlusconi government on 18 October 2001. It will affect people who "promote, establish, organise, direct or finance, including indirectly, associations" intending to commit acts of violence on persons or things abroad, or for the detriment of a foreign State, institution or international organisation for terrorist scopes. The punishment for such offences ranges from seven to 15 years, whereas five to ten year sentences are applicable for participation in such an association. Offering refuge, hospitality, means of transport or instruments for communication to persons participating in such associations are offences carrying sentences of up to four years in prison. The main developments are the extension of anti-terrorist powers to international terrorism and the financing of terrorist associations. The description of what constitutes international terrorism follows the approach in the UK Terrorism Act (2000) in that it makes no distinction between the nature of foreign states against which "terrorist" activities are conducted.

This idea was also taken up in the Conclusions of the EU summit which followed the 11 September attacks in New York and Washington, despite concerns expressed in the European Parliament Committee on the Citizens' Freedoms and Rights, Justice and Home Affairs' report on combating terrorism. The report, adopted on 5 September by the European Parliament, said that a distinction should be made between acts of terrorism and:

*acts of resistance in third countries against state structures which themselves employ terrorist methods*

The inclusion of acts of violence to the detriment of "a foreign State, institution or international organisation" could also be used against protest movements. Such legislation could be applied to demonstrations against EU summits or meetings of organisations such as the IMF and G8, if they are characterised by violence.

Anti-terrorist powers in Italy include the possibility of preventative detention during preliminary investigations for a period which was extended from 18 to 24 months on 7 May 2001 by the previous government. The decree also envisages the possibility of undercover activities, whereby there would be no sanctions against agents whose actions are covered by previous judicial authorisation, and preventative surveillance in the form of interceptions of telecommunications (including e-mails). These interceptions must be authorised by a magistrate for a maximum period of forty days, which can be extended by a further twenty days.

*European Parliament report on the role of the European Union in combating terrorism (2001/2016(INI)), Committee on Citizens' Freedoms and Rights, Justice and Home Affairs; "Disposizioni urgenti per contrastare il terrorismo internazionale" - Urgent measures to combat international terrorism, d.l. 374/2001; [www.cittadinolex.kataweb.it](http://www.cittadinolex.kataweb.it) "Terrorismo, tempo*

*piu lunghi per le indagini", d.l. 98/2001.*

## Law - new material

**Annuario sociale 2001.** Gruppo Abele, (Feltrinelli, Milan), pp955, Lit. 37,000. An essential guide that includes detailed statistics and analytical essays and features concerning social issues. It is made up of nine sections: AIDS, Environment, Youth and children (including abuse, adoption, family rights, schooling, national service, etc.), Prison and the justice system, Crime and Mafia, Drugs, Immigration, Social issues (such as housing, the elderly, disabilities and mental health, traffic accidents, work, non-profit organisations and volunteers, population, poverty, prostitution, social protection, mental problems, suicides, violence and gypsies), International rights and conflicts. Contains excellent tables and exhaustive information for the meticulous researcher. Available from: Redazione - Ufficio Stampa & Comunicazione, Gruppo Abele, via Giolitti 21, 10123 Torino, Italy.

**Reviewing Crown Prosecution Service decisions not to prosecute,** M Burton. *Criminal Law Review* May 2001, pp374-384. In recent years a number of ethnic minority families have sought judicial review of CPS decisions not to prosecute police officers and prison officers following the death of their relatives whilst in custody. This article examines the issues surrounding these cases and considers implications for judicial review of prosecutorial discretion more generally.

**The Terrorism Act 2000,** J Rowe. *Criminal Law Review* July 2001, pp527-542. This article examines how the operation of the Act will affect human rights and how the principle of the European Convention on Human Rights may affect the exercise of powers under the Act.

**List to the Right,** C Fauset. *Index on Censorship* vol 30 no 3 2001, pp17-19. This article looks at the Terrorism Act 2000 in conjunction with the Regulation of Investigatory Powers Act 2000 and the Criminal Justice and Police Act 2001. The Act, the author concludes, is further evidence of the erosion of fundamental freedoms that produces a two-tier criminal justice system.

**Trial by jury,** Michael Mansfield. *Socialist Lawyer* no 33 (Summer) 2001, pp4-7. This is an edited version of a talk to the Haldane Society of Socialist Lawyers in which Mansfield defends trial by jury and argues that the Mode of Trial Bills and the Auld report will "create a more expensive process." He argues that the Bar Council, the Law Society and large law firms will "have to start putting their money where their mouth is because this is going to be the last opportunity to make a stand".

## CIVIL LIBERTIES

### GERMANY

## Telecommunication providers to intercept customers

On 24 October, the government passed a new Telecommunications and Surveillance Regulation (TKÜV, *Telekommunikations-Überwachungsverordnung*). The regulation lays down the technical and organisational measures, which providers will have to implement, to allow for the interception of telecommunications such as fixed line and mobile phones, text messages, faxes and e-mails. The legal basis for the interception is already laid down by provisions under the Criminal Code, the Foreign Economy Law (*Außenwirtschaftsgesetz*) and the newly amended G-10 *Gesetz*, which restricts the right to privacy in telecommunications (see *Statewatch* vol 11 no 3 & 4). Internet service providers are excluded from the new provisions, however:

*So that this [exemption] does not create... gaps in surveillance, the*

providers of transmissions which serve direct, user-specific Internet access (eg. ADSL connections) are obliged to take the relevant measures. E-mail account providers continue to be bound by law to provide the relevant technical provisions."

The regulation forces providers to implement the interception measures at their own cost. Further, telecommunications companies are forced to immediately implement surveillance on demand by the relevant authorities. An unsigned fax, either from judges, public prosecutors, the police or internal and external security services, can require companies to intercept their customers. The promised far-reaching discussion on this contested provision has not taken place, instead the Cabinet passed the regulation as an emergency anti-terrorist sanction.

Although the government claims that only the telecommunications of those under surveillance will be intercepted, a wide range of civil liberties groups have argued that this will not be possible due to the provision enabling internet surveillance, including chat rooms and mailing lists, thereby extending the interception to non-suspects. Furthermore, service providers are obliged to keep secret their interception activities and not leak the information gathered. This, according to internet specialists, is impossible to guarantee.

As in the G-10 *Gesetz*, the regulation is not subject to a "success control", which would monitor whether it achieves its objectives of fighting crime. In the past, interception laws, just as with stop and search powers, have proved incapable of reducing or even detecting crime (see *Statewatch* vol 11 no 3 & 4 and vol 11 no 2). Although the providers will have to keep statistics on their interception activities, these are only available to the authorities, making public accountability unlikely. The regulation does not call for the outright abolition of encryption, but it demands from providers so-called "backdoor" devices for the cryptography keys they provide. Internet activists have predicted an encryption paragraph will be "slipped in" with the still outstanding technical guidelines for the TKÜV.

The regulation, rather than being a national provision, follows a proposed EU Council Resolution (20 June 2001, document number 9194/01) "on law enforcement operational needs with respect to public telecommunication networks and services", that was not adopted because of privacy concerns. It states:

*The Council calls upon Member States to ensure that, in the development and implementation - in cooperation with communication service providers - of any measures which may have a bearing on the carrying out of legally authorised forms of interception of telecommunications, the law enforcement operational needs, as described in the Annex, are duly taken into account.*

See <http://www.big-brother-award.de/current/comm/> for background information on the Regulation, [http://www.bmwi.de/textonly/Homepage/download/telekommunikation\\_post/TKUEV1.pdf](http://www.bmwi.de/textonly/Homepage/download/telekommunikation_post/TKUEV1.pdf) for the Regulation in pdf format and <http://www.bundesregierung.de/frameset/index.jsp> for the government's take of the new regulation with regard to civil liberties.

## Civil liberties - new material

**The day to count: Reflections on a methodology to raise awareness about the impact of domestic violence in the UK**, EA Stanko. *Criminal Justice* vol 1 no 2, pp215-226. This article presents findings of an innovative methodology that examines the impact of domestic violence on key service providers in the UK. An audit of calls to the police over one 24-hour period reveals that it is largely women who contact police about domestic violence. The audit also documented that more women escaping domestic violence live in refuges in the UK on one day than contact police for assistance.

**Palestinian refugees: the right of return**, Naseer Aruri (ed). *Pluto Press*, 2001, 294pp, ISBN 0-7453-1776-6. The Palestinian's right of return to their homes has been upheld in international law and UN

Resolutions for more than 50 years, albeit while being simultaneously denied by Israel. Chapters from 16 contributors, including Edward Said and Noam Chomsky, cover the historical roots of the refugee question and a number of related issues. Includes an analysis of the EU's (impotent) approach to the refugees' return.

**Voices.** *Voices in the Wilderness*, no 17 (June) 2001. This newsletter campaigns for the immediate and unconditional lifting of sanctions against the people of Iraq. *Voices in the Wilderness UK*, has sent eight delegations to Iraq "deliberately and openly breaking the sanctions by hand delivering medical supplies and toys to children's hospitals in Iraq, without applying for export licenses." Available from: *Voices in the Wilderness*, 16B Cherwell Street, Oxford OX4 1BG; email [voices@vivuk.freeseve.co.uk](mailto:voices@vivuk.freeseve.co.uk); Tel 0845 458 2564.

**The new battleground**, Simon Davies. *Index on Censorship* vol 30 no 1 2001, pp13-16. Looks at the way the mass collection of DNA is an incursion into personal privacy. It examines the UK Criminal Justice Act and Police Act 2001 and argues that they "override earlier safeguards by mandating the indefinite storage of samples, notably those provided 'voluntarily', and extending access to those beyond police and other law enforcement agencies."

## RACISM & FASCISM

### Racism & Fascism - in brief

■ **UK: C18 leaders guilty.** Combat 18 (C18) leader, Will Browning, and two other members of the fascist organisation, admitted using threatening words and behaviour at Southwark crown court on 12 October. Browning, from John Silkin Lane, Surrey Quays, south London, with Matthew Osbury from Oxford and David Haldane from Scotland, were arrested after a television documentary filmed them threatening a peaceful march in January 1999. It commemorated the Bloody Sunday massacre of civilians by British soldiers in Derry in January 1972. Judge James Wadsworth told the men that they intended to disrupt a lawful march and fined them £750 each and sentenced them to 80 hours of community service. C18 effectively collapsed as a serious threat in the late 1990s when their leadership imploded in a violent feud after one of their key figures, Charlie Sargent, was jailed following the murder of a supporter. It was revealed at his trial that he had been a police informer for some years. *Independent*, 22.10.01.

### Racism & Fascism - new material

**The three faces of racism.** *Race and Class* vol 43, no 2 (October-December) 2001, pp140. This issue is published on the twentieth anniversary of the 1981 uprisings when Black and Asian youth organised in self-defence to fight against racist incursions by the fascists and police. It contains an important contribution from Sivanandan, "Poverty is the new Black", as well as pieces on Xeno-racism (Liz Fekete), popular racism (Arun Kundnani), race and the law (Lee Bridges), the Human Rights Act (Frances Webber) and the Terrorism Act (Gareth Peirce). It includes commentaries on this summer's confrontations between young Asians and the police in northern towns (Kundnani), Black deaths in custody and the Macpherson report (Harmit Athwal), the plight of asylum-seekers "dispersed" to Glasgow (Vicky Grandon) and the "Story of Ramin Khaleghi", a political prisoner who had suffered brutal torture in Iran and fled to Britain only to have his claim for asylum rejected. Ramin took his own life on hearing of his rejection. Available from IRR, 2-6 Leeke Street, London WC1X 9HS.

**Trouble in happy valley**, Marie Gillespie. *Index on Censorship* vol 30 no 3 2001, pp6-9. This article looks at racism in South Wales, "one of Britain's top three most dangerous areas for ethnic minorities." Available from Writers & Scholars International, Lancaster House, 33 Islington High Street, London N1 9LH.

**Recognising and Combating Racial Discrimination: A Short Guide.** *European Roma Rights Centre*, September 2001, pp14. A booklet that looks at the definition and nature of discrimination against Roma, ways to recognise discrimination, ways of proving discrimination and, finally, how to counter discriminatory practices or incidents. One suggested approach is called "testing" and has been used by Central and Eastern European organisations. In some countries it may be accepted in court. It involves sending pairs of Roma and non-Roma to apply for jobs, flats, or to restaurants and discotheques where regular discrimination is suspected to take place and comparing their testimonies. Statistical research is also deemed useful and may be used in court to highlight issues before international bodies (UN, Council of Europe). Furthermore, good statistical data of importance is often lacking, and sometimes state authorities block efforts to discover such information. The booklet highlights that "the existence of a law against discrimination in your country does not mean that it is impossible for you to suffer discrimination - it only means that you have a tool to fight against discrimination." More information on testing is available on the ERRC website at: [http://errc.org/rr\\_nr3\\_2000/legal\\_defence.shtml](http://errc.org/rr_nr3_2000/legal_defence.shtml)

**The decline of the 1970s National Front**, Kate Taylor. *Searchlight* no 315 (September) 2001, pp23-25. This article starts with the National Front's electoral apex of May 1977 and follows their rapid decline resulting in the organisation splitting in the early 1980s. One faction was led by the now redundant Martin Webster while the other, led by current BNP leader Nick Griffin and colleagues, flirted with Italian fascism. But the real victors in this period were the anti-fascists who countered the NF's every move, forcing them from the streets and exacerbating their internal tensions, until they became the largely irrelevant body that they are today.

*CARF* no 64 (October/November) 2001, pp16. Latest issue has pieces on "The end of asylum"; the anti-Muslim racism that has swept across the western world in the wake of the attacks on the World Trade Centre and the racial violence that is part and parcel of the asylum-seekers dispersal system, which was widely criticised as unworkable before their government introduced it. Available from *CARF*, BM Box 8784, London WC1N 3XX.

