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EU-US

Creation of a Northern "axis"?

- EU-US to establish common area on asylum and exclusion of "inadmissibles"
- EU-US to exchange Europol strategic analysis and personal data
- EU-US to have mutual assistance agreement covering criminal and judicial matters

Underneath the well-reported apparent disagreements between the United States and the EU (and a number of its governments) over tactics in the "war against terrorism" (for example, extending the "war" to Iraq) a much deeper change is taking shape.

The EU and the US have always cooperated, usually through *ad hoc* meetings, on specific issues concerning policing and migration. But now, beneath the to-ing and fro-ing, we are seeing the creation of a new permanent EU-US area of cooperation on migration, expulsion and exclusion and police and judicial cooperation - the "EU-US Northern axis". This "axis" born out of the "fight against terrorism" is creating a common area of cooperation which will cover in its first stage:

- i) border control management which presumes the EU and the USA are a single, common, area;*
- ii) the systematic exchange of data on false documents and visas (issued and refused) and maybe passenger lists to control movement and exclusion "inadmissibles" from the common area;*
- iii) the exchange of police and intelligence data and information on terrorism and crime in general - including personal information - even though the US has no federal data protection system;*
- iv) agreement(s) covering judicial cooperation, including fast-track extradition for trial;*
- v) a series of "mutual assistance agreements" on justice and home affairs issues, under Article 38 of the Treaty on the European Union (which requires no formal parliamentary scrutiny or consultation);*

In addition there is to be the more systematic coordination of foreign policies, aid and trade to combat "terrorism" (see feature page: 17) through the G7/8 meetings and the Transatlantic Agenda (EU-US Senior Officials Group).

The common EU-US axis is likely to be developed in much

the same way as the EU: piecemeal harmonisation, cooperation mechanisms, information exchanges and common databases.

Taken together these measures alone (and there may be more in the pipeline) constitute the creation of a common internal security policy covering the European Union and the United States.

EU post 11 September developments

This does not mean that all post 11 September measures in the EU are being determined by the "axis", it is rather that the "axis" covers areas of "common interest" at the level of international cooperation. But like the US, with its PATRIOT Act, Homeland Security Act and revision of immigration rules, the EU has its own programme of measures.

In this issue there are reports on the ever widening EU concept of terrorism (page 16) and on measures being taken at national level in Denmark (page 2), Germany (page 6) and the Netherlands (page 19).

Already a number of broad conclusions can be drawn on the effects of 11 September: 1) under the excuse of combating "terrorism" new powers and agencies are being put in place on crime in general and on asylum in particular; 2) A number of measures are not targeted but will place the "whole population" under surveillance (see UK Home Office comment, page 18) which will lead to an enormous growth in the amount of "intelligence" held on people's quite normal, lawful and democratic activities; 3) special measures are being directed at refugees and asylum-seekers and protests and protestors and 4) the concept of "free movement" within the EU has been suspended for the foreseeable future, "free movement" requires not just the ability to move between EU countries without being checked, but to do so in a way that is *not* being recorded and stored.

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EU: Concept of terrorism grows ever wider see page 16

UK: Blunkett's security nightmare: 2002 White Paper see page 21

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Pro-Eurojust organises Amsterdam police raid

On 17 January 2001, police in Amsterdam raided a so-called "legalised squat" and arrested Juan Ramón Rodríguez Fernández, wanted by the Spanish police in connection with the separatist Basque group ETA. Up to 200 special criminal investigators and riot police entered the residential area at 3.30 a.m., searching all 14 apartments, and allegedly leaving a woman needing stitches after she was struck by a police baton. Several Spanish books, two mobile phones and a toy gun collection were confiscated by the police. Fernández was visiting Amsterdam on holiday.

The raid was organised by the provisional "Eurojust" EU prosecutions unit. "Pro-Eurojust" was created in December 2000 and will be located in the Hague when a Council Decision is rubber-stamped by ministers. Currently comprised of a prosecutor from each member state, the unit handled 170 cases in its first year. In its provisional form, pro-Eurojust was technically an EU Council working party with a mandate to facilitate cross-border investigations and prosecutions.

Activists in Holland suspect the raid was carried out in order to harass and discredit the squatters, whose premises had been referred to as a "no-go area" for the police. Under the recently agreed European Arrest Warrant, which will enter force in 2004, the Dutch police would have been obliged to pick up and hand over Juan.

For full story see:
<http://www.statewatch.org/news/2002/feb/02eurojust.htm>

Europe - new material

Global Trends and Global Governance P Kennedy, M Messner & F Nuschler. Pluto (London) 2002; ISBN 0-7453-1750-2; Examines global trends seen to require forms of global governance, though largely ignores existing international organisations with these functions and aspirations.

Recent developments in European Convention law, Philip Leach. *Legal Action* January 2002, pp10-15. This piece summarises cases at the European Court of Human Rights which have relevance to the UK.

number of immigrants entering the country under family reunification regulations. In mid-January he outlined a number of broad changes to the Aliens Act to meet the DDPs extreme demands. He will present a number of amendments before 1 March.

No easy way to get asylum

The Government plans to abolish the *de facto* category (in some countries this is referred to as B-status) which covers asylum seekers who are not protected by the Geneva Convention and therefore should have B-status. Over the years the majority of asylum seekers have had *de facto* status and by eliminating it the government hopes that the number of refugees will fall dramatically. Asylum law experts have however pointed out that this is unlikely to happen since Denmark is obliged to grant protection from persecution under international agreements such as the European Human Rights Convention and UN obligations to prevent torture. The government will also increase the number of so-called safe third countries where asylum seekers can be sent back. It is not known by which guidelines and criteria these countries will be evaluated. Additionally, it will no longer be possible for asylum seekers who have left their homes for a neighbouring country to apply for protection at a Danish embassy or consulate.

Under the slogan "refugees must not become immigrants" Haarder intends to extend the period a person must stay legally in Denmark before s/he can have permanent leave to stay. It will be extended from three to seven years. During this time there will be a permanent evaluation of the situation in their home country regarding the possibility of deportation.

A number of changes in asylum procedure will also be introduced. In future it will be impossible to have a case reopened if the rejected asylum seeker has gone underground. Final rejection of an application should be followed by immediate expulsion. This will be backed up by a wider use of the procedure to deal with manifestly unfounded cases and the introduction of a one-day procedure for asylum seekers coming as a group from a specific country - most likely to be used in cases involving refugees from central and eastern European countries. Changes in the composition of the Appeal Board will see the removal of the voluntary Danish Refugee Council's representative leaving only a judge, a ministry delegate and a member of the Lawyers' Council.