**Second report on the United Kingdom.** *European Commission against Racism and Intolerance (ECRI)*, Council of Europe 3.4.01, pp28. Based on fieldwork carried out in May 2000, this report found that "Problems of xenophobia, racism and discrimination...are particularly acute *vis-à-vis* asylum seekers and refugees. This is reflected in the xenophobic and intolerant coverage of these groups of persons in the media, but also in the tone of the discourse resorted to by politicians in support of the adoption and enforcement of increasingly restrictive asylum and immigration laws." Available from: ECRI, Directorate General of Human Rights DGII, Council of Europe, F-67075 Strasbourg Cedex, France.

## POLICING

### ITALY

## Raids on anarchists, anti-fascists and social centres

Anarchists and social centres were blamed by the Italian government and law enforcement agencies for clashes in Genoa during the G8 summit on 19-20 July 2001, they have now experienced police raids, searches and arrests, as well as suspected attacks by fascist groups.

Investigations by Milan investigating magistrate Stefano Dambruoso led to hundreds of raids on anarchist social centres and activists' homes throughout Italy under article 270 *bis* (associations with the aim of terrorism and subverting the democratic order), as well as the arrest of three anti-fascists. A

number of social centres and anarchist offices were vandalised, including the burning down of the *Pinelli* social centre in Genoa on 15 September. In the wake of the 11 September attacks Prime Minister Berlusconi claimed there were "peculiar similarities" between Islamic terrorists and anti-G8 protesters, a sentiment later echoed in the UK by International Development minister, Clare Short.

### Anti-fascists arrested in Milan

On 12 September 2001 Antonio Noe, Elio Lupoli and Mario Daprati were arrested, as their homes and the social centres (*Vittoria* and *via Gola* squatted house) they frequent were searched. They are accused of causing serious bodily harm to two fascists laying a wreath in piazzale Loreto in Milan, where Mussolini was hanged in 1945, on 25 April, the feast for Italy's liberation from the nazis. The three were kept in preventative custody because they were considered a "social danger" and to prevent them from repeating the offence. *Vittoria* social centre stressed that the laying of the wreath was a provocation in its call for a demonstration to demand their release - 3,000 people took part on 15 September. They argued that fascists carried out attacks, including a stabbing and bottle-throwing, during the afternoon. The three were detained for nine days and were subsequently placed under house arrest. Noe, Lupoli and Daprati wrote a letter criticising conditions in Milan's *San Vittore* prison, adding that their arrest was an effort to silence and divide the movement that manifested itself in Genoa "through criminalisation, intimidation, arrests and state terrorism".

### Pinelli social centre burnt down

On the night of 15-16 September the *Pinelli* anarchist social centre (named after the anarchist Giuseppe Pinelli, who "fell" out of a window in 1969 during questioning in relation to the Piazza Fontana bombing while in police superintendent Luigi Calabresi's custody, see *Statewatch* vol 11 no 3/4) in Genoa was burned down in an attack during which molotov cocktails were thrown. The centre was the headquarters for the "Anarchists against the G8" Coordination network, hosting anarchists prior and during the G8 summit. On that occasion, it was the object of preventative dawn raids by police in search of weapons and those present had their identities taken, as part of a host of raids aimed at social centres throughout Italy in the build-up to the G8 (see: *Statewatch* vol 11 no 3/4 and *Statewatch news online*, July 2001). A memorial to Carlo Giuliani was also vandalised on the night of the attack, in which the *Pinelli's* theatre area, library, practice and recording studio for local bands, IT centre, reception and meeting point for children and the mentally disabled were destroyed.

### Nationwide investigations and raids

On 18 September nationwide raids against anarchist centres and activists resulted from Dambruoso's investigations into three bombings in Milan: one in *Sant'Ambrogio* basilica on 28 June 2000 (unexploded), one in the *Duomo* on 18 December 2000 (unexploded), and another involving a letter bomb containing 150 grams of explosive sent to the *Musocco-Milano carabinieri* station (which was defused) on 26 October 1999. An organisation called *Solidarietà Internazionale* (International Solidarity) claimed responsibility for the *Duomo* device in a letter sent to Rome daily *Il Messaggero* in which they also criticised prison conditions in top security units in Spain and Italy. Investigators link the bombings, all of which figure in Dambruoso's investigation, to the "anarchist-insurreccionalist" area, alleging links to groups in Spain and Greece.

Over 100 raids were carried out by the *Digos* (*Direzione Generale Operazioni Speciali*) on 18 September in many Italian cities including Milan (Lombardy), La Spezia (Liguria), Modena (Emilia-Romagna), Trieste (Friuli-Venezia-Giulia), Venice, Mestre, Vittorio Veneto, Padua, Sacile (Veneto), Catania

(Sicily), Nuoro, Cagliari (Sardinia), Mondovì, Turin, Cuneo (Piedmont), Grosseto, Pisa, Florence (Tuscany), Orvieto (Umbria) and Aosta (Val d'Aosta). Among the social centres that were searched were *La scintilla* and *Rivalsa* (Modena) and *Villa Litta* (Milan), and an environmental group, *Il Silvestre*, was also raided in Pisa. The raids led to 60 people being placed under investigation. Material confiscated by the police consisted mainly of printed materials, leaflets, computers, floppy discs and publications. According to investigators, the most significant finds were three cases for mining detonators made by *Italesplosivi*, allegedly the same brand as the ones used in the *Duomo* device found in a country house in Grosseto and printed material concerning Spain and Greece, particularly about the FIES struggle against high security prisons in Spain. The "significance" of the material found may be limited by the fact that Grosseto is traditionally a mining district and that material concerning the FIES struggle is widely available.

*Croce Nera Anarchica*, an anarchist group, issued a statement that included quotations from the notice of investigation (*avviso di garanzia*) that one of their members from Modena received from investigating authorities. It was:

*for the crimes envisaged in article 270 bis of the criminal code for taking part - together with other unidentified persons - in an association named "Solidarietà Internazionale" aiming to violently subvert the social and economic established order in the State, to carry out violent actions with the aim of suppressing every political-judicial order in society or expression of the latter (such as the prison system), and in particular attacks against various targets such as religious sites, law enforcement agency barracks and public offices in Milan starting in October 1999 to the present day.*

### More investigations in Florence

On 24 September 2001 investigations into a "letter bomb" sent to Florence chief of police Achille Serra on 10 September 2001 resulted in investigations into eight members of *Network*, *odissea per lo spazio*, aged between 19 and 23. It contained a newspaper cutting relating to the likely eviction of a social centre in Florence to which the group is linked (*Centro popolare autogestito*) with an "A" drawn on it. The youths are accused of participating in an association with anarchist-insurrectionalist links, and of attempted murder for "taking part in the making of an explosive device ... which may have caused injuries to the head of police or anyone who opened the parcel". The organisation denied any involvement, claiming that the investigation is an "operation of political intimidation", resulting from their social activities. "The attack on persons who are particularly young indicates the desire to [dissuade] them from participating in politics ...", the statement continues.

### Intimidation at a local level

Three persons from the *Comitato sardo contro la globalizzazione neoliberista* (Sardinian committee against neo-liberal globalisation) alleged that they were detained on 25 September in Sassari while they were fly-posting for an anti-NATO demonstration. They claim that a plainclothes policeman called them over to his parked car before a flying squad car took them to a police station. They were insulted, threatened and had their mobile phones taken apart to prevent them from calling anyone, amid mentions "that they knew we had been to Genoa". They were questioned about their organisation and denied access to lawyers. They were threatened with arrest and searches of their homes, while their car was searched. "Interesting" material found by the police consisted of some posters and a photographic exposition on events in Genoa which was put together by the committee and shown in public during debates, along with some video footage. They were released after spending the night in the police station, repeated interrogations, having their material

confiscated and being charged with illegal fly-posting.

*ANSA 19.9.01; La Stampa 11.9.01; Corriere della Sera 11.9.01, 20.9.01; Repubblica 10.9.01, 18.9.01, 19.9.01; Resto del Carlino 18.9.01; International Herald Tribune 19.12.00; CNN 19.9.01; Network, Odissea per lo Spazio, press conference excerpts 27.9.01, and communiqués 24 & 25.9.01; Comitasto anarchico difesa e solidarietà, 18.9.01; CSA Vittoria 12.9.01, 13.9.01, 16.9.01; CSOA Pinelli, 16.9.01, 19.9.01; Centro popolare Autogestito 25.9.01; Resistenza Anti-Fascista 20.9.01; Croce Nera Anarchica communiqué, 19.9.01; Radio Black Out communiqué 18.9.01; Gruppo Ecologista Radicale "Il Silvestre", 19.9.01; CNN 19.9.01; Umanità Nova 18.9.01; Soccorso Rosso 17.9.01, 19.9.01; letter from three members of comitato sardo contro la globalizzazione neoliberista 26.9.01.*

**Genoa/Correction:** *In the front page article of issue 11:3/4 "An Italian view of "public order policing" Italian style", in reference to arrests in Genoa during the G8, we wrote that detainees "were charged with "subversive association aimed at destruction and looting" (a charge which allows the use of anti-terrorist legislation)". In fact, they were accused of belonging to a "criminal association aimed at destruction and looting" (a charge allowing the use of legislation against organised crime).*

## FRANCE

### "Bloody police repression" of Algerians remembered

France has officially acknowledged the cover-up of a massacre of up to 200 Algerians participating in a peaceful demonstration to protest at a curfew on their movements. Exactly 40 years after the events of 17 October 1961, the mayor of Paris, Bertrand Delanoë, unveiled a plaque near the Saint Michel bridge - from which many of the murdered Algerians were thrown by the police - which read: "To the memory of the Algerians, victims of the bloody repression of a peaceful demonstration". Successive French governments denied the extent of the atrocity, admitting only that only a few people had died in outbreaks of factional fighting among demonstrators. Their version of events was challenged by human rights groups who claimed that perhaps 200 or more people were killed (see *Staterwatch* vol 9 no 2).

The French cover-up began to unravel when Maurice Papon lost his libel case against a journalist who had accused him of ordering the killing of demonstrators in 1961; he was chief of the Paris police between 1958-1967 when the French colonial regime was trying to maintain a grip on its eight-year occupation of Algeria. Papon had previously served as a Vichy minister and collaborated with the nazis during the second world war, organising convoys of Jews to be sent to Auschwitz concentration camp. He was convicted of crimes against humanity in 1984 and sentenced to a token ten years imprisonment.

Perhaps it is not surprising that the events of 17 October 1961 have been compared to the rounding-up of Jews by the Paris police in 1942. Up to 25,000 demonstrators had gathered to peacefully protest at curfews imposed on them as a result of police attempts to smother the Algerian *Front de Liberation's* war of independence, which they had taken to the streets of Paris. The prosecutor at Papon's libel case described a police "storm of hate" against Algerians, encouraged by Papon's instructions to shoot protesters engaged in criminal activities on sight. Police officers and other witnesses described a two hour "manhunt" during which demonstrators were assaulted, beaten and shot before being dumped into the River Seine by policemen.

French Interior ministry documents, released in 1997-98, confirm the details of the massacre. They say that "dozens" of people died in a police station while the bodies of other Algerians were found in the Seine or the Paris sewers, some with hands bound with evidence of strangulation or bullet wounds. Bodies were, the papers say, found downriver of Paris for several days. One government archivist alone was aware of 63 dead, 23 of

whom were never identified. However, official records are certainly an underestimate as a third of the police files covering the events have "disappeared". In 1999 a judicial investigation concluded that at least 48 people were killed in the massacre, although the *Ligue des Droits de l'homme* said that hundreds had died, including some who were murdered over the following days at the police headquarters on the Ile de la Cite. Nearly 12,000 Algerians were detained, tortured and beaten after the march before their mass deportation disposed of potential witnesses.

Some commentators have described the begrudging French acknowledgment of the atrocity of 17 October 1961 as a country coming to terms with the painful events of its colonial past. Others ask why the French authorities have never held an independent public inquiry into an event that has been described as "revolting crime" by Patrick Baudouin, president of the Paris based International Human Rights Federation. Only last May a senior French general, Paul Aussaresses, boasted of torturing and murdering Algerian resistance leaders during the war of independence. The French judicial authorities refused to prosecute him because his admission was covered by a blanket amnesty declared by the Government in 1969.

The French police union has attacked the commemoration saying: "This kind of remembrance of a particularly painful period of our history can only have one consequence - to alienate the national police force. We denounce the irresponsible actions of some politicians." It would seem the only voice that remains to be heard amid the denials and denunciations is that of the relatives of those who were murdered.

*Liberation 17 & 18.10.01.*

## UK

### Traffic wardens, special constables and civilians to get police powers?

With the drive to recruit tens of thousands of new police officers looking unlikely to attract enough applicants, the Home Office has come up with a number of ideas to bolster police numbers and visibility using traffic wardens, special constables and civilians.

The central tenet of plans drawn-up by civil servants is the creation of a new "police auxiliary force" of traffic and street wardens. Nineteen sets of extra powers have been proposed covering a range of traffic and vehicle offences (at present traffic wardens can only issue fixed penalty notices), enforcement of anti-noise and litter and laws, patrolling "crime hot-spots" and a "limited power of detention". The proposals were presented at a meeting in August to a "staggered" Police Federation. One representative said "it was the first time we had heard of this and we felt the Home Office was trying to railroad us into it".

"Custody civilians" to reduce the workload of officers at police stations were another suggestion. They would be empowered to conduct breath-tests in drink-driving cases, take fingerprints and DNA samples from people arrested, interview suspects and prepare files for the Crown Prosecution Service.

Up to 30,000 "special constables" - police volunteers - should be recruited and paid a tax free sum of £2,500 per year for weekly shifts of eight hours to increase street patrols with real police officers. At present they are only entitled to have their expenses reimbursed.

The wider use of non-police "experts", seconded to particular investigations or specialist departments, was also floated. Under the scheme computer specialists would be brought in to help combat "cybercrime", accountants would assist in fraud cases and surveillance specialists, private detectives and former security service personnel would become more involved with "intelligence-led" policing. Those experts who wanted to join the

police but had been put off by low wages and the training requirement that they spend time in uniform patrolling the streets could be "fast-tracked".

The government is due to present a White Paper on police reforms to parliament by the end of 2001; formal proposals will follow in the new year.

*Sunday Times, 19.8.01; Independent, 20.8.01.*

## Policing - in brief

■ **UK: Officer suspended after Brixton riots.** A police officer drafted into Brixton to deal with disturbances that followed the police shooting of Derek Bennett has been suspended after CCTV footage allegedly showed him attacking a young black male and a couple who came to his aid. Hundreds of people had taken to Brixton's streets on 20 July after it emerged that Bennett, a 29-year-old black man killed four days earlier after waving a fake gun and taking a hostage on the Angell Town housing estate, may have been shot in the back (see *Statewatch* vol 11 no 3 & 4). CCTV recordings reportedly show two or three officers in riot gear chasing and kicking the black youth. A man and woman who intervened were then also allegedly assaulted, with the man suffering a dislocated wrist. Eight other officers involved have been put on "restricted duties". Prior to the disciplinary action, the Metropolitan police had said that they were unable to identify the officers involved from the camera footage. Paul Twyman, a member of Lambeth's Community Police Consultative Group, said that people who had in the past called on police officers to be more clearly identifiable had been "fobbed off". He said that if the Met had listened there would be "whacking great numbers on these people, rather than shoulder-flashes which you can't read". *South London Press 5 & 23.10.01.*

■ **Roger Sylvester police officer promoted:** To the dismay of the family of Roger Sylvester, who died after being restrained by eight Metropolitan police officers in January 1999, one of the policemen involved in the incident has been promoted. The family is still waiting a full account of Roger's death and an inquest to establish the cause of his death has yet to be set (see *Statewatch* vol 9 no 1, vol 10 no 6). Commenting on the promotion Roger's mother, Sheila Sylvester said: "We were told all 9 officers were on desk duty. No one had the decency or compassion to inform or consult us... of this promotion. We feel we have been treated with contempt. All this, whilst still grieving with our lives on 'hold' and before an inquest. Once again the Met. does what is best for itself and not for the people it serves." The Roger Sylvester campaign, PO Box 25908, London N18 1WU.

■ **UK: MoD deputy chief constable fired.** The deputy chief constable of the Ministry of Defence (MoD) police, Tony Comben, had his contract terminated in October, following criticism of his handling of a number of high-profile cases. He is being investigated by the Police Complaints Authority (PCA) following complaints by the *Sunday Times* journalist Tony Geraghty. Geraghty was charged under the Official Secrets Act when he published his book, *The Irish War*, but all charges were dropped after a two-year legal battle. The PCA also received a complaint from another MoD officer that Comben interfered with his mail and illegally obtained financial information about him. Comben has claimed that he has been treated disgracefully and said the he will appeal against the sacking. *Sunday Times* 28.10.01.

## Policing - new material

**Guide to the use of Stop & Search**, ACPO August 2001, pp62. The Association of Chief Police Officers (ACPO) has published a guide

setting out the standards expected of police officers conducting stop and searches. The manual contains sections on "Understanding stop & search", "Community consultation", "Monitoring role of the Police Authority", "Strategic and tactical use of power" "Recording [Stop & Search]", "Management information" and "Training and Development". In his foreword David Coleman, Chair of the ACPO Stop and Search Sub Group and Chief Constable of Derbyshire Constabulary, says that: "We are determined to rebuild community confidence in the police service by using our powers of stop and search lawfully and ethically in support of the community against crime."

**After Genoa? What next?** *Socialist Review*, no 255, September 2001, pp36, £1.50. Special issue on Genoa highlighting the anti-globalisation movement and emphasising that it must not be driven from the streets. Articles and analysis from demonstrators and commentators including George Monbiot, Susan George, Lindsey German, Mumia Abu-Jamal and others. Looks at evidence of police brutality, including pictures of another Italian policeman aiming a gun in Genoa, and at the main players involved in the demonstrations, viewed as "a staging post in rebuilding the left".

**Annual report 2000/2001.** *Police Complaints Authority* (2001), pp82 (£15.25). The sixteenth annual report of the "independent" Police Complaints Authority is as uninformative as its predecessors. It contains brief entries on, among others, deaths in police care or custody, firearms incidents, police integrity, race and community, allegations against officers, self-defence and restraint and the future. Available from: PCA, 10 Great George Street, London SW1P 3AE.

**Public order review,** Jo Cooper. *Legal Action* August 2001, pp20-23. Bi-annual column that reviews developments in public order law. This article considers affray (Public Order Act 1986 s3), criminal damage (Criminal Damage Act 1971 s1), execution of duty (Police Act 1996 s89) and harassment (Protection from Harassment Act 1997 s2).

## PRISONS

### UK

## Mubarek family win independent inquiry as crisis hits YOIs

The family of murdered teenager, Zahid Mubarek, who was killed by a racist prisoner in his cell at Feltham Young Offenders Institution (YOI) in March last year (see *Statewatch* vol 10 no 2), has been told by a High Court judge that there must be an independent investigation into his death. The family had pressed for a public and accountable inquiry into racism at the YOI, but was told by the Home Secretary David Blunkett that they would have to accept an investigation by the Commission for Racial Equality (CRE). The CRE, which planned to consider Zahid's case as part of a general investigation into racism in the prison system (see *Statewatch* vol 10, no 6), had refused to use its discretionary powers under the Race Relations Act to "either involve Zahid's family or add any meaningful element" to their inquiry.

It had been argued by counsel for the Secretary of State that the inquiry currently undertaken by the CRE would go towards meeting the government's obligations under Article 2 of the European Convention on Human Rights. This was rejected by Mr Justice Hooper. The CRE could only concern itself with the circumstances leading to the murder insofar as they related to racial matters. Counsel for the Secretary of State argued further that the family should exhaust any remedies against the public authorities before taking action against the Secretary of State. This also was rejected by Mr Justice Hooper: "It does not seem right to me that the Minister should be entitled to require the family of the deceased first to seek judicial review of decisions of

other public authorities, such as the Coroner, the CRE or the CPS."

Mr Justice Hooper said that to deny the Mubarek family an independent investigation would be a breach of their rights under Article 2 of the European Convention of Human Rights. Article 2 of the European Convention on Human Rights provides in sub-article (1) 2 that "Everyone's right to life shall be protected by law..." The European Court has made clear the nature of a state's obligation under this Article. In *Keenan v UK (ECHR) 3 April 2001*, a case in which the applicant was alleging that her son had died in prison due to a failure to protect his life by the prison authorities, the Court stated that:

*For a positive obligation (under Article 2) to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.*

By virtue of Article 2 therefore there is an obligation to carry out an effective official investigation.

Counsel for the Secretary of State argued that the purpose of any such investigation ought only to decide whether there should be criminal proceedings against state agents. In rejecting this, Mr Justice Hooper argued that it is clear from the case law that one of the principal purposes of requiring an investigation is to ensure future compliance with Article 2 (and Article 3) duties and that limiting the scope of an investigation in the manner proposed by the Secretary of State would not achieve that purpose. In *R. on the application of Wright v SSHD (2001) EWHC Admin 520* (see below "Suicides and Deaths in Prison") consideration was given to the necessary features of an investigation compliant with Article 2. Mr Justice Hooper said that the necessary features are:

1. *The investigation must be independent.*
2. *The investigation must be effective.*
3. *The investigation must be reasonably prompt.*
4. *There must be a sufficient element of public scrutiny.*
5. *The next of kin must be involved to the appropriate extent.*

Accordingly, in relation to the murder of Zahid Mubarek, Mr Justice Hooper concluded that:

*the obligation to hold an effective and thorough investigation can, in my judgement, only be met by holding a public and independent investigation with the family legally represented, provided with the relevant material, and able to cross examine the principal witnesses.*

He went on to argue that it was "likely...that there were serious human failings at the wing level and at higher levels which have not been publicly identified." However, the Secretary of State has been granted leave to appeal. He is expected to claim that Zahid's death, and the institutional failings that led to it, have been adequately investigated already.

Over the years Feltham has been roundly criticised by official and non-governmental sources. The Chief Inspector of Prisons, sir David Ramsbotham, has described the YOI as "rotten to the core." As recently as last July he compared the institution to a "gigantic transit camp" with conditions "unacceptable in a civilised society". Last year the deputy governor resigned because of the overcrowding and anti-social conditions which he described as "Dickensian".

The Prison Board of Visitors found that prison staff had registered over 700 young people as suicide risks. One of these was Kevin Henson, a seventeen-year old who had suffered alcohol problems since the death of his mother, and who was found hanging from exposed pipes in his cell last September. An inquest into his death in April returned a verdict of suicide, but west London coroner Allison Thompson blamed "failures in communication and the identification of at risk prisoners". Kevin's father blamed the Prison Service for not doing their job.

He said:

*Short of pulling the place down, it would be nice to see an outside agency go in. If its left to the Home Office to investigate there will be no criticism."*

At the end of September another young man died at Feltham - 16-year old Kevin Jacobs was found hanged on the same wing of Feltham B as Kevin Henson. Jacobs, who had been in the care of his local council and whose family said that he had become "institutionalised", had previously tried to harm himself while in police custody.

A day earlier another youth, 19-year old Luke Cortez-Malone, was found hanged at Brinsford YOI near Wolverhampton. His death was the second at Brinsford within a year. Deborah Coles, co-director of the campaigning and advice organisation INQUEST, has argued that there is a "crisis in young offender institutions" that needs to be addressed and pointed to the government's obligations under Article 2 of the European Convention. Furthermore, INQUEST has noted that despite inquests and official reports revealing a catalogue of institutional neglect and impoverished conditions and regimes, failings in suicide prevention and inadequate health care, there has been no change. She said:

*That so little has changed is a damning indictment of the way in which young offenders are dealt with by the criminal justice system and exposes the lack of accountability of the Prison Service.*

*INQUEST press releases, April & October 2001; Guardian 12.4.01, 2.10.01.*

## UK

### Suicides and deaths in prison

The Howard League has called for action to bring about a reduction in deaths and injuries in court cells and prison vans. Three hundred and seventy six people harmed themselves in cells and escort vehicles in 2000. The Howard League wants the Prison Service to take responsibility for conditions in court cells and has demanded a review of prisoner escort services, which were privatised in 1993. There have been eight suicides in court cells since the escort service was contracted out. Twenty eight per cent of suicides take place within a week of reception into prison.

A second inquest into the suicide of 22-year old Keita Craig, found hanged at Wandsworth prison in February 2000 has ruled that the prison's neglect contributed to his death. The second inquest was ordered by the High Court after legal action by Mr Craig's family to have the question of whether neglect or lack of care contributed to Keita's death considered by the inquest jury. As at the first inquest, the jury at Westminster Coroner's Court ruled that Mr Craig, a paranoid schizophrenic, killed himself while the balance of his mind was disturbed, but added that the cause of death was contributed to by neglect. Staff in the prison had been told on at least five occasions by Mr Craig's family that he was at risk. Warders at Richmond Magistrates Court, where he was tried for robbery, removed his shoelaces, believing he might seek to harm himself, but staff at Wandsworth returned them to him. He subsequently hanged himself by his shoelaces. Mr Craig was in a single cell on the hospital wing, waiting for a place in a psychiatric unit, but was not placed on suicide watch. The family have said that they intend to take his case to the European Court of Human Rights.

A public inquiry, chaired by a retired academic, John Davies, is to be held into the death on 7 November 1996 at HMP Armley of Paul Wright, who suffered a fatal asthma attack. During the hearing into his death in June this year, Mr Justice Jackson said that the standard of treatment given to him could arguably be considered "inhumane". He added that Wright - who was kept locked in his cell without appropriate medication and no key kept nearby to unlock the cell in case of emergency - had

received "inappropriate medical treatment" and that the jail's failings amounted to a breach of his Article 3 rights.