Rejected asylum seekers who cannot be returned to their home countries will receive a special status - a right to stay without rights - and will be refused benefits otherwise given to asylum seekers, but must report to the police or risk being imprisoned if they fail to do so.

Limited family reunification rights

A number of changes are also being planned for immigrants. They must be able to support themselves and in cases where that is not possible, and where there is no permanent leave to remain, they will be returned to their home country. In family reunification cases the same rules will apply. If a husband wants his wife to join him in Denmark he can pay a 50,000 Dkr. "deposit" and he must also not have received social benefit for a certain period. To curb the number of marriages between people living in Denmark (Danish or migrant) and people from third countries an age limit of 24 years will be set. Those under the age of 24 will have no right to join their partners, even if they can provide economic guarantees and are not in debt.

For refugees with a right to stay in Denmark, family reunification with a spouse will only be allowed if the marriage predates the persons flight from their home country. The right for parents aged over 60 years to come and live with them will also be removed. If a person (Danish or foreigner) wants to marry a third-country national an evaluation of their connection with Denmark or to the spouses home country must be made to

DENMARK

Hard times for asylum seekers and refugees

Xenophobia was one of the main issues used by right-wing parties to win the national elections on 20 November last year. The new Anders Fogh Rasmussen-government (a coalition of the liberal "Venstre" party and the conservatives) is ruling with the support of the "real" winner in the elections, the Danish Peoples Party (DDP) - an extreme right populist party under the leadership of Ms Pia Kjaersgaard. Together they have an absolute majority. One of the coalition's first initiatives was to appoint a minister for the integration of foreigners, Bertel Haarder (a former minister of education who was, until the elections, a member of the European Parliament for *Venstre*). Haarder has begun to fulfil promises, made during the election campaign, to curb the number of asylum seekers and dramatically reduce the

establish in which country the connection is strongest and advise the couple to stay in that country. If a couple want to separate before seven years of marriage then the "unified" person (often the woman) will be forced to return home. Womens' crisis centres have warned that these rules will force women to stay in a bad or violent marriage. Asylum seekers will also be prohibited from marrying while awaiting a decision on their application.

50% reduction in social benefit

The government's rhetoric calls for more integration. It will introduce "incentives" to bring immigrants out of passive public financial support and into the labour market. To do this they will introduce a scheme whereby all persons (Danish or immigrant) who have not resided in Denmark for seven out of the last eight years will only be entitled to half of the full social benefit. "To further encourage people to find work - including part time work - persons who have resided in the country for less than the seven year period will be allowed to keep a larger part of their income before having their benefit reduced", says the government paper. Haarder continues:

Despite their reduced finances, families with children can in many situations still receive a relatively large amount of money, after their everyday expenses have been paid. This is due to other services, such as housing benefit, child support and reduced day care payment. The Government will therefore review these rules carefully in respect of our overall employment policy.

Immigrants will also be summoned by their local council to be presented with a contract that stipulates what they must do to get a job or learn the Danish language. If they fail to fulfil this contract they will have their benefit reduced.

A final proposal in the government paper raises the requirements for citizenship. The present requirements of "no criminal record and a certain knowledge of the Danish language" will be tightened to include a more ideological point: knowledge of Danish values. This criterion is not defined. Furthermore, the possibility to derogate from these demands for people over 65 will be eliminated and the period of legal residence in the country to gain citizenship will be extended from seven to nine years. Refugees, stateless people and persons married to a Dane only have to wait eight years.

All in all these are hard times for asylum seekers, refugees and immigrants in Denmark.

Danish government, "En ny udlaendingepolitik" 17.1.02.

SPAIN

Migrant protests violently crushed

With the enforcement of the EU migration regime in southern European countries, particularly Spain and Italy, has come increased resistance from migrant communities as well as activists (see *Statewatch* vol 11 no 1). Whilst in Bologna, Italy, hundreds of people have stormed a detention centre and dismantled it, Spain has seen a series of hunger-strikes by undocumented migrants in protest against the new aliens legislation which has introduced rules that make it almost impossible for them to receive papers (see *Statewatch* vol 10 no 1). After migrant protests in Almería and demonstrations by activists in Malaga against the forced deportation of some of the protestors from Almería, one activist himself is now facing a deportation order.

Police violence against protests

On 22 January around 100 undocumented migrants, most of them

Moroccans, set up a camp in the southern Spanish city of Almería to demand papers to be able to live and work in Spain with legal rights. The migrants had been waiting for over two years for a decision on their regularisation. One day later, police violently broke up the camp with tear gas and rubber bullets, injuring 20 migrants and arresting 31 on the grounds of "resisting orders". On 24 January, eight of them were transferred to the immigration detention centre in Malaga (CIE plz. Capuchinos) for immediate deportation.

That same day, the groups *Ninguna Persona es Ilegal (Malaga)* (No one is illegal) and *MPPE* (Movement against Poverty, Unemployment and Social Exclusion) started a camp in front of the detention centre in protest at the deportation orders and hindered vehicles leaving the premises. The camp lasted until 29 January, when the police evicted the occupants to allow the deportation of 23 immigrants from the centre, some of whom are believed to be from Almería. *Ninguna Persona es Ilegal* had called on the public to protest against the inhumane detention and deportation practices and called a demonstration after their eviction at which there was a strong media presence. Some of the activists chained themselves to the doors of the detention centre.

With their second eviction, after most journalists had left, police started attacking people, in particular two of the protestors. Nico and Kepa were arrested and taken to the detention centre where they were allegedly badly beaten by 8-10 policemen. A lawyer, who happened to be in the detention centre witnessed the attack and tried to intervene, but was herself forcefully removed from the premises. Shortly afterwards, an ambulance arrived to take the two to hospital. Nico and Kepa were held for two days and Nico was subjected to racist abuse and threatened by the police. Meanwhile, the Moroccan detainees were deported from Spain.

Television and newspapers showed images of the police brutality but the Spanish police claimed that Nico and Kepa had been arrested on grounds of public order violations and violent assaults on the police. The lawyer who witnessed the police brutality as well as *Ninguna Persona es Ilegal* and *MPPE* have now initiated legal proceedings against the police (who had earlier initiated legal proceedings against both groups, on the grounds of causing public disorder and refusing to follow orders).

Deportation of migrants - deportation of activists

On 1 February, Nico received a deportation order which was dated 9 February, although the appeal hearing was set for 15 February. This deportation is in contravention to free movement provisions laid down in the Treaty of the European Communities, amended by the Amsterdam Treaty in 1997, but apparently the Spanish authorities are exploiting a legal loophole: regional government representatives in Spain have the power to deport foreigners without a legal conviction against them. Although there is a chance of a judicial review these proceedings do not involve the right to a fair trial and the presumption of innocence.

The conflicts in Malaga and Almería have received nationwide attention - and criticism. Civil liberties organisations, trade unions and the party *Izquierda Unida* (United Left) have protested against the police brutality against migrants in the region and have called for the resignation of Carlos Rubio, the government representative for Almería. There has also been a nationwide and international campaign for Nico Sguiglia, with the participation of anti-detention campaigns and refugee and migrant organisations, including the *Barbed Wire Britain Network to End Refugee and Migrant Detention*, the *Oxford Trades Union Council*, and the German based refugee organisation *The Voice, Africa Forum e.V.* Due to the strong reaction, some journalists and politicians have indicated the deportation order would be withdrawn. However, there has not been any official confirmation yet. Nico has been ordered to report to the police station at the end of February to receive the

outcome of his deportation order.

Deutsche Presse-Agentur 23.1.2002; *Independent Media Centre* <http://uk.indymedia.org:8081>

ITALY

Quota for seasonal workers

On 4 February 2002 the Italian government decreed that 33,000 third-country seasonal workers will be allowed into Italy in 2002. They will enter Italy to undertake "seasonal employment" in tourist, hostelry and agricultural businesses after being "requested and authorised" to do so on an individual basis while they are in their countries of origin. This procedure for recruiting foreign labour is part of the centre-right government's proposed amendments to the 1998 immigration law (see *Statewatch* vol 11 no 6). The quota will only apply to citizens of countries who are candidates for EU accession (Slovenia, Poland, Hungary, Estonia, Latvia, Lithuania, Czech Republic, Slovakia, Romania and Bulgaria) and countries with which Italy has bilateral agreements on seasonal workers. Italian daily *Corriere della Sera* reports that Welfare minister Roberto Maroni from the *Lega Nord*, who signed the measure, said that "some businessmen from Veneto in the fields of tourism and agriculture" were asking for its approval. The measure also aims to ensure that "they will return to their countries of origin at the end of their contract".

The quota for seasonal workers is strictly divided into regional requirements, and in some cases by province. Thus no immigrants will be granted access for seasonal work south of the central Lazio region, due to high unemployment in the south, in line with the government's policy of only allowing immigrant workers into Italy if no Italians are available to fulfil the vacant positions. The vast majority of the seasonal foreign workers are destined for the north-east provinces of Bolzano (13,000) and Trento (7,000), and the Veneto region has the next highest quota (5,000). The yearly quota for 2002 will be approved after the centre-right government's proposed amendments to the 1998 immigration law have undergone parliamentary scrutiny.

Ministerial decree of 4.2.02, available on:

www.minlavoro.it/norme/dm_04022002; *Corriere della Sera* 5.2.02.

ITALY

Minister praises expulsion of "criminal" immigrants

The Italian interior minister Claudio Scajola jubilantly announced on 19 February 2002 that 1,352 foreigners were expelled during the largest ever police operation to combat illegal immigration and prostitution in Italy. Eight cities were targeted (Rome, Bari, Palermo, Caserta, Genoa, Padua, Turin and Milan) leading to the expulsion with escort to the border of 862 men and 490 women, of whom Scajola stressed that 402 were prostitutes. Scajola added that 151 of the males expelled were involved in exploiting prostitution and related crime. He repeatedly stressed the link between illegal immigration and criminality in a press conference attended by prime minister Silvio Berlusconi and his deputy, Gianfranco Fini. During an operation against drug dealing in 11 cities (Brescia, Verona, Venezia, Savona, Bologna, Rimini, Firenze, Cagliari, Palermo, Lecce and Catania), he claimed that 64% of the 216 persons arrested were third-country nationals, "showing the strong impact such individuals have in the distribution of drugs".

Scajola was presenting official figures for the second half of 2001. He said that there were also 121 arrests for illegal immigration and increases in the numbers of confiscated vehicles used by illegal migrants, of intercepted migrants swimming, of

expulsions of immigrants escorted to the border (42,087, up from 33,361 in the first half of 2001), 2,447 of which were sent towards Slovenia from Gorizia, a city near to Italy's north-eastern border. These figures mean that there has been a dramatic increase in the total number of migrants expelled with police escorts, from 15,002 in 2000 to 75,448 in 2001. The government is looking to make this procedure the norm with amendments (see *Statewatch* vol 11 no 6) to the 1998 immigration law (40/98), which are undergoing parliamentary scrutiny. These envisage the immediate implementation of expulsion orders by forced removal, with the possibility of filing appeals from abroad, using Italian diplomatic facilities. Scajola said that a special unit to combat illegal immigration is to be set up in March within the Department of Public Safety - Immigration and Border Police Directorate, raising the number of officers involved from 5,222 to 7,780. Five new liaison offices in the Balkans have also been established.

Repubblica 20.2.02; *Italian ministry press conference:*

http://www.interno.it/notiziario/primopiano/conferenza_stamp_19_02.html; *Annuario Sociale* 2001, Gruppo Abele, Feltrinelli, May 2001;

Immigration & Asylum - in brief

■ **Spain: 250,000 migrants ordered leave.** The Spanish government will inform around 250,000 undocumented migrants, (who are not included in any of the extraordinary regularisations, see *Statewatch* vol 10 nos 3 & 4, vol 11 no 1), that they must leave Spain within 15 days. If they do not leave they will be expelled and banned from returning to Spain for a period of three years. The measure will also be applied to immigrants who have an offer of employment. In January the government sent a circular to its delegates in which they were instructed to deny work and residence permit requests submitted after 14 January 2002 through any process other than the quota system. This puts an end to any attempts to regularise the almost 250,000 unregularised migrants living in Spain. The annual quota of workers is a complementary procedure to the general regime, according to which, in certain circumstances, a person can request work and residence permits when they have a job offer. The measures included in the circular letter put an end to this possibility.

■ **EU: Proposed EC directive to give short-term residence to asylum-seekers who "cooperate" with police:** The

European Commission has proposed a Council Directive to grant a short-term residence package to asylum-seekers who "cooperate with the competent authorities" by giving information on "illegal immigration or trafficking in human beings". European Commission doc. COM (2002) 71, 11.2.02.