*Howard League; Guardian 2 & 12.10.01.*

## Prisons - in brief

■ **Scotland: insanitary conditions highlighted.** A Barlinnie remand prisoner made a successful application to the Court of Session in Scotland, arguing that his detention in a cell without sanitation constituted "inhumane and degrading" treatment and as such was a violation of his rights under Article 3 of the European Convention on Human Rights. Lord Macfadyen ruled in favour of Robert Napier's application on 26 June 2001 and ordered that Mr Napier be transferred pending a full hearing of the issues following the Scottish Executive's appeal against the ruling. A Scottish Prison Service spokesperson conceded that slopping out continued at five jails - Barlinnie, Edinburgh, Perth, Peterhead and Polmont Young Offenders Institution - and that only 76% of cells within the Scottish prison system had night toilet facilities. *Miscarriages of Justice UK info bulletin 29.6.01.*

■ **UK: Satpal Ram update:** In 1986 Satpal Ram was racially attacked in an Indian Restaurant. In the course of defending himself, his attacker died. In 1987 Satpal was convicted of murder without being given the opportunity to defend himself in court. During his 15-year incarceration he has been moved continuously, seventy times, to a variety of High Security locations (see *Statewatch* vol 4 no 3, vol 6 no 6, vol 9 no 5). On 27 October 2000 the Parole Board gave an unprecedented recommendation supporting Satpal's immediate release. After sitting on the decision for seven months, the-then Home Secretary Jack Straw rejected the recommendation and imposed instead a decategorisation timetable. In September 2001 the Criminal Cases Review Commission provisionally rejected Satpal's legal team's submission that his conviction was unsafe. For further information, contact: Free Satpal Campaign, PO Box 30091, London SE1 1WP. Tel: 07947 595367; email: freesatpalcampaign@hotmail.com

■ **UK: Sentence Reviews:** On 24 July 2001 the European Court of Human Rights, in a complaint brought by a prisoner, John Hirst, held that delays and infrequency in compiling parole reports and two year gaps between parole hearings violated a prisoner's right under Article 5 of the Convention to have their arrest or continued detention decided speedily by a court. This was the third occasion the Court had criticised the "tardiness" of the parole procedure. Prior to the ruling, the Prison Service was moving towards the implementation of a new Life Sentence Plan (LSP) which abandons automatic three-yearly F75 sentence plan reviews and moves towards the introduction of a system for producing reports "only at times of significant change or progress.". The only predicted report dates under the LSP would be Parole Board Reviews for open conditions or release. Logically, the LSP proposals may now have to be abandoned. *Daily Telegraph 25.7.01.*

■ **UK: Disability Rights in jail.** A disabled prisoner has won compensation for discrimination after claiming damages because of his experiences at HMP Horfield. The prisoner, who weighs 22 stone and has difficulty climbing stairs because of a heart condition, was transferred from Leyhill open prison to Horfield, where he was subject to a more strict regime. The claim for compensation was brought under the terms of the 1995 Disability Discrimination Act. Paul Daniels, of Russell Jones and Walker Solicitors, who represented the man, said "This man was humiliated and depressed by his experience. The way he was treated was an affront to his personal dignity." Almost 500 of Britain's prison population of 66,000 are disabled. *Observer 26.8.01.*

## Prisons - new material

**Predicting the likelihood of rearrest among Shock Incarceration Graduates: Moving beyond another nail in the Boot Camp Coffin**, JB Stinchcomb & Clinton Terry. *Crime & Delinquency* vol 47 no 2 (April) 2001, pp221-242. This study of a 90-day, jail based shock incarceration programme found relationships between the likelihood of being re-arrested and race, type of release, age and criminal history.

**Prisoners' Rights Bulletin**. Prisoners Advice Service, issue 16 (September) 2001, pp12. Contains recent prison law case reports, an update on recent Prison Service Instructions and Orders and an article examining critically the current proposals for lifer management arising from the Joint Thematic Review. Available from: Prisoners Advice Service, Unit 305, Hatton Square, 16/16A Baldwins Gardens London EC1N 7RJ. Tel: 0207 405 8090.

**Prison Report**. Prison Reform Trust, issue 55 (Summer) 2001 pp32. Contains a round up of news from UK prisons, a series of articles about problems with visits to prisoners, prison drugs supply reduction strategy, the formation of a national probation service, and extracts from Sir David Ramsbotham's recent Prison Reform Trust lecture. Available from the Prison Reform Trust, 15 Northburgh Street, London EC1V 0JR. Tel: 0207 251 5070.

**Hunger-strikes: a prisoner's right or a "wicked folly"?** J Williams. *Howard Journal of Criminal Justice* vol 49 no 2 (May) 2001, pp285-296. The decision to allow the force-feeding of Ian Brady raises many complex ethical and legal issues. Early case law sanctioned force-feeding, as suicide was illegal. However, this raises the question of whether death by hunger-strike is suicide, or simply an exercise of the right to self-determination. Recent case law provides a mixed message. Some cases recognise the duty of the prison authorities to intervene, others that it is merely a power, whilst a third category emphasises self-determination. American case law also fails to give clear guidance on the constitutionality of force-feeding. This article examines the case law, and considers the impact of the Human Rights Act 1998 on the

force-feeding of hunger-striking prisoners.

## MILITARY

## Military - new material

**Dutch increase spending to support Europe**, Joris Janssen Lok. *Jane's Defence Weekly* 25.7.01, p4. The Netherlands has announced up to \$825 million worth of new military programmes between 2002-2011 to strengthen European defence.

**Germany looks to the future**, Joris Janssen Lok. *Jane's Defence Weekly* 8.8.01 pp17-26. Germany has launched a major armed forces reorganisation.

**EU "neglects air force role"**, Joris Janssen Lok. *Jane's Defence Weekly* 29.8.01 p4. Statement by Dick Berlijn, commander-in-chief of the Dutch air force.

**Taking the initiative**, Craig Hoyle. *Jane's Defence Weekly* 19.9.01 pp34-42. Development of Europe's air forces since operation "Allied force" over Kosovo in 1999.

*Europaeisierung der Ruestungsbeschaffung. Willkommen im Schaffraffenland?* [Defence acquisition to the European level. Welcome to a land of plenty]. *AMI* July/August 2001.

**The EU Rapid Reaction Force: Europe takes on a new security challenge**, Chris Lindborg. *BASIC occasional papers* no 37, (August) 2001.

## GERMANY

## A "new war" on civil liberties?

### The German response to the attacks on 11 September

The German authorities, similar to their European counterparts, have responded to the attacks of 11 September with a 3 billion DM boost to Germany's internal security apparatus and a catalogue of security measures.

The measures will affect civil liberties and, in particular, the rights of foreigners in Germany and people with Islamic background. They include applying anti-terrorist legislation - formerly used against German militant activists - to non-Germans (without them having committed a criminal act or without the terrorist group they are allegedly part of actually existing in Germany). Existing stop and search powers (see *Statewatch* vol 10 issue 5) have been used in a nation-wide dragnet control operation specifically targeting migrants. Students with Arabic background are systematically checked for possible "terrorist" links. Other measures include the possible introduction of fingerprints in passports, the creation of "mobility profiles" of mobile phone users and the abolition of financial privacy in account handling. On the foreign policy front, conservatives have now proposed a change in the Basic Law to allow for Germany's armed forces to become active abroad without a prior parliamentary decision on the legality of such operations.

### The state of emergency

On the day of the attacks, Frank-Walter Steinmeier, the leader of the Federal Chancellery declared a security situation under which the Federal Security Council holds daily meetings until further

notice. The Security Council, created by a cabinet decision in 1955, consists of high-ranking security officials from relevant authorities, namely, the Foreign Office, the Ministry of Defence, the Ministry of Justice, the Ministry of Interior, the Ministry of Finance, the Ministry of Economy as well as the Ministry of Economic Cooperation and Development. With the Prime Minister, the leader of the Federal Chancellor's Office and representatives of the Federal Office of Criminal Investigation (Bundeskriminalamt, BKA) and German services abroad, the security council has around a dozen members. It meets, under the auspices of the Federal Chancellery, and are top secret, its remit is the coordination of the government's security and defence and Germany's arms export policies. The Council "analyses actual and potential dangers to the Federal Republic of Germany, coordinates the activities of the different authorities and prepares necessary measures and decisions".

The Council oversaw two "anti-terror packages", the first of which was proposed by the Chancellor's Office on 19 September and passed by the Lower House of the German parliament on 11 October. Also on 19 September, the Federal Chancellery decided to allocate 3 billion marks for the fight against terrorism in the 2002 budget. The final draft of the second anti-terror package, the "Government Proposal for the Fight Against International Terrorism" is currently being prepared and expected to come before parliament shortly.

## More money, less liberties

The extent and nature of the proposed (and agreed) security measures is far-reaching. There are budgetary increases for the German armed forces and for the secret services (for the intensification of its investigation into terrorism) and more provisions for the Federal Border Guards (Bundesgrenzschutz), the Federal Office for Criminal Investigations (Bundeskriminalamt), the Public Prosecutor and general security control measures.

The measures however, that will directly affect civil liberties, especially of the non-German population, is firstly the change in the Regulation for Officially Listed Associations (hereafter Vereinsrecht) to annul religious privileges and secondly, a change in the Criminal Code to enable the prosecution of persons who are alleged/"suspected" members of terrorist organisations abroad, even if they are not active in Germany or if these organisations do not exist in Germany. This throws up the question of the definition of terrorist organisations yet again with regards to armed resistance/liberation groups in authoritarian regimes supported by the EU governments and the USA.

## Terrorism goes ethnic

The change in the Criminal Code to allow German authorities to prosecute foreign organisations is an extension of the existing anti-terror provision 129 StGB. PARAGRAPH 129a StGB was introduced in the 1970's and gives extensive powers to law enforcement agencies and the German internal secret service (Verfassungsschutz). It has been used in particular against Germany's extra-parliamentary anti-fascist and environmental movement and most recently against six people alleged to be members of a militant group which dissolved over 20 years ago. The provision has been severely criticised for allowing arbitrary interception and prosecution as it fails to define specific crimes and allows for an immense increase of powers for police and prosecution on grounds of "membership and/or promotion of a terrorist organisation", dubbed by the German civil liberties group CILIP an "open sesame" paragraph for Germany's criminal justice system (see *Stewatch* vol 10 no 1 & vol 11 no 2 for a more detailed discussion). Now the provision has been extended, in neat alphabetical order, to include paragraph 129b StGB, this time to allow for the investigation and prosecution of foreigners in Germany who are deemed terrorist not only by EU member states, but also by any other state recognised by the international community. This addition to the German Terrorism Act, which was passed without any opposition in parliament, could have immense consequences for any opposition to authoritarian regimes. Even Kurt Rebmann, the Chief Public Prosecutor in 1986, voiced concerns on this matter when he pointed to the need for making:

*a decision [on the question] if a possibly legitimate resistance against a foreign unlawful regime can annul the qualification of a terrorist organisation for [the same organisation]. This test would become almost impossible, if a foreign organisation would take over governmental power through the use of force, thereby legalising its past behaviour.*

The weekly newspaper *jungle world* asks: "Will the Albanian militant organisation UCK be classified as terrorists or as a legitimate form of armed resistance, or what kind of treatment will Kurdish refugees have to expect in Germany in the future?"

This, and other provisions, have been passed through parliament with little debate, although the Green party warned of "discrimination and false allegations", which seems an understatement, given the specific focus on ethnic, national or religious groups under paragraph 129b. Together with the abolition of religious privileges in Germany's regulation of officially listed associations (Vereinsrecht), the security measures

allow for specific restrictions on religious and ethnic groups under the Vereinsrecht, and far-reaching infringements of their members' civil liberties. What the targeting of religious and ethnic groups means in practice, first became evident in post-war Germany in the beginning of the 1990's, when then Interior Minister Manfred Kanther (CDU) outlawed over 150 Kurdish political and cultural organisations. The mere assertion of Kurdish culture through theatre performances and the use of Kurdish language allowed the police to intervene and the targeting of Kurdish organisations led to an unarmed 16-year-old Kurd being shot dead by police whilst putting up posters for an outlawed Kurdish party during the night. Over 1,500 preliminary investigations were instigated after the ban in 1993, most of which had to be abandoned and most of the organisational bans were later declared unconstitutional in court, but they resulted in the criminalisation of a particular ethnic group and the collection of vast amounts of data.

## Collective guilt

After an agreement, on 1 October, between the Interior Ministers of Germany's regional states (Laender), "Islamic terrorists" are being targeted through a nation-wide "dragnet control" operation. This systematic search for so-called "sleepers" - people not actively engaged but possibly preparing future terrorist activities - compares the characteristics of a large group of people to locate a combination of specific characteristics and possible connections/similarities. The crime preventative computerised dragnet control is thus a mechanistic comparison of sets of data held by public and private institutions, for example, by registration offices, universities, health insurances, electricity providers and police data. Through the comparison of the data, the circle of "suspicious" persons is continuously reduced.

Despite the lack of definition of what characteristic renders a person subject to surveillance, one criterion appears evident: membership of the Muslim faith. With the alleged link between the attacks of 11 September and some German students of Arab origin, the first wave of controls has been introduced at German universities. Using the "profile" of the three alleged attackers who studied at the university of Hamburg, the authorities are currently targeting young, religious men of Arab origin who are studying/have studied technical subjects, are financially independent, speak several languages, regularly applied for visas or travel and/or have a pilot's license. As most male students from Arabic origin are financially independent, mostly study technical subjects and not sociology, travel at least to their countries of origin, have to apply for visas on grounds of their non-EU status and usually speak their mother tongue, German and English, the chosen criteria could include the majority of Arab students in Germany, of which there are several thousand (the Muslim community as a whole is 3.3 million).

The only opposition to targeting these groups has been the students' unions at universities which are handing over their data pool on Muslim students to the investigating authorities. The demand by Berlin's Interior Minister for the data of students from 14 Arab countries, for example, was complied with by the Technische Universitaet Berlin (data sets on 400 students) as well as the Humboldt Universitaet (23 records). The Freie Universitaet is currently refusing to comment. The Goethe University in Frankfurt also passed over data on their Arabic students in the sciences, because "we have no reason at all to retain data", the university's director, Rudolf Steinberg, asserted. Universities in Hamburg, Hesse, Bavaria, Baden Wuerttemberg, Saxony and Brandenburg followed suit, though they are reluctant to admit the extent of their cooperation with the authorities. The universities say they do not doubt the integrity of their students and are against "any blanket denunciation of people of different nationality and religion" (Juergen Luethje, director of the Univerisitaet Hamburg) or think that "nobody should be

suspected unfairly on grounds of his belief or origin" (Juergen Mylnek, director of the Humboldt Universitaet Berlin).

The universities are being criticised by many students' unions and the umbrella organisation of students' unions announced it would take legal steps against the handing over of data. At the Humboldt University the student's union has initiated legal proceedings against the chief of police in Berlin: "amongst other things on grounds of violation of the data protection law as well as incitement of racial hatred against religious groups", says Oliver Stoll, spokesperson for the union.

### **Data protection by-passed**

Germany's data protection officers have warn against rushed legal decisions which could lead to the eradication of data protection per se, particularly in the light of Prime Minister Gerhard Schroeder (SPD) commenting that maybe Germany had exaggerated its emphasis on data protection in the past. Spiro Simitis, professor in the research centre for data protection at the university of Frankfurt (and data protection officer in Hesse between 1975 and 1991), strongly opposed the common argument that to protect data is to protect terrorists and declared that the argument was "nonsense". When questioned if he had ever learnt of a case where data protection laws or practices had stood in the way of the detection of criminals, he replied:

*no, not a single one. I only know of cases where the allegedly exaggerated data protection [in Germany] is used as an excuse: either because the authorities cannot be bothered to look for specific data on time. Or because they are incapable, unorganised or insufficiently equipped to draw on the data. Our police laws and other regulations have allowed the collection and use of this personal data for years now, they are generously defined for this purpose. At this moment I ask myself: why do the authorities use their possibilities so little?*

### **The second "anti-terror package": everyone's a suspect**

Despite many new powers agreed in the 1990s, Interior Minister Schily has proposed a second catalogue of security measures, this time to increase powers for the BKA (to enable the preventative fight against terrorism and non-suspect related investigations) and the secret service. The current proposal is still being debated and will probably come before parliament at the end of October. It includes plans for:

- the inclusion of fingerprints in passports
- the use if federal border guards as "sky marshalls"
- the obligation by banks to provide the secret service (Verfassungsschutz) with customer's data
- stricter internal and external controls of foreigners
- more powers for the BKA to allow for indiscriminate interception

The proposal affects around 11 laws and regulations, from the police laws and secret services regulations to the passport laws, the Aliens Act and the Regulation on the Aliens Data Pool (Auslaenderdateienverordnung).

The internet magazine *Telepolis* points to the dangers inherent in the recent propositions, in particular the unchecked extension of police powers:

*What seems, at first sight, not particularly spectacular, has in fact been subject of heated debates between lawyers for years now and could transform the working methods of the Federal Office for Criminal Investigation (BKA) into those used by the secret services. Until now, crime police officers as a rule can only start investigations if there is a clear danger of a violation of legal rights. The public prosecutor also can only instigate preliminary proceedings on grounds of an initial suspicion.*

The blurring of the legal separation between law enforcement agencies and secret services brings with it many dangers. Fredrik

Roggan, legal expert at the university of Bremen says this leads to: "a blurring of the separation of police regulations and the Criminal Code" as well as the abuse of discretionary powers by the investigating authorities through the abolition of the necessity to justify preliminary proceedings. Without valid reasons for suspicion, everybody becomes a suspect, and data is collected without adequate control.

Another focus of Schilly's second package is the internet, as this is being seen by the German authorities as an "efficient infrastrucutre for carrying out crimes, in particular providing possibilities to attack information and communication systems". Similar to dragnet control on the ground, the automated search system INTERMIT will soon find a legal basis in Germany.

### **Biometry in passports, foreigners under control**

One of the most worrying aspects of the second 135-page government proposal, is the inclusion of so-called bio-metric material in passports and identity cards. In additions to photos and signatures, the government is trying to create a legal basis for the inclusion of fingerprints and "hand or facial geometry" into identification documents. This, the report argues, is necessary for a positive identification without relying on those subjective, perceptive faculties necessary for the comparison between a photograph and a real person. In order to enable a computerised comparison, the data will be stored on the identification papers in a coded format.

In order to try and prevent terrorists entering the country, the report further proposes a language identity test on undocumented asylum seekers in order to define their countries or regions of origin. The refusal of visas on suspicion of terrorist activities will be made easier. For this purpose, Schilly is planning to extend the central data register on foreigners (Auslaenderzentralregister) the data of which is currently used for the decision-making on visa issuing - all the data would be made accessible to secret services and investigating authorities - and the creation of data sets according to certain group criteria is planned too. The latter on its own, that is, the extension and technical innovation of the data pool on foreigners, is estimated to cost the state around 33.7 million Euro by 2005.

### **Financial privacy**

Financial privacy is also an issue of concern. Mr Eichel, Minister of Finance, wants to register all 300 million account holders in Germany, which, apart from detecting terrorists, would be helpful in uncovering tax fraud. "In one way or another, we will have to part with the so-called right to banking secrecy (*Bankgeheimnis*)", Joachim Poss, financial expert of the Social Democratic faction said. Paragraph 30a of the tax regulation protects bank customers from personal data transfers, but this regulation, says Poss, "does not actually protect the customer, but protects the tax evader". Further, "because organised crime cannot survive without tax evasion", the regulation is in dire need of reform, he says. In line with the declared war against the financing of terrorism Germany had closed 214 accounts by 16 October - around 8 million DM have been frozen.

### **Article 5 and Germany's armed forces**

Although the constitutional ban on Germany's involvement in military operations abroad has increasingly been eroded since the breakdown of the Communist Bloc, activity by Germany's armed forces on foreign soil is still bound by UN and NATO mandates and restricted by a requirement for a parliamentary vote. The decision by the NATO security council to invoke Article 5 of the Washington Treaty (the principle of collective defence) was welcomed by the German government. The invocation of Article 5 however, does not automatically constitute an obligation on the German government to send troops abroad in a military capacity,

as the circumstances do not constitute a situation of self-defence as it is defined by Article 115a of the German constitution.

Although Uwe-Carsten Heye, speaker for the Federal Press Office, denied the existence of an official request for the involvement of Germany's armed forces in the current conflict, prime minister Gerhard Schroeder declared that the German army could "shortly" be expected to be sent abroad. Michael Glos (CDU) commented that he expected a parliamentary decision to be made on the subject at the next parliamentary meeting in the beginning of November.

*Government press releases from 12.9., 13.9., 19.9., 1.10., 2.10., 7.10., 12.10., 16.10. this year (<http://text.bundesregierung.de>); jungle world 26.9.2001; Telepolis 17.9.2001, 11.10.2001, 12.10.2001 ([www.heise.de/tp/deutsch/inhalt/te/9565/9783](http://www.heise.de/tp/deutsch/inhalt/te/9565/9783) and [/9792.html](http://www.heise.de/tp/deutsch/inhalt/te/9565/9792)); press release by the Independent Centre for Data Protection Schleswig-Holstein 17.9.2001; Spiegel online 3.10.2001 ([www.spiegel.de](http://www.spiegel.de)); Die Zeit 4.10.2001; Sueddeutsche Zeitung 17.10.2001. (Governmental note on the introduction of a nation-wide dragnet control operation, 1.10.01, [http://text.bundesregierung.de/nurtext/dokumente/Artikel/1x\\_58248.htm](http://text.bundesregierung.de/nurtext/dokumente/Artikel/1x_58248.htm)*

EU

## Expanding the concept of terrorism?

Thomas Mathiesen examines the dangers presented by the proposed EU definition of terrorism

The events which took place in the United States on 11 September 2001 were terrible. So are many of the acts committed by the United States against other states through the years. The latter actions have been part of the complex of factors causing the former.

In the shadow of these events, and at very short notice, plans have been proposed within the EU which imply a dramatic widening of what we usually understand by "terrorism".

The proposals contain two main characteristics. Firstly, if implemented they will be of marginal importance when it comes to prevention of actions such as the ones we have seen in the US. Secondly, they will be of very considerable importance in preventing legitimate but perhaps somewhat boisterous protests such as those we saw earlier this year in Gothenburg and Genoa. And I am not thinking of the actual outbursts of violence there, but the more peaceful approaches used by the large majority.

The proposals were discussed at the meeting of the JHA Council on 20 September, nine days after the events in the US. The Commission had presented two proposals for council framework decisions, drafted after 11 September - one on the issue of the European arrest warrant, and one on combating terrorism. The ministers agreed in principle on both of them, advocating their rapid adoption. My focus here will be the proposal on combating terrorism.

The core provision in the proposal is Article 3, where "terrorist offences" are defined.

"Terrorism" is a complicated concept. As far as definition goes, it is in considerable measure dependent on political view: Palestinian actions in the Middle East are defined as "terrorist" by Israel and many Western states, while they are defined as legitimate and necessary political actions by many Palestinians. Frequently, an important part of the political struggle consists of winning the battle over definition.

What is defined as "terrorist" may also change through history: The demonstrations and actions of the Norwegian labour movement in the early 1900s were frequently defined as terrorist, while in retrospect they are seen as legitimate and necessary attempts to change Norwegian politics and social structures.

Despite variations such as these, some core activities are commonly understood as "terrorist", at least by a large majority, more or less regardless of political view and historical phase. Violent and arbitrary actions consciously directed towards civilians with a political goal more or less clearly in mind constitutes such a core act (though admittedly, those who commit such acts may at the time not consider them "terrorist"). I view the mass bombing of the city of Dresden during the closing months of World War II, followed by the shooting of civilians (from fighter planes) who tried to flee from the demolished city,

as such acts. Although the professed aim was to shorten the war, the war obviously coming to an end anyway, Dresden was of no military importance whatsoever, and it was a violent and arbitrary slaughter of tens of thousands of civilians. The carpet bombing and the slaughter of civilians in My Lai and other attacks on civilians during the Vietnam war and the actions against the World Trade Center in New York and the Pentagon in Washington D.C. on 11 September of this year, constitute other cases in point.

Though this is one core activity, other types of action may also be included, for example damage to or demolition of important institutions such as oil installations, symbolically important physical structures, or structures with important practical functions for civilian populations (Norwegian oil rigs, Buckingham Palace, WTC and Pentagon once more, and electricity - and water supplies such as those in Serbia and Afghanistan would be cases in point).

There is also an admittedly hazy "outer parameter" of the concept, comprising activities which may or may not be included, depending on the circumstances. In any event, and despite the lack of clarity, the concept as defined in Article 3 in the Commission's proposed framework decision *comprises activities which without doubt go far beyond any reasonable definition, and far beyond the concept of terrorism as commonly understood today*. The concept is greatly expanded compared with any of the core activities mentioned above.

A number of offences are listed, from murder to attacks through interference with information systems. Several of the offences, including theft and robbery, do not arouse associations to anything particularly terroristic. More important is the fact that acts covering regular civil disobedience - Ghandi's time-honoured approach - are included. "Unlawful seizure" of "places of public use" arouses strong associations to environmental protests such as the ones we saw in Northern Norway in the early 1980s, where thousands of people participated in major sit-down demonstrations in order to prevent irreversible damage to nature in connection with the use of a particular river for electricity. Likewise, the demonstrations in Gothenburg and Genoa earlier this year are relevant. "Unlawful seizure" of "state or government facilities" covers protest against the erection of nuclear power plants in many countries. "Damage" to such places of public use and facilities is also included, but the very significant word "or" is injected between "seizure" and "damage", indicating that seizure alone is enough to qualify. Threats to commit offences of this kind are also included in the list.

But the offences in and of themselves, as listed by the Commission, are not enough. *The purpose* must be terroristic, and in the proposal a terroristic purpose is given a very broad

definition indeed. If the offences which are listed "are intentionally committed by an individual or a group against one or more countries, their institutions or people with the aim of intimidating them and seriously altering or destroying the political, economic, or social structures of those countries, [they] will be punishable as terrorist offences".

Note once more that there is an "or" between seriously "altering" and "destroying". Think of that - *with the aim of seriously altering political, economic or social structure*. The demonstrations mentioned above in Northern Norway in the early 1980s as well as the Gothenburg-Genoa-demonstrations in 2001, had precisely this aim. So do environmental protests of various kinds today. So does *Attac*. In Northern Norway in the 1980s, the demonstrators were fined. The fines were nothing compared to the maximum prison sentences outlined in Article 5 of the Commission's proposal.

But perhaps the proposal from the Commission will be delimited through later decision-making steps? At least we know what the Council's response is: As this issue of the *Statewatch* bulletin is going to press, *Statewatch* has revealed that the Council wants to *widen* the definition of terrorism proposed by the Commission. Most significantly, the Council changes the word *altering* political, economic or social structure to *affecting* such structures. "Affecting" may include almost anything. Also, the Council does not wish to limit the issue to affecting the political, economic or social structures of *countries*, but adds *international organisations*. As *Statewatch* argues in a significant submission to the House of Lords Select Committee on the European Union, such "a broad definition would clearly embrace protests such as those in Gothenburg and Genoa". On top of this, Ireland and the UK have apparently proposed deletion of the word *seriously* in the definition of a terroristic purpose, broadening the scope still more. In view of all of this, it is of little help that the Council adds the word "serious" to the description of the offence called "unlawful seizure of or damage to.. places of public use" (see above).

What is happening now in terms of definition is dangerous. Legal measures of this kind will not be effective in preventing terrible and extraordinary events such as those we have seen in the US. Actions of that kind are committed by very professional people, fully capable of acting outside the reach of the measures. But the measures *will* most certainly enable relevant state institutions and forces to stop legitimate protests against "political, economic, or social structures".

Add to this that the JHA meeting on 20 September also discussed far reaching communications surveillance, which suffers from the same weaknesses: It will not threaten committed terrorists (Echelon and other types of advanced communication controls were apparently of no help in preventing the 11 September event), but will seriously limit civil rights and the freedom of expression, and discipline many of us. Measures of this kind are also discussed or even enforced on a national basis in several countries. The logic seems to be: Communication surveillance are ineffective in combating terrorism. Medicine: You need more of the same. This particular logic runs through current crime control policy in general: Prisons are ineffective, and even counter-productive, in combating crime. Medicine: You need more of the same.

Methods of political protest available to ordinary people are under attack. Regardless of whether the attack is consciously planned and/or an unintended consequence of a major panic (it is probably a mixture of the two), it is politically dangerous. If the Commission's and now the Council's proposals are adopted, they may possibly not be used in such a broad and generalized way at first. From long experience we know, however, that discretionary measures in this area will be employed less carefully, and more broadly, as time passes and when the time is ripe.