For full text see:

<http://www.statewatch.org/news/2002/feb/inform71.pdf>

Immigration - new material

Negotiating Europe's Immigration Frontiers. Barbara Melis. Kluwer Law International, pp250, [ISBN 90-411-1614-1]. Detailed legal analysis of EU immigration policy, from the rights of third country nationals, rules on admission to the EU through to repressive control and expulsion measures, concluding that "with few exceptions, the trend recorded is to create a Fortress Europe, a "White Fortress". The emerging European immigration policy is therefore a serious challenge to western Europe's declared values. In particular, the research has demonstrated that the new measures have racial and gender implications that undermine the liberal and non-discriminatory commitments of the Member States and the European Union itself".

No change for asylum seekers? Sue Willman. *Legal Action* December 2001, p8. Considers the proposed changes after the government's review

of asylum seekers' voucher and dispersal schemes.

Support for asylum-seekers update, Sue Willman. *Legal Action* January 2002, pp24-27. This article examines welfare provision for asylum seekers and others subject to immigration control.

Belgium/ECHR: Court of Human Rights finds Belgium guilty of mass expulsion of Roma: For full story see: <http://www.statewatch.org/news/2002/feb/05belgium.htm>

Italy: Moroccan G8 protestor expelled from Italy, then allowed to return: For full story see: <http://www.statewatch.org/news/2002/jan/g8expulsion.html>

MILITARY

EU-NATO

Closer cooperation stagnating

In December Turkish prime minister Bulent Ecevit announced that Ankara was satisfied with consultation agreements with the EU over its security and defence policy and would lift its veto on EU access to NATO planning capabilities. There was some speculation on whether Turkey had received assurances that EU forces would not be deployed to Cyprus or to the Aegean. However in the official statements after a meeting between the US, the UK and Turkey in Ankara, nothing was mentioned about specific arrangements that had been made in this area.

The EU and NATO still have to draft a formal document governing the loan, return and payment for NATO military assets, operational command and planning capabilities for EU crisis-management operations. This document must then be ratified by the 15 EU members and approved by the 19 members of NATO.

At the 14-15 December European Council in Laeken there was a new setback when Greece refused to accept the result of the Ankara agreement, as it was not an official EU paper. So the whole process has now to start anew. In addition a security agreement must be finalised that allows the exchange of sensitive documents. Institutional arrangements such as the frequency and structure of contacts have mostly been worked out and are already implemented on a temporary basis. In January 2003 the EU force should be ready for deployment at the moment when Greece takes over the EU presidency.

Jane's Defence Weekly 12.12.01, 2.1.02 (Luke Hill, Lale Sarlibrahimoglu)

SPAIN

Government decriminalises avoiding conscription

On 1 February the Spanish government modified the Criminal Code and the Military Criminal Code to decriminalise, retroactively, the failure to carry out obligatory national service. The measure affects around 4,000 people who avoided conscription as well as seven deserters, some of whom have already been sentenced while the rest are undergoing judicial proceedings. The text will have to be approved by parliament.

Carrying out national service, or *Prestacion Social Sustitutoria* (Alternative Social Service for conscientious objectors) was obligatory until 31 December 2001, when the Spanish army became a fully professional service. On the same day, the Council of Ministers approved a legal amendment allowing foreigners residing "legally" (with documents) in the state to become professional soldiers in the army or navy for a period of three years. This applies specifically to citizens "with

special links to Spain", referring to Latin American countries because they are "closer to our culture" according to the Defence Minister.

The measure, which the government presents as an example of its openness to a "mixed-race" society is, more accurately, a statement of its failure to establish a new defence model based on a professional army. The new law authorises the signing of a single, temporary three-year contract. Those who wish to serve for longer and to have access to tasks and positions carrying greater responsibility will have to acquire Spanish citizenship.

Military - in brief

■ **Macedonia: EU to take over Operation Fox?** The meeting of EU foreign ministers in Spain has decided in principle to take over the Nato-run Operation "Fox" in Macedonia that protects international monitors. As when the EU took over the command of the international police task force in Bosnia from the UN, the decision was proposed by EU high representative for foreign and security policy Javier Solana. Before a final decision on Macedonia many operational problems must be solved. The change in command will therefore take place not earlier than the autumn of 2002. A condition is that the government in Skopje agrees to a further extension of "Fox" after the summer and the transfer of the responsibility from NATO to the EU. Solana and the EU see Operation "Fox" as a practical way to begin an independent EU military crisis management structure. The operation is seen as comparatively small, not too complicated and restricted in time. The Nato intervention force of about 1000 strong is already composed of European units and was from the start in September 2001 commanded by a German brigadier-general. *Neue Zuercher Zeitung 9.2.02*

■ **Germany: European military transport aircraft still in doubt.** The German government still cannot give a legally binding commitment to purchase all of the 73 A400M military transport aircraft Berlin is planning to buy. The indecision leaves in doubt the future of the centrepiece of the European defence project and the backbone of the planned EU rapid reaction force. Germany will be the biggest customer for the eight-nation project. The problem is that the German government had only budgeted funds for about 40 aircraft. To overcome this shortfall the government wants to reach a decision through an emergency procedure; the parliamentary opposition has appealed against this at the constitutional court. To avoid the case going any further the government has now conceded that the commitment is not binding. Earlier defence minister Scharping said that a parliamentary veto on the A400M deal would result in the most serious crisis seen in European security, defence and industry policy for more than 40 years. The stalemate means further postponement for the project. If the Germany decides to buy less aircraft, the individual price of each aircraft will become more expensive. As a reaction to the German troubles the eight participants in the A400M deal agreed to postpone the deadline for the final contract until the end of March, giving Germany some breathing space. *Financial Times 30.1.02, 2.2.02; Jane's Defence Weekly 19.12.01.*

Military - New material

Europe on standby - Briefing on EU military capabilities, Ian Kemp and Luke Hill. *Jane's Defence Weekly 12.12.01. pp24-27.*

Pan-European defence company is ratified, Christopher Foss. *Jane's Defence Weekly 2.1.02. p16.* MBDA is a merger of Matra, BAe Dynamics, Aerospatiale Matra Missiles and Alenia Marconi Systems (Missile Division) and is the second largest missile company in the world.

Europäische Verteidigungspolitik - quo vadis? [European defence policy - quo vadis?], Thomas Frisch. *Europäische Sicherheit* 2/2002 pp7-11.

La "Joint Rapid Reaction Force" - Un outil militaire performant [The 'Joint Rapid Reaction Force' - an effective military instrument], Yves Debay. *RAIDS* 187 (December) 2001, pp56-63.

"A dossier on Civilian Victims of United States' Aerial Bombing of Afghanistan: A Comprehensive Accounting", Professor Marc W. Herold. December 2001.

POLICING

GERMANY

Police "trawling" for suspect foreigners

After 11 September last year, German police units started collecting data on young men with Islamic background from universities, registration offices, health insurance companies and Germany's "Central Foreigners Register" (*Ausländerzentralregister* -AZR). The practice of so-called "trawling" or "dragnet control" (*Rasterfahndung*), a blanket "non-suspect related" police operation, which collects and compares vast amounts of data sets on individuals according to vague criteria, was introduced in the 1970s in the wake of Red Army Faction (RAF) activities and has been criticised for its violation of data protection rights. Student unions and affected individuals have initiated legal proceedings against the practice with different regional courts. Three regional and appeal courts of the *Länder* Hesse, Berlin and North-Rhine Westphalia have now reached a decision. Hesse (Court of Appeal in Frankfurt/Mainz) and Berlin (regional court) found for the complainants, while North-Rhine Westphalia (Court of Appeal in Düsseldorf) deemed the data collection on people with Islamic background legal. One victim will test his rejected complaint with the Federal Constitutional Court.

Data protection violated

Many civil liberties groups and student unions complained about the initiation of the far-reaching data collection operation and argued it was useless for the detection of possible terrorists. The police forces used the "profile" of the Arab students from the University of Hamburg who were allegedly linked to the attacks in the USA, and in some *Länder* demanded that universities hand over data sets on all their male students, but mostly male Arab students. The "profile" effectively makes every male Arab student in Germany a suspected terrorist, (see *Statewatch* vol 11 no 5). In the case of North-Rhine Westphalia, the police demanded data on all men born between 1960 and 1983 from public and private institutions; around 10,000 students have been under surveillance in North-Rhine Westphalia (NRW) alone. Rather than just representing a data protection violation however, student unions argue the practice is racist and explicitly discriminates against people with an Islamic background, be it through a declared Muslim faith or birth in an Islamic country declared to host "terrorists".

Dozens of legal proceedings were initiated by individuals and student unions against the handing over of university data to police forces and courts in Berlin and Frankfurt am Main (Hesse) have now declared the dragnet control to be in violation of data protection rights (*Recht auf informationelle Selbstbestimmung*). In the case of Hesse, the Court of Appeal overruled a ruling from the

regional court in Wiesbaden. The legal basis for the operations would only exist if there was an "immediate danger" of terrorist attacks - the courts held that this danger had not arisen. The Berlin court declared that the police could only justify the practice if it "had to avert an immediate danger to national security or the security of the *Länder* or danger to the life, limb or freedom of a person. An immediate danger however, is neither justified by the appellant (Berlin chief of police), nor can it otherwise be detected." The Court of Appeal in Düsseldorf however, held that an immediate danger existed which justified the actions on people who were nationals of Islamic countries deemed to be countries of origin of terrorists by the authorities, or "if they were born in those countries, or if they are members of the Islamic faith" (court decision 11.2.02). At the same time, the ruling declared the inclusion of German nationals in the provisions as illegal.

Rulings contradictory and racist

The first two rulings were welcomed by civil liberties groups and student unions but the court decision from NRW was criticised. On the one hand, student unions pointed out that earlier first instance court decisions and the latest Court of Appeal decision from Düsseldorf stand in direct opposition to the official government line that "[c]urrently, there are still no concrete facts that point to a danger of terrorist attacks against Germany" (*government press release*, 9.11.01). This was repeated by the Interior Minister of NRW. Why is it then, the student union from Duisburg university asked, that the police department of NRW justified their practice on grounds of an immediate danger of terrorist attacks? Consequently, the court's decision that there were "sufficient facts" pointing to a terrorist attack in Germany with "inconceivable personal and material damage" contradicts the situation report by the German security council. Carmen Ludwig, speaker for the student umbrella organisation *freier Zusammenschluß von studentInnenschaften* (fzs) commented: "Only one of them can be right, either the government has lied to the public or the court has taken a decision without wanting to take into account actual and factual circumstances."

On the other hand, the Düsseldorf decision laid down a legal precedent for the official discrimination and denial of basic rights for foreigners and people of a particular faith. It explicitly declared that the inclusion of Muslims and people of a particular nationality in law enforcement control criteria was "acceptable", in this case, the discrimination of Jordanian and Moroccan men. Again, Ludwig commented that it was "horrendous that in a legal decision, people of Islamic faith and from particular countries are subjected to the general suspicion of being a 'terrorist'." The democratic and legal principle of the presumption of innocence was only applied to German nationals and thereby represented a "racist treatment on behalf of the law enforcement agencies and courts." Defence lawyer Wilhelm Achelpöehler said he would appeal against this decision with the Federal Constitutional Court on grounds of differential treatment of people from a particular nationality or faith, and in order to test the whole practice of dragnet control for unconstitutionality. Court rulings from the *Land* of Rheinland-Pfalz are still expected.

Jungle World 30.1.2002; *Frankfurter Rundschau* 12.2.2002; *Telepolis* 13.2.2002; <http://www.uni-duisburg.de/ASTA/de/aktuell/artikel/rasterfahndung2.htm>; <http://www.lust.uni-koeln.de/rasterfahndung.shtml>

ITALY

SISMI informer linked to Milan bombing campaign

An informer for the Italian military secret service (*SISMI*) was

arrested on 7 April 2001 in connection with a bomb that exploded on 22 September 1998 in front of a *Guardia di Finanza* (Customs) office and a device that was planted in Bocconi University in Milan on April 1999, that did not explode. Luca Giannasi received an 8-month sentence in La Spezia (Liguria) for possession of explosives but was acquitted of the more serious charges of organising and carrying out the bombings, for which the prosecuting magistrate asked that he receive a 16-year sentence. A statement from key witness Giuseppe Fregosi, a *Lega Nord* (LN) member and associate of Giannasi who admitted to providing him with one and a half kilograms of explosive between December 1997 and May 1998, was not allowed as evidence, because he failed to repeat his allegations in court. The lawyer defending Giannasi accepted that new rules on evidence, the so-called "fair trial" regulation, made "the prosecution's main source impossible to use", although he insisted that Fregosi was unreliable. According to Fregosi, Giannasi said that he would build explosive devices as part of a plan to destabilise the country, and aimed to turn the LN security service (green shirts) into a paramilitary group. The case is particularly significant because it was alleged that he organised the bombings to accredit himself with the secret services. He allegedly told SISMI between June and September 1998 that bombings in Milan by Turin anarchists were imminent, in response to a series of arrests against anarchist squatters in Turin. The bomb found in Bocconi University was accompanied by a leaflet from the unknown *Nuclei di Guerriglia Antirazzista* (Anti-Racist Guerrilla Units). It is alleged that Giannasi told SISMI that three Milan anarchists were responsible for the bomb planted in front of the Customs office. After investigations followed the anarchist trail unsuccessfully, Giuseppe Fregosi, a Lega Nord member and associate of Giannasi, was arrested in La Spezia on 25 June 1999 with ammunition for an armoured tank in his car.