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(This article first appeared in the Norwegian daily newspaper *Dagbladet* on 1 October 2001)

EU

## European arrest warrants

Examines the proposal to abolish extradition and remove human rights safeguards

On 20 September 2001, the European Commission presented its proposal for European arrest warrants as a replacement for extradition procedures to the special Council of justice and home affairs ministers convened to discuss the terrorist attacks in America nine days earlier. The ministers announced that they would agree the text at the justice and home affairs council on 6-7 December 2001.

The speed with which EU governments intend to agree such a complex and detailed proposal is both unprecedented and astonishing. It does not deal solely with terrorist offences, nor does it not seek to "simplify" extradition for *serious* offences in line with EU mandates. It is in fact so broad that it exceeds the aim of creating a "single European legal area for extradition" that the EU said last year was a "long-term objective" for 2010.

### Goodbye extradition, hello 'Eurowarrants'

At present, extradition requests can be made in two ways. 'Provisional arrest requests', where one state requests another, usually through police channels, to arrest the subject of a domestic warrant. If that person's whereabouts are known, the request is made bilaterally - if not, an international "alert" is issued (via the Schengen Information System (SIS) in

participating states or by way of an international arrest warrant through Interpol). "Full order requests", are completed extradition papers sent in advance of the arrest through diplomatic channels. The proposed Framework Decision will replace all EU extradition procedures with EU-wide arrest warrants issued directly by a judicial authority in one EU member state and treated in largely the same way as a domestic warrant by the judicial authorities in all the others (the "mutual recognition" principle). These "Eurowarrants" will count as complete requests for the location, arrest, detention and surrender of a fugitive and will also be used for "searching", and by implication, seizure.

### Indictable offences

After their first reading of the Commission's proposal, EU government delegations were split over the potential range of offences to which EU warrants will apply. Under current extradition rules, the principal requirement is 'dual criminality' - the offence must be a crime in *both* the requesting and requested states, and punishable in *both* states by a minimum custodial sentence (at least 12 months imprisonment in the requesting state and six months in the requested state under the 1996 EU extradition convention). Four options to decide the scope of the

new system are now on the table. Widest of these is a “general scope” and the total abolition of dual criminality. This is unlikely because it would mean that a member state could effectively apply its criminal law to legitimate behaviour in another (‘extraterritoriality’). The narrowest option, and least objectionable from a civil liberties viewpoint, is restricting the scope to “harmonised”, “positive list” of EU offences. Eurowarrants could then only be issued where EU member states have similar definitions and minimum sanctions for offences in their criminal law, but governments may be reluctant to leave existing extradition procedures in place for other offences. A third option is a restricted dual criminality requirement, where extradition would not be allowed where the acts took place in any state not criminalising those acts, although, alarmingly, no reference is made to maintaining the minimum sentence threshold. The remaining possibility is a positive list combined with a minimum sentence threshold for the remaining offences. The positive list in another EU proposal on the mutual recognition of orders to freeze assets and evidence includes drug trafficking, EC budget fraud, money laundering, counterfeiting of currency, corruption, trafficking in human beings, terrorism, trafficking in firearms, child pornography and sexual exploitation, and participation in a criminal organisation. Murder, theft, blackmail, kidnapping, forgery, facilitation of illegal immigration and fraud are also being considered in negotiations conducted in virtual secrecy since February.

### **Extradition procedures - the status quo**

The extradition process from England and Wales to EU states is governed by the 1989 Extradition Act, which incorporated the 1957 Council of Europe Convention on Extradition. After an initial arrest, the Home Secretary must issue an Authority to Proceed (ATP). Where an arrest has been made on the basis of a provisional request, a judge will decide whether to remand the person in custody or allow their release on bail and set an initial period, generally 40-60 days, for the receipt of the full extradition request and subsequent ATP. If the person consents to their extradition, all rights are waived and expedited transfer is arranged. Otherwise, a committal hearing takes place, at which a district Judge must be satisfied that the papers are in order, the offence is an extraditable crime and none of the barriers to extradition apply (see below).

When the judge authorises the extradition, the defence have fifteen days to lodge a *habeas corpus* appeal with the Divisional Court. That decision can in turn be appealed to the House of Lords (the requesting state may also appeal if the Divisional Court rules against it). Once this judicial process has been completed, the ultimate question of whether to “surrender” the person to the requesting state is referred back to the Home Secretary, who must sign an order for the person’s return. A judicial review of that decision may then be sought if there are still reasons to suggest the extradition would be wrong, unjust or oppressive. The judiciary is under no obligation to complete proceedings in any given time limit and cases that go the distance can take a long time. Criminal defence specialists say this “delay is often both inevitable and necessary in the interest of justice” (*The law on extradition: a review*, Justice, June 2001).

### **The new regime**

Under the fast-track procedures in the proposed EU Framework Decision, a number of basic procedural rights are threatened by the Commission’s failure to provide simple guarantees. When arrested under a Eurowarrant, a “requested person” must be informed “of the warrant and of its content, and of the possibility of consenting to surrender to the issuing judicial authority” and has “the right to be assisted by a legal counsel and, if necessary, by an interpreter” (art. 11). However, there is no specification as to *what* information should be given to the person immediately

upon arrest, or even how quickly it should be provided.

When an arrest is made, the executing state informs the issuing authority who must then confirm immediately whether the warrant is still valid (art. 13). A decision on whether to remand the person in custody or allow them bail is then taken by the executing state (art. 14). *Fair Trials Abroad* (a UK legal rights group) lobbied the Commission doggedly for a “Eurobail” system to be developed in tandem with the proposal, but these and other possible safeguards were ignored. There is no attempt to ensure that people arrested on “Eurowarrants” are granted provisional release on the same basis as nationals, although the Home Office makes the absurd claim that harsh sanctions proposed for non-compliance are “more likely to dispose executing judicial authorities to allow bail”.

A judicial examination of the warrant must follow within ten days of the arrest (art. 17), unless the person consents to their extradition. This takes place under national law to satisfy a judge that the warrant is valid and no grounds for refusing enforcement apply (see below). The court may request additional information from the issuing state (art. 19), but there are no provisions governing the requested person’s right to hear and respond. The hearings are allowed to consider the grounds for refusing extradition (art.s 26-32) and surrender (art.s 33-34) but not other important exceptions provided for in “special cases” (art.s 35-39, see below).

### **Appeal to be limited or abolished**

The provisions on judicial examination also faced revision after the first reading of the Commission’s proposal by EU government delegations. “Some delegations” suggest that judicial supervision should be limited to the “legality of detention”, with no review of the other provisions in the framework decision. This would remove many of the safeguards in the Commission proposal, and clearly leave the system wide open to illegal extraditions and abuse by prosecutors. Other governments want appeals restricted to a single instance, placing complete faith in the infallibility of first instance judges.

A 90-day time limit for enforcement of the warrant, from the date of the initial arrest, was proposed by the Commission (art. 20) but “most delegations consider that this time limit should be shortened”. If no decision has been taken within the time limit, or if the extradition is refused, the person must be released (unless there are other grounds for his or her continued detention). No allowance is made for complex points of law or possible references to the European Court of Justice (ECJ) and the explanatory memorandum makes it clear that there is to be no political involvement whatsoever in the new procedure.

### **Most bars on extradition removed**

A number of bars to extradition that currently exist will be abolished by the framework decision. Although the potential for applying these exceptions had been limited to varying degrees by extradition agreements, they remain an integral part of current extradition procedures. The Commission gives no explanation as to why they are no longer deemed necessary. These are:

- “*Political offence exception*”: allows states to derogate from their extradition obligations if they believe the prosecution sought is based on political persecution.
- “*Military offences*”: where no general criminal law offence has been committed.
- “*Fiscal offences*”.
- “*Own nationals exception*”: this is a constitutional guarantee in many EU member states (but not the UK). It had been expected that the existing principle of ‘extradite or prosecute’ the suspect (or enforce the sentence) would be strengthened to allow for such guarantees.

- “Lapse of time limitations”: states set time limits on how long charges sought by prosecutors can stand. Ignoring the time limits set by national law just because the offender has left the country is surely unjustifiable.

- “Speciality rule”: this stipulates that the prosecuting state can not charge the extradited person with any other offences than those for which extradition was sought. The abolition of this rule leaves the system open to abuse by prosecutors who could issue a warrant for a serious offence, intending to drop these charges once the person has been surrendered and then bring new charges for which extradition could not have been obtained.

- “Re-extradition rule”: this rule prevents a person being re-extradited to a third state without the prior consent of the extraditing state. It is unclear if its abolition could be interpreted to mean that re-extradition to a non-EU state could now be permitted without consent.

### Remaining safeguards undermined

The barriers to extradition that the Commission proposal preserves will be undermined. These are:

- “Principle of territoriality”: member states may refuse to enforce warrants for offences that took place outside of the issuing country (art. 28). No reason is given for not making this exception mandatory.

- “Ne bis in idem” (or ‘double jeopardy’): this is the principle that a person may not be tried twice for the same offence or on the basis of the same facts. Although the proposed framework decision provides for mandatory refusals on such grounds (art. 29), it does not go as far as the provisions in existing extradition treaties, the Schengen Convention or the EU Charter of Fundamental Rights. The resulting problem is that a person who should not be extradited under *ne bis in idem* could still be surrendered before these grounds are established, and then face trial for different charges for which extradition could not have been sought. The relatively stronger Schengen provisions have recently been referred to the European Court of Justice.

- “Amnesties and immunities”: member states may refuse to extradite people to whom they have granted an amnesty (art. 30) - mandatory grounds under existing rules - and must refuse where they have granted persons immunity (art. 31). The Commission sees no need to limit immunity, for example regarding crimes governed by the treaty establishing the International Criminal Court or ad-hoc tribunals under the Security Council.

### Refusal of surrender, “special cases” and human rights

Member states may refuse to surrender people whom they decide would have better possibilities of “reintegrating” if the sentence was served in that state (art. 33), or where the person could take part in court proceedings via videoconference (art. 34).

To accommodate those member states that allow trials *in absentia*, the proposal stipulates that a new hearing is required following extradition in such cases. However, these rules do not take full account of ECJ case law or permit the person to argue for a new trial on the grounds that they were inadequately represented. Nor are there any provisions allowing for appeal against previous *in absentia* judgments.

Executing states may impose a condition that a life sentence can not be sought against the person before they extradite (art. 37), or defer from handing a person over on health grounds (art. 38).

Article 49 of the proposed framework decision permits a member state to suspend its application in the event of a “serious and persistent” breach of human rights in another, reflecting the so-called “red card” procedure under Article 7 of the EU treaty. The possibility of warnings to member states that risk serious human rights infringements (“yellow cards”), as set out in the Treaty of Nice, was ignored.

There is no corresponding possibility for a person named in a warrant to argue that the issuing state is in “serious and persistent breach of human rights”, nor any provision for them to offer evidence that their rights under the European Convention of Human Rights - prison conditions (art. 3 ECHR) or the right to fair trial (art. 6 ECHR), for example - would be threatened if they were extradited.

In an explanatory memorandum, the UK Home Office admits that the lack of any explicit bars to surrender on human rights grounds may not be compatible with the Human Rights Act.

### “Mutual recognition” or blind faith?

Policy makers argue that since all EU member states are bound by the ECHR, further guarantees are unnecessary and it is OK to relieve authorities in one member state of any obligation to consider human rights issues in another. Like the entire mutual recognition programme on harmonising EU criminal law and procedure, it assumes consistent high standards in the administration of criminal justice in every member state. “Mutual recognition”, we are told, is based on “mutual respect”. However, had this proposed fast-track system been in place during the last five years, a pregnant Roisin McAliskey would almost certainly have been extradited to Germany to face a prosecution described by the Home Secretary as “unjust and oppressive”, “whistleblower” David Shayler would have been swiftly returned to Britain by France to answer a case brought by his former employers MI6, many Kurdish activists would have been surrendered to Germany to face likely re-extradition to Turkey, and scores of Algerians and Basques expediently transferred to France and Spain. Conversely, judge Baltasar Garzon Real’s laudable attempts to see the likes of Pinochet and Berlusconi answer the cases against them in Spain would have faced shorter shrift.

### Why the urgency?

The Commission was always due to present the proposal in the third quarter of 2001, but it is now part of an urgent post-September 11 EU anti-terrorist programme. Yet no explanation has been given of how this framework decision will aid the new fight against terrorism. It appears that the public is expected to assume an abundance of Eurowarrants await suspected terrorists who would be otherwise untouchable in the midst of Europe’s widest ever criminal investigation.

EU governments took nearly three years to agree the last Extradition Convention. Just five years later, they are apparently content to replace this treaty with a more coercive system of warrants in just 10 weeks. Despite a clear split among the member states on substantive issues, none have suggested that the interests of justice would be better served by longer negotiations. Neither have they made any attempt to draw up (let alone fast-track) proposals to protect the citizen such as “Eurobail”, judicial standards, quality of legal aid or consistent procedural guarantees.

*Proposed Framework Decision on a European Arrest Warrant from the Commission, COM (2001) 522, 19.9.01; EU Council response to the Commission proposal, 12646/01, 10.10.01; Steve Peers’ analysis of the proposals for Statewatch: <http://www.statewatch.org/news/2001/oct/ewarrant.pdf>; Home Office explanatory Memorandum, 9.10.01; Staatsanwaltschaft Aachen v Hüseyin Gözütok (pending Schengen ‘ne bis in idem’ case referred to ECJ, OJ 2001 C 212/10); Draft Framework Decision on the execution in the EU of orders freezing assets or evidence, 12445/01, 5.10.01.*

## EU links protests and terrorism in action plan

**No sign of accountability or data protection in "anti-terrorism roadmap"; para-military police units to control protests; German plan for EU "foreigners" register; US demands data retention and surveillance**

### Introduction

After the attacks in the US on 11 September there was a special meeting of the EU's Justice and Home Affairs Council on 20 September - this was followed by the scheduled meeting on 27 September, special meetings on 16 October and 16 November and the planned meeting on 6-7 December.