Corriere della Sera 21-22.4.99, 28.4.00, 26.4.00, 22.11.01, 15.2.02; *www.repubblica.it* 14.2.02.

ITALY

Right-wing bomber sentenced

Andrea Insabato, a forty-one year old right winger with links to *Forza Nuova* leader Roberto Fiore, received a 12-year prison sentence on 6 February 2002 for a bomb attack on left-wing daily *Il manifesto*. Insabato attended his trial on a stretcher after being injured in the attack, which judge Luciano Pugliese deemed to be aimed at causing a massacre. The bomb exploded as he was on the third floor of a building in central Rome outside the *Il manifesto* head office on 22 December 2000. Insabato, a former member of International Third Position, denies the allegations. His sentence was reduced by a third because he accepted to be tried by a fast-track procedure whereby the first instance judge passes judgement on the basis of acquired documents without a public debate in front of a jury. Insabato availed himself of further mitigating circumstances, as he was considered mentally unstable at the time of the attack. Public prosecutors Franco Ionta and Pietro Saviotti had asked for a nine year sentence, but the judge added a further 3 years, considering the accused to be socially dangerous. Insabato has been accused on a number of occasions in relation to anti-homosexual and anti-Jewish initiatives, and was first arrested in 1975 for assaulting an office of the former communist party, PCI. Insabato's lawyer Saverio Uva has announced that he will present an appeal, arguing that even if he had been guilty, "the sentence can't be so harsh".

Il manifesto 29.1.02, 7-8.2.02; *Il Messaggero* 13.6.01; *Corriere della Sera* 27.12.00, 7.2.02; *Repubblica* 1.8.01; *www.ilnuovo.it* 29.1.02.

Policing - in brief

■ **Spain: Operation LUDECO.** The *Dirección general de policía* has ordered the strict surveillance of 157,000 Colombian and Ecuadorian citizens residing legally in Spain. "Operation Ludeco" aims to counter an alleged increase in crime by groups or individuals from these countries through increased effectiveness in applying the current immigration law and carrying out expulsions more diligently. It also provides for the opening of a computer database on "suspects". The plans have been criticised as "xenophobic" and have been appealed by immigrant support organisations as well as by various opposition parties.

Policing - new material

Worlds Apart? Women, Rape and the Police Reporting Process, J Jordan J. *British Journal of Criminology*, vol 41 no 4 (Autumn) 2001 pp679-706. During the 1970s and 1980s, in both Britain and New Zealand, mounting criticism was made of the way in which women rape complainants were treated by the police and criminal justice system. In response to these criticisms, legal and procedural changes were introduced in both countries in the mid-1980s, aimed at improving women's experience of the reporting process. As in England, however, little research was conducted following these changes to assess their impact on women's experiences of the police reporting process. In a recent *British Journal of Criminology* article (1997), Jennifer Temkin presented research findings based on a study of women in Sussex who reported rape in the 1990s. By way of comparison, this article presents the results of similar research conducted within the New Zealand context. Both studies, although conducted "worlds apart", produced similar results and generated strikingly similar conclusions. It concludes that little in the way of substantive improvements appears possible within this historically and cross-culturally fraught area.

LAW

UK

Police bugging privileged conversations

Three Lincolnshire detectives have been suspended from operational duties after allegations that they had illegally bugged privileged conversations between a lawyer and suspects in a murder case. The three detectives - Detective Chief Inspector Tony White, Detective Inspector Roger Bannister and Detective Sergeant Steve Thom - placed bugs in the police cells of the accused and in an exercise yard in order to overhear details of their defence. The covert operation was exposed at the end of January when the men's trial was brought to abrupt halt by the judge, Mr Justice Newman, who said: "Justice has been affronted in a grave way." He also criticised the prosecution for belatedly attempting to suppress the recordings by using the public interest defence, which allows police not to disclose material to the defence.

Lawyers have since claimed that this case is only the tip of a very large iceberg and that the practice is far more widespread than is commonly acknowledged. Franklin Sinclair, the senior partner with Tuckers solicitors, told the *Times* newspaper:

I have my suspicions that a number of interview rooms in police stations up and down the country are bugged and also I have a concern that some visiting rooms in prisons may be.

He added that the practice breached not only the Police and

Criminal Evidence Act 1984, but also the European Convention of Human Rights. Legal privilege is considered to be a fundamental right that has been upheld under common law. Mr Justice Newton added that the Regulation of Investigatory Powers Act 2000 specifically stated that privileged conversations must not be subject to surveillance. The three police officers are likely to face a criminal investigation.

Times 30.1.02

Law - in brief

■ **UK: Two "terrorist" suspects freed by the court** The courts have freed two "terrorist" suspects who were held in custody for months because of lack of evidence. Lotfi Raissi, an Algerian pilot settled in the UK for years, was freed by Belmarsh magistrates court because the US failed to produce any evidence to substantiate their claim that Raissi was a key suspect who trained the people involved in the 11 September attacks in the USA. Raissi was held for five months in the high-security Belmarsh prison. On 15 February Abdelghani Ait Haddad, an Algerian, was freed after the Home Secretary, David Blunkett, stopped the extradition case against him. Raissi had been held for three months in Belmarsh high security prison following a demand from Algeria that he be extradited on charges connected with a bombing at Algiers airport in 1992 which killed nine people.

For full story see: <http://www.statewatch.org/news/2002/feb/11freed.htm>

RACISM & FASCISM

GERMANY:

Secret service colluded with far-right

Since last summer, the German government has officially committed itself to the fight against neo-fascism. However, with its attempt to ban the *Nationaldemokratische Partei Deutschlands* (National Democratic Party of Germany, NPD) it has become clear that its arguments are based on evidence from active neo-nazis, who have worked as informants for the internal secret service, (VS, *Verfassungsschutz*, Office for the Protection of the Constitution). The government withheld this information from the Federal Constitutional Court and refused to clarify the role of the informants in its bill of indictment, so the court has interrupted proceedings to decide if the trial will continue.

Under article 21(2) of the German constitution, the Federal Constitutional Court has the right to decide on the legality of a political party. The Federal Government lodged an application for an NPD ban with the court in early 2001 and the court decided on 4 October that the evidence constituted grounds for a trial. By January this year however, the court had learnt that witnesses had connections to Germany's secret service, triggering "the biggest secret service scandal in the history of the FRG". The interior ministry has refused to comment in detail on this matter to the Constitutional Court and argued that the witnesses' role was of no importance as the comments used in the bill of indictment were made either before or after their dealings with the services. The court gave the government until 11 February to produce a statement on the matter. The plaintiffs then handed over a 40 page document to justify their evidence to the trial, which is to be considered by the court in the coming months.

It is unclear why interior minister Otto Schily was ignorant of the implications of the evidence prepared by the VS. Some

argue it was a deliberate attempt by a far-right faction within the service to jeopardise the prosecution of the NPD, a suspicion that does not seem entirely unfounded when considering the connections between Germany's far-right and the VS. The VS effectively financed a large part of the NPD's organisational structure and propaganda through wages paid to informants that were ploughed back into the party. The reliance on evidence given by such informants becomes even more bizarre when comments by experts on the far-right indicate that the NPD's statements and manifesto are, in themselves, enough to prove their unconstitutionality and threat to the "free democratic order of the FRG". Green and Socialist party members have demanded a clarification of events.

The government's clarification to the court on 11 February, according to Green MP Hans-Christian-Ströbele, was unclear as to the extent and nature of the involvement of the VS in NPD structures. He demanded a change in the bill of indictment to exclude information from informants and to proceed only on official NPD material and statements. PDS (*Partei des Demokratischen Sozialismus*) MP Ulla Jelpke said that the:

...scandal surrounding the informants again shows that the secret service departments will not be controlled by anybody nor reveal their hand. They are a state within a state, an alien element in a democratic society.

Wolfgang Frenz, one of the main witnesses at the trial, is a co-founder of the NPD and author of several racist and anti-Semitic writings. He was an informant for the VS for 36 years and received a monthly salary of 600-800 DM, which he paid into party funds, a total of at least 260,000 DM (£85,000) of taxpayer's money that was effectively donated by the state. Comments by Frenz and also Horst Mahler (a former left radical lawyer, turned neo-nazi) are listed in the government's bill of indictment, but due to the confidential nature of the information given by the secret services, it is not officially known how many NPD informants were listed to give evidence at the trial. Remarks by politicians indicate that at least four informants were supposed to give evidence.

Frenz had been recruited by 1959 by the North-Rhine Westphalia *Verfassungsschutz* and the NPD was formed by him and others in 1964. He was taken off the payroll in 1995, allegedly because he turned "radical". This justification is deemed false by Jörg Fischer, an ex-Nazi, former NPD member and author of the book *The NPD ban*. He says that Frenz had always belonged to the radical wing of the NPD. Fischer also criticises the current application for an NPD ban as "blind activism", which was initiated by the government to hide the fact that it had been inactive against growing nazi structures in Germany for years.

This has prompted questions over whether Germany's far-right could have emerged to the extent that it did without the financial support of the state. The fact that the secret services are unaccountable and not bound by any "success control", for example, by showing that their use of active neo-nazi informants averts race hate and anti-Semitic crimes, means that the nature of the cooperation between neo-nazis and the secret services is unclear.

A brief and incomplete history of state involvement in, and knowledge of, fascist attacks and far-right organisation raises serious questions as to the political motives of the *Verfassungsschutz*:

■ late 1970s (Berlin): an informant complains that his information on planned violent far-right attacks is not taken seriously by the *Verfassungsschutz*.

■ late 1970s (Lower Saxony): Hans-Dieter Lepzien, a member of the *NSDAP-AO* (National Socialist Worker's Party) and

informant for the regional *Verfassungsschutz* office was caught building bombs for far-right attacks.

■ 1980's (North-Rhine Westphalia): Norbert Schnelle, *Verfassungsschutz* informant, former member of the *Junge Nationaldemokraten* (Young National Democrats), and later a member of the *Nationalsozialistische Front* (NF - National Socialist Front), warns fellow nazis about planned raids and is found to have taken part in criminal acts as well as using his *Verfassungsschutz* wages for building up the NF. Informants from the NF (which was banned in 1992) are known to have agreed with the party leadership on what kind of information should be passed on to the VS.

■ 1988 (North-Rhine Westphalia): Andreas Szypa, active nazi for the *Freiheitliche Arbeiterpartei* (FAP, Libertarian Workers' Party), offers himself to the regional *Verfassungsschutz* as an informant, after checking his move with party cadre. They agree what kind of information should be leaked as well as paying half his wages to the FAP.

■ early 1990s (North-Rhine Westphalia): Bernd Schmitt is employed by the regional *Verfassungsschutz* to spy on the far-right. He runs a martial arts sports club where he trains local nazi youth. Some of his trainees later burn down a house inhabited by a Turkish family in Solingen in 1993, killing five family members, including children. The incident has no repercussions on the regional *Verfassungsschutz*.

■ 1994-2000 (Brandenburg): Carsten Szczepanski is recruited by the *Verfassungsschutz* whilst in custody, awaiting trial for the attempted murder of a Nigerian. Szczepanski had contact with Federal Crime Police Office (BKA) in the early 1990s and provided information on the German Ku-Klux-Klan during interrogations. He was released early from prison on the order of the VS and employed by them for the next six years, earning around 70,000 DM (£23,500). It later became known that Szczepanski had a leading role with the NPD in Berlin-Brandenburg as well as with the *Nationalrevolutionären Zellen* (National Revolutionary Cells) and *Blood & Honour*, and that he spent those years building up far-right organisations in the region.

■ 1994-1998 (Thuringia): Thomas Dienel receives 25,000 DM (£8,500) for his services to the regional *Verfassungsschutz* between 1994 and 1998. He claims his employers granted him immunity from criminal prosecution for his deeds. He also claims to have used his wages to finance fascist propaganda.

■ March 1999 (Mecklenburg-Vorpommern): Matthias Grube, informant for the regional *Verfassungsschutz*, conducts an arson attack on a restaurant run by migrants in Grevesmühlen. He also claims the *Verfassungsschutz* provided him with names and addresses of young left activists in the region.