The "Conclusions" of the meeting on 20 September set out a far-ranging programme of responses covering both legislative and "operational" measures. These "Conclusions" termed an "Anti-terrorist roadmap" are also incorporated in reports to the General Affairs Council (EU Foreign Secretaries) covering military, diplomatic and economic responses in additions to those on justice and home affairs.

Most of the legislative measures proposed, like that for a "Eurowarrant", were all already in the pipeline at various stages of drafting or adoption. The 20 September Conclusions however set new deadlines - in most cases by the 6-7 December - to "fast-track" twelve measures. This means that most are being rushed through the European Parliament and national parliaments. These include an EU definition of "terrorism" and the introduction of an EU-wide warrant for arrest.

One of the new measures is the "examination of legislation with reference to the terrorist threat" which was followed in the roadmap as: "The process is underway at the Commission for rules on asylum and immigration". In the 20 September "Conclusions" this was referred to in the following terms:

*The Council invites the Commission to examine urgently the relationship between safeguarding internal security and complying with international protection obligations and instruments"*

### Definition of "terrorism" covers protests

The definition of "terrorism" put forward by the European Commission would cover protests (like Gothenburg and Genoa) and "urban violence" (often viewed as self-defence by local communities). It would cover:

*seriously **altering** or destroying the political, economic or social structures of those countries (emphasis added).*

The Council (the EU governments) want to go even further and define it as:

***affecting** or destroying the political, economic or social structures of a country or of **an international organisation** (emphasis added).*

Either of these definitions, coupled with the planned new operational measures, could see protestors and other groups treated as if they are "terrorists" (see below).

Moreover, what began as a possibility in the 20 September "Conclusions" but became a definite commitment by 16 October is to draw up an EU list of proscribed organisations. This has all the dangers of the UK's Terrorism Act and ignores that distinction drawn in a European Parliament report between terrorism and "acts of resistance in third countries against state structures who themselves employ terrorist methods".

The proposed definition would, ominously, cover:

*Unlawful seizure of or damage to state or government facilities, means of public transport, infrastructure facilities, places of public use, and property (Article 3.f)*

This could embrace a wide range of demonstration and protests - ranging from the non-violent Greenham Common Womens

protests against a US Cruise missile base in the UK to the protests in Genoa. The term "property" covers public and private property. This offence would carry a sentence of up to 5 years in prison and could also apply under Article 4 to "instigating, aiding, abetting or attempting to commit" a defined terrorist offence.

In addition Article 3.h. cover offences: "endangering people, property, animals or the environment" and could refer, for example, to animal right protests.

The intent to extend the definition of "terrorism" to cover protests is also indicated in Article 5.3 which adds "alternative sanctions such as community service, limitation of certain civil or political rights" and Article 5.4. provides for fines. These are not criminal sanctions normally applicable to terrorism.

The question of whether it is intended to extend the definition of "terrorism" to cover demonstrations, protests and political dissent is answered in the "Explanatory Memorandum" accompanying the proposal. It says that Article 3 defining terrorist offences:

*could include, for instance, urban violence*

Since the Commission proposal was put forward this issue has been raised on a number of occasions in the UK and other countries and no government has denied the extension in the definition to cover protests. In the UK House of Commons on 15 October the David Blunkett, the Home Secretary, dodged a question on the scope of "terrorism" from Chris Mullin MP, chair of the parliament's Home Affairs Select Committee, who tried to pin down the government on the proposed definition, he asked:

*The EC may be proposing to cast the net a little too wide. Will he ensure that whatever definition [of terrorism] is finally agreed is robust, watertight and confined to dealing with terrorists and not with other people who might, from time to time, get up the noses of the established order?*

The Home Secretary did not answer this question.

On the website of the European Commission there is a new page put up by the Directorate-General on Justice and Home Affairs called: "Terrorism - the EU on the move". The introduction says it is concerned with:

*radicals suspected of violence*

### "Anti-terrorism roadmap" - "operational measures"

The "roadmap" sets out 25 "operational measures" and a further 8 measures for operational cooperation with the US.

Many of the "operational" initiatives in the 20 September "Conclusions" and the "roadmap" concerned the creation of ad hoc, informal, groups, targets and cooperation. There is little or no mention of accountability to the European parliament or national parliaments. No mention at all of data protection or to recourse to courts for individuals who might be affected.

Moreover, there is a real danger that these "temporary" arrangements and groups will become permanent leaving a whole layer of EU policing, surveillance and intelligence-gathering practices unaccountable.

These "operational measures" include:

1. Police Chiefs Operational Task Force, which has no official status or legal standing in the EU, is given many roles

including organising cooperation between "Heads of counter-terrorist units" and the "strengthening of external borders". This is termed "Urgent".

2. Counter-terrorist specialists are to be seconded to Europol and it is to open and expand "analysis files" on terrorism based on information (hard facts) and "intelligence" (supposition and suspicion) provided by police forces (ordinary police, criminal investigation and Special Branches) and by intelligence services (internal security agencies and external intelligence agencies).

3. Access to the Schengen Information System, which is based in Strasbourg, is to be extended from police, immigration and customs officials "in the context of counter-terrorism".

4. A new group of the Heads of the security and intelligence agencies in the EU is to "meet on a regular basis" starting in October. It is expected that on-going work will be delegated to "expert" meetings under the same umbrella - and reporting back to the senior group. In theory this group will stand alongside the Police Chiefs Operational Task Force but in practice it will be the senior group. This is because it is extremely unlikely that the security and intelligence agencies will pass on all their data and intelligence to Europol - this will be passed on a "need to know" basis. This new group has no legal standing, no provision for data protection, and no mechanism for parliamentary scrutiny or accountability. The first meeting was held on 11-12 October.

5. A mechanism for the exchange of information on terrorist incidents is to be created. What is of interest is that this report, dated 23 August and agreed in October, clearly defines "terrorist" acts in a more limited way than the draft Framework Decision on combating terrorism. For example, it would not include the "unlawful seizure or damage to state or government facilities..." (Article 3.f) unless it involved bombing, an armed attack, hijacking, hostages or biological or chemical weapons. Not mentioned in 12800/01 or 12800/1/01 updated "roadmaps".

6. The "Conclusions" call on all member states to "strengthen immediately the surveillance measures provided for in Article 2.3" of the Schengen Convention, that is, for police, immigration and other officials to step up identity checks.

7. The issuing of visas is to be conducted with "maximum vigour" and the Commission is asked to prepare, by March 2002, a proposal for a "network of information exchanges concerning visas issued".

8. Member states are to use the Schengen Information System (SIS) to provide "more systematic input into the system of alerts" under Article 95 (people wanted for extradition), Article 96 (people to be refused entry who believed to be a threat to public order or national security) and Article 99 (people or vehicles to be placed under surveillance).

9. EU-US police cooperation: The Director of Europol is instructed to conclude an agreement to provide for: "the exchange of liaison officers between Europol and US agencies that are active in the policing sector". The Director of Europol is also to:

*open negotiations with the United States on the conclusion of an agreement which includes the transmission of personal data*

Europol has concluded a number of agreements to exchange personal data and a number are in preparation - the US is not on this agenda. Moreover, a broad agreement covering policing in general would raise major questions as to the level of data protection afforded under US law.

10. Agreement with US on penal cooperation on terrorism. The big barrier here, apart from legal standards, is the use of the death penalty in the majority of US states and the federal death penalty.

11. Cooperation with US on illegal immigration to:

*intensify cooperation with the United States in field of illegal immigration, visas and false documents.*

## Surveillance of telecommunications

Two of the 20 September "Conclusions" concern new powers for law enforcement agencies, that is, police, customs, immigration and internal security agencies. First in Conclusion no 4, the Council has asked the European Commission to "submit proposals" to ensure that :

*law enforcement authorities are able to investigate **criminal** acts involving the use of electronic communications system (emphasis added)*

In phrase often used when more power for state agencies is being planned the Conclusion says there should be a:

*balance between the protection of personal data and the law enforcement authorities' need to gain access to data for the purpose of **criminal** investigations (emphasis added)*

In Conclusion no 5 the Council calls on the Commission "to review EU legislation to ensure that it contributes to law enforcement efforts".

Both of these Conclusions are taken from a previous report in the Council which was discussed at the highest level under the Swedish Presidency earlier in the year then quietly "buried" because of adverse publicity. Moreover, it should be noted that both of these Conclusions concern criminal investigations in general and not terrorism.

The current discussion in the EU on data retention centres on the proposed updating of the 1997 Directive on privacy in telecommunications. In September the plenary session of the European Parliament sent back a report on this to the Committee on Citizens' Freedoms and Rights because MEPs were divided down the middle, not on data retention, but on the issue of "spam" (unsolicited e-mails). The Committee has now re-affirmed its report and its will go back to the parliament's plenary session. On the issue of surveillance and data retention their report says: "any form of wide-scale general or exploratory electronic surveillance is prohibited".

The Council of the European Union has received advice from its Legal Service that it already has all the powers that it needs in the proposed Directive to combat terrorism but this is unlikely to satisfy the governments, including the UK, who have been pushing for general powers of surveillance.

## Demands on the EU by Bush

In an extraordinary letter to Mr Romano Prodi, the President of the European Commission the US President Bush has lodged 40-plus demands for EU cooperation on terrorism - though a number have nothing to do with terrorism.

The demands say that "data protection issues in the context of law enforcement and counter-terrorism imperatives" should be considered and that: "draft privacy directives that call for mandatory destruction to permit the retention of critical data for a reasonable period" should be revised. A US official is quoted as saying that: "This is not an US-EU issue, it is more a question of law enforcement versus a strict interpretation of civil liberties".

The EU data protection directives, and the data protection rules in the Schengen Convention, the Europol Convention, the Customs Information System Convention and the EU Mutual Assistance Convention, already grant extensive derogations from their rules to facilitate law enforcement. Similarly, Article 8 ECHR and the Council of Europe data protection Convention also contain provisions permitting expedited exchange of data by law enforcement agencies. **The US is not a signatory to any of these instruments.**

Under the heading "police and judicial cooperation" the US wants EU "police authorities and local magistrates of member and accession states to deal *directly* with US law enforcement authorities" (emphasis added) and "Whenever possible, permit urgent MLAT requests to be made *orally*, with follow-up by

formal written requests".

Exchanging information solely on the basis of an oral request runs a huge risk that law enforcement authorities will act illegally, if the information is transmitted before the written request is received. This system will also make prior judicial or other official supervision of the legality execution of requests effectively impossible. These proposal would give unacceptable powers of "self-regulation" to law enforcement agencies.

On border controls and migration the US makes some extraordinary suggestions. First to: "Explore alternatives to extradition including expulsion and deportation, where legally available and more efficient". It is manifestly clear from the case law of the European Convention of Human Rights that it is a breach of the ECHR to use expulsion or deportation proceedings as "disguised" extradition proceedings (*Bozano v France* (A 111, 1986)). Second, to: "Establish procedures to share information on immigration lookouts for individuals associated with terrorist organizations". The Schengen Information System is not open to non-Schengen states, and is subject to detailed data protection safeguards. And, third to:

*Improve cooperation on the removal of status violators, criminals and inadmissibles.*

There is no reference to the Geneva Convention on refugee status, Articles 3 and 8 ECHR or the UN Convention against

Torture, all of which impose limitations on such removals. The demand refers to the "removal" from the US and the EU to the third world of "inadmissibles", a term which has little or no legal meaning. The demand is also clearly not limited to "terrorism" unless it is assumed that "status violators", criminals in general, and so-called "inadmissibles" are all potential terrorists.

When the US letter was received the European Commission said most of the demands could be met. It is hard to see how many of them could be "met" without abandoning protections and rights under EU Directives, the European Convention of Human Rights and a number of EU Conventions. The full-text of the letter is on *Statewatch Observatory: in defence of freedom and democracy* ([www.statewatch.org/observatory2.htm](http://www.statewatch.org/observatory2.htm)).

### **German government proposals**

One of the most extraordinary responses in the aftermath of 11 September came from the German government which put forward a series of measures to be adopted at the Justice and Home Affairs Council on 27-28 September. The document, a "Meetings document", was not formally adopted but in the "anti-terrorist roadmaps" produced for the General Affairs Council there is a note saying that it is still on the table. Intriguingly the document SN 4038/01 was fully listed in the first two versions of the roadmap but in the latest version available (24.10.01) is simply

### **Police front anti-terror moves across Europe**

Looking at the steps under discussion or adopted by the EU, it is the role of police and intelligence agencies that are being emphasised. The question of how to fight the roots of terrorism - the debt and poverty caused by imperialist suppression of national political development and the exploitation of natural resources by large multinational corporations - is not central to the 19 October council declaration. The main points of the declaration focus on the legal steps to be taken by the countries in the fields of mutual legal assistance, extradition and further police cooperation.

The extension of the fight against terrorism will incorporate almost all forms of crime. This opens up the possibility of a much wider range of law enforcement measures to be applied to "ordinary" crime, hitherto countered by "ordinary" police investigation. At the same time civil rights are being put under heavy pressure.

According to a Dutch *Statewatch* correspondent the government has set up a task force to respond to the action plan published on 5 October. In 43 points it proposes to combat terrorism partly with new ideas, but also with a more intensive use of measures already in existence. The Dutch government sees a bigger role for the intelligence services and wider use of both surveillance, both of e-mails and of the Internet.