■ 2000 (Mecklenburg-Vorpommern): Matthias Meier, NPD district chairman in Stralsund, reveals his connection to the regional *Verfassungsschutz*. Party colleagues claim he worked for years for the party and the state, with the knowledge of the NPD leadership.

The following is a list of *Verfassungsschutz* informants, many of whom were sentenced for racially motivated and other crimes during their employment by the regional *Verfassungsschutz* (VS) offices:

Bela Althans (VS Hamburg, incitement to racial hatred), Joachim Apel (VS Lower Saxony, arson), Stefan Michael Bar (VS Kaiserslautern), Klaus Bloma (Federal *Verfassungsschutz* office), Tino Brand (VS Thuringia, his writings for the NPD are used in court to prove the unconstitutionality of the NPD), Thomas Dienel (see above, stood trial several times on grounds of inciting racial hatred), Michael Frühauf (VS Hamburg,

sentenced to life imprisonment for murder), Werner Gottwald (VS Lower Saxony, former NPD member, sentenced for illegal arms dealing), Michael Grube (see above, several sentences for arson), Maik Layer (VS Baden-Württemberg, regional NPD chairman, he is also named as giving evidence to the current NPD trial), Matthias Meier (see above), Carsten Szczepanski (see above, attempted murder).

The latest scandal has thrown up serious questions concerning the practices of the secret services. In particular after the increased powers given to the *Verfassungsschutz* in the latest anti-terrorist packages (see *Statewatch* vol 11 no 5, vol 11 no 6), commentators fear that the VS is out of state control and heavily influenced by far-right forces. Angela Marquardt, PDS member and MP, said that the VS effectively created the NPD, and that the "*Verfassungsschutz* should be abolished as soon as possible." Ulla Jelpke also demanded the abolition of the *Verfassungsschutz* and argued that an official investigation into the current scandal was "owed to the victims of Mölln, Solingen, Rostock and Hoyerswerda" (attacks on asylum seekers homes and foreigner's homes, killings dozens of people). She said that "it is an unprecedented scandal that informants for the *Verfassungsschutz* are active in the NPD for years, even as national chairmen, and that at the same time members of that party have planned, propagated and conducted violent attacks against refugees, migrants and other people, without the security authorities preventing it." The secret services, she argued, far from protecting democracy, constituted a threat to civil liberties.

When looking at the connections between the *Verfassungsschutz* and the far-right these demands are not far-fetched, because, as the weekly newspaper *Jungle World* points out:

It is.. not at all mutually exclusive to work for the Verfassungsschutz and at the same time be a convinced neo-nazi. On the contrary: the best Verfassungsschutz informants are usually the most active neo-nazis with the best connections. In most cases, it is not possible anymore to dissect who profits from this cooperation, and who ends up working for whom.

The Federal Constitutional Court declared it could not estimate when it would reach a decision on whether the statement by the government and parliament were enough to continue with the proceedings. It is thought a decision on the matter will not be made before the forthcoming parliamentary elections in September this year.

The listings of VS informants can found in junge Welt 30.1.2002 and Jungle World 30.1.2002. Background articles: junge Welt 26.1.2001, 24.1.2002, 28.8.2001, 1.9.2000, 17. & 20.7.2000; www.bundesregierung.de/dokumente/artikel/ix_35207.htm, www.bundesregierung.de/dokumente/artikel/ix_67844.htm

NORWAY

Racist killers jailed for murder

Two Norwegians, Joe Jahr and Ole Kvisler, have been convicted of stabbing to death a black teenager in a racially motivated killing last January. The two men, members of the far-right "Bootboys" group, murdered fifteen-year old Benjamin Hermansen, last January after planning and setting out to "get a foreigner". A third person, Veronica Andreassen, was convicted as an accessory after she admitted picking out Benjamin as a victim; she was sentenced to three years. The prosecution had demanded the maximum sentence of 21 years for the two men for the premeditated murder, but they were jailed for 16 and 15 years respectively, causing family members to question Norwegian "justice."

Benjamin Hermansen died of multiple stab wounds 500 metres from his home in the Oslo suburb of Holmlia. His murder, which was described as a "watershed" by prime minister Jens Stoltenberg, prompted a demonstration of 40,000 people. However there are indications that Norway is becoming increasingly intolerant and in last September's elections the ruling Labour Party was ousted by a right-wing coalition that was supported by the racist Progress Party. Norway accepts around 15,000 migrants annually, but few are to be seen outside of the capital.

Benjamin's stabbing was admitted by Jahr, but forensic tests demonstrated that he did not act alone and that two knives had been used in the murder, demonstrating that Kvisler had also been an active participant. Prosecutors called for the maximum sentence - of 21 years - for the role Jahr played and for a 19 year sentence for Kvisler. Their sentences of 16 and 15 years were widely condemned with Nadeem Butt, of the government sponsored Centre Against Racism, commenting: "When the case was so clear cut and had a clear racial motive my initial reaction is that the sentences may be low". The Hermansen family were outraged at the sentences and Benjamin's mother, Marit, said "I thought there was going to be some kind of justice here. But there was no justice. I think they should have got 21 years."

Guardian 18.1.02.; Independent 18.1.02.

ITALY

Rauti steps down

On 10 February 2002 Pino Rauti stepped down as secretary of far right party *Movimento Sociale - Fiamma Tricolore*, and his chosen successor, Luca Romagnoli, was voted in as the new secretary at the party's Congress in Montesilvano (Pescara). The explicitly fascist party is an offshoot from the *Movimento Sociale Italiano* (MSI) that left the MSI when it became *Alleanza Nazionale* (AN) at the Fiuggi congress in 1994; it was one of a series of changes orchestrated by current deputy Prime Minister Gianfranco Fini, aimed at improving the AN's image by disavowing some of its most explicitly reactionary policies.

Reports from the congress stated that there was fighting over the way in which Rauti imposed his successor, a hail of Roman salutes during the national anthem at the close of the meeting, and messages of support from former president Francesco Cossiga and the Austrian far-right leader, Jorg Haider. In his acceptance speech, Romagnoli stressed the need for closer ties with the centre-right government coalition, so that "electors won't think that a vote for MS is wasted and advantageous for the left". He added, "like Mussolini, in 1924, won the elections by allying himself with the liberals and populars [mainstream parties] we, thanks to the electoral agreement with the *Casa delle Liberta*, must make our roots sprout". The outgoing speech from Pino Rauti, the founder of *Ordine Nuovo*, an organisation involved in a number of bombings