The Dutch borders will, according to the action plan, be controlled by more mobile police teams and there will be more resources allocated to regional teams of police officers fighting organised crime. This is a step which will involve closer cooperation between ordinary police and the intelligence service. The government also plans to investigate trafficking in human beings in relation to terrorism; this suggests that terrorists make use of "illegal immigration". All of the agencies that act to combat this crime form will be enlarged.

The German correspondant reports that the number of proposals put forward by the government in its anti-terrorism initiative are incredibly wide-ranging: extended law on on terrorist organisations in the criminal code. More powers, money and personnel for the intelligence services, a new passport and identity card which will include at least a fingerprint and possibly more biometric data. Visas will also include fingerprints. Applicants for naturalisation (citizenship) must be checked by the intelligence services.

In Switzerland the reaction has, according to our correspondent, been calmer and the measures proposed by the government were, more or less, on the table before 11 September. Most of the proposals were launched last year in connection with the debate on emerging right-wing extremism, or after the demonstration against the World Economic Forum in Davos in January this year.

In Norway (not an EU country but a member of Schengen Convention) the chairman of a committee set up to review new police methods, (such as bugging, control of telecommunications and the use of hidden video surveillance), has announced that the committee will speed up its work. Originally the plan was to be finished by the end of 2002.

In Denmark the government has announced a number of initiatives, including implementing the UN anti-terrorism financing convention. In November the Minister of Justice, Frank Jensen, will announce the changes to Danish law expected to include further powers to register telecommunications companies and internet providers and to keep information on communications for the police and others to use in investigations. The police will have easier access to phone-tapping in cases concerning breaches of weapons regulations. Changes to the Aliens Act, to enable cooperation between the asylum authorities and the police intelligence service in asylum cases and other cases concerning permission to stay in Denmark, will be strengthened. For instance, through a wider use of denying people permission to stay in the country because of state security; changes in the extradition law so that there will be additional means to hand over persons involved in terrorism cases, including situations where Danish citizens are wanted abroad. This maybe combined with having a Dane sentenced by a court in another country transferred to serving their sentence in a Danish prison.

referred to as: "see document ....01".

The document calls on the Council of the European Union to adopt the following proposals: i) the police to have access to the planned EU Eurodac database of the fingerprints of asylum-seekers and refugees and "suspected" illegal immigrants; ii) use by "security authorities" of the information on visa consultation; iii):

*establishment of common visa data records and of a European central register of third-country nationals present within the territory of the Union"*

iv) "introduction of new methods of proving identity and identification, eg the ultra-secure technique of image integration and inclusion of fingerprints in visa stickers and residence permits; v) the immediate introduction giving Europol, national Public Prosecutor's Offices, immigration and asylum agencies access to the Schengen Information System (SIS); vi) proposals to enable "Europe-wide computerised profile searches to be conducted".

It then proposes, in the context of the above and in reaction to 11 September that:

*each Member State should maintain centralised population registers and centralised registers sorting data on third country nationals present within the territory of the Union*

Five EU member states have computerised and centralised population registers: Belgium, Denmark, Luxembourg, Finland and Sweden. Nine EU member states have "municipal register" (that is register compiled and held at the municipal level but not in a form which can be accessed for analysis at national level), these are: Belgium, Denmark, Germany, Spain, Italy, Luxembourg, Netherlands, Austria and Sweden. Five EU member states do not have population registers: France, Ireland, Portugal, the UK and Greece (Greece does have municipal records but only of Greek nationals) (Source: Demographic Statistics, Eurostat, 1960-99). However, the data held on these national and/or municipal records is often out of date and/or incomplete.

As to the dangerous proposal to have targeted centralised and computerised registers of "third country nationals" in the EU only Germany and Luxembourg have such registers of "foreigners".

The idea that all EU member states should have to have "centralised population registers" implies that there would also be an obligation for all people (citizens and third country nationals) to register or face criminal penalties.

The idea that there should be national and a European centralised and computerised database of all third-country nationals is quite appalling - the last time a state employed this approach it led to the "final solution".

The fact that these proposals have not been put straight in the "bin" is very alarming especially as the EU is now trying to hide the existence of this document.

### **Twin-track approach to "terrorism" and "protests"**

After Gothenburg in June the EU Justice and Home Affairs Council held a special meeting on 13 July to adopt "Conclusions on security at meetings of the European Council and comparable events" (for full report see *Statewatch*, vol 11 no 3/4). This was followed by the confrontations in the streets of Genoa in July. Under these plans protestors and the groups they come from were, to be the target of surveillance prior to, on the way to, and at future protests.

No sooner had the EU institutions returned to work after the traditional vacation month of August still images of Genoa in their minds governments and officials faced the events of 11 September in the USA. Three aspects of the EU's reactions to these events will affect future protests. One is the definition of terrorism which extends to protestors in Genoa or Bradford (see above). The other two are "operational" measures one agreed, the other on the table.

### **Amnesty International criticise the proposed definition of "terrorism"**

The Amnesty International European Office has issued a strong critique of the proposed definition of "terrorism". It says that:

*Vague and broad laws allowing prosecution for offences which are not clearly defined or can potentially be used to criminalise peaceful activities, which are unrelated in any way to acts of violence, are of serious concern.*

It is critical of the general definition in Article 3 and in particular of Article 3.1.f. which creates a criminal offence of "unlawful seizure or or damage to" state, government or any property (public and private). Their report says that: "In its present form this offence might be used to suppress legitimate forms of protest and infringe the right of peaceful assembly".

It is also critical of Article 3.1.m. which makes it a terrorist offence of "promoting of, supporting of or participating in a terrorist group". AI say that "promoting" and "supporting" are not defined and that: "Ethnic and religious groups that share the political orientation of a group which carries out criminal acts but are not involved in criminal acts themselves are likely to be particularly vulnerable to prosecution for such an offence". AI conclude:

*Amnesty International calls for Article 3 of the proposal for a Council Framework Decision on combating terrorism to be reworded, in order to ensure that it meets international human rights standards. In particular, the proposal should ensure that the behaviours listed as terrorist offences are recognisably criminal offences and do not result in an infringement of human rights, such as the rights of association, of peaceful assembly and of freedom of expression.*

*Amnesty-EU@aieu.be*

### **Immigration Law Practitioners' Association on the effect of proposed UK anti-terrorism laws**

The Immigration Law Practitioners' Association (ILPA) have sent a strongly worded submission to the UK parliament's Home Affairs Select Committee expressing "profound concerns at the linkage between anti-terrorism measures and the immigration and asylum systems".

Their submission covers four aspects of the proposed legal changes. First, the removal of access to judicial review for immigration appeals which it says is "fundamentally misconceived".

Second, the rejection of asylum claims where a person is "certified" to be a "threat" to national security. It recalls the wide use of deportation orders (on the basis of security services information) leading to the detention of many Iraqis and others from the Middle East during the Iraq-Kuwait war "none of whom were deported because they were never in fact a risk to national security".

Third, the detention of "suspected" terrorists who cannot be deported for indefinite periods. ILPA opposes the proposed UK derogation from Article 15 of the ECHR and says powers already exist to bring such people to trial: "it is hard to see how administrative detention as opposed to prosecution can ever be justified".

Fourth, ILPA says the the proposed European arrest warrant would abolish due process and see "no justification whatsoever for the abolition of the political offence" and says that the proposal "would circumvent the proper application of an asylum procedure".

The first are the "operational measures" to be put in place to combat terrorism in general. The "Conclusions" of 20 September allow for: the Police Chiefs Task Force to coordinate meetings and operations of counter-terrorist units of the member states, seconding counter-terrorist experts to Europol and for Europol to set up analyses files based on intelligence, and the heads of internal security and external intelligence agencies (eg: MI5, MI6 and GCHQ) are to meet regularly to "intensify.. cooperation and exchange between these services".

These new measures and means of cooperation will include protecting future EU summit meetings and other international meeting held in the EU from perceived terrorist threats. **From the security point of view the "threat" to EU summits comes from both protestors and from terrorists and in terms of contingency planning they are intrinsically linked and would be combined in one overall plan. In contingency and emergency planning terms both "threats" concerning a specific meeting become one.**

### **A EU para-military police units to counter protests**

The second "operational measure" is likely to be the bringing together of all the national level para-military police units to counter demonstrations (and to provide extra security against terrorist threats).

The German government has sent a proposal for the creation of "Special Units" to the EU "Heads of central bodies for public order and security" to counter protests at EU Council meetings and other international meetings.

On 6 August, prior to 11 September, the German Minister of the Interior, Mr Otto Schilly, backed by Italian Interior Minister, Claudio Scajola, called for the creation of an EU anti-riot police in reaction to events in Gothenburg and Genoa. Mr Schilly said in an interview with the Sontag newspaper:

*We cannot allow violence from militant activists to dictate where and how democratically elected state leaders hold their meetings. [An EU anti-riot police] would cooperate internationally to de-escalate situations where possible and to combat violence with appropriate firmness where necessary.*

In a report sent to the EU working party, dated 20 September, the German government has proposed to other EU states that, in response to "events in Gothenburg and Genoa", each should form and make available "special units" to implement:

*joint and harmonised measures against travelling offenders committing violent acts*

The proposal covers:

1. "the creation of common standards for the training and equipment of existing special units" in EU states
2. A common tactical framework "including a graded response system respecting the principle of proportionality (eg: separation of troublemakers from peaceful demonstrators)"
3. Basic and advanced training for "large-scale (emergency) situations" - thus linking protests and "emergencies"
4. "standard common equipment with command, control and

operational means (eg: radios, weapons, special devices)" and finally,

5. "the preconditions must be established to enable one Member State to request the support of special units from other Member States".

On 29-31 October, under the umbrella of the Police Chiefs Task Force, a special meeting was held in Brussels to discuss public order and security at EU Summits and others meetings and cooperation after 11 September. The meeting was attended by police and internal security officers from EU member states, the EU candidates countries and Norway and Iceland (who are member of the Schengen agreement).

Commissioner-General Herman Franssen, of the Department of International Police Cooperation of the Belgian Federal Police, who chaired the meeting, said afterwards that the methods used to police protests was discussed and the:

*exchange of information will involve sharing data about those people who pose a threat to a peaceful society*

The meeting agreed on a joint EU list of known terrorists and terrorist groups (though this list had not been made public). They also agreed that the EU should speed up the "universal adoption" of identity cards to fight cross-border crime.

The meeting was addressed by Antoine Duquesne, Belgian Minister of Interior Affairs (Belgium holds the EU Presidency) who backed the proposal for an EU anti-riot police force (and for an EU border police).

In summary this would mean that instead of creating a formal EU para-military public order police force there would be a system in place for the movement and deployment of existing specially- trained national units to police public order situations (eg protests) in the host country. These units would have "weapons" and "special devices".

The record of the use of such para-military police units in the UK and elsewhere shows that it leads to more violent confrontations and the strong tendency to indiscriminately "punish" the people for being on the streets rather than arresting and charging people who have committed an offence.

The legal basis for this "cooperation" is quite unclear. The German proposal alludes to the Joint Action on law and order and security of 26 May 1997 but as pointed out in a previous *Statewatch* report (The "enemy within" - EU plans for the surveillance of protestors and the criminalisation of protests) this only provides a legal basis for the exchange of information, not operational matters.

*Statewatch special report: The "enemy within" - EU plans for the surveillance of protestors and the criminalisation of protests, see website below; Conclusions adopted by the Justice and Home Affairs Council, 20.9.01, doc SN 3926/6/01; German delegation proposal for a Council statement, Meetings document, doc SN 4038/01, 27.9.01; Special Units to guarantee the safety of meetings of the European Council and other comparable events, doc 11934/01, 20.9.01; European Union action following the attacks in the United States, doc 13155/01, 24.10.01.*

## **Statewatch "Observatory": In defence of freedom and democracy - News laws and practices affecting civil liberties and rights after 11 September in the EU, UK and US**

The *Statewatch* website now has an "Observatory" carrying all the documentation on proposed EU legislation and "operational" measures plus coverage of UK & US developments and the reactions of NGOs and voluntary groups.

*Statewatch* has so far put onto the site five detailed analyses: 1. EU "Conclusions on counter-terrorism" (20.9.01); 2. The European arrest warrant proposal; 3. EU definition of terrorism; 4. Analysis of legislative measures and 5. Analysis of "operational" measures. The site also has a full-text documentation centre.

The "Observatory" is on: <http://www.statewatch.org/observatory2.htm>

## The activities and development of Europol: 1993-2001

by Ben Hayes

Examines the history and development of the European police office (Europol), from its creation as the informal Europol Drugs Unit (EDU) to the current proposals to extend its mandate and make the EU agency operational.

It assesses intelligence exchange and collection by Europol; operational activities; Europol's remit and strategy; its relationship with other EU agencies; the alleged corruption scandal and the lack of cooperation from member state police forces; decision-making, judicial control and democratic accountability.

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### Statewatch editor gets award

Statewatch editor, Tony Bunyan, has selected as a member of the "EV50" - the fifty people who have most influenced the European Union over the last year. The award is made by the European Voice, Brussels-based newspaper (part of the Economist group).

Statewatch has previously received three other Awards for its work:

1998 The Campaign for Freedom of Information gave Statewatch an Award for its work on fighting for EU openness (access to documents)

1999 Privacy International gave Statewatch an Award for its work in exposing the EU-FBI telecommunications surveillance plans

2001 The European Information Association gave Statewatch the "Chadwyck-Healey Award for achievement in European Information" for its work on openness and the new code of access to EU documents

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## Statewatch website

Statewatch's website carries News online and has a searchable database. The url is: <http://www.statewatch.org>

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

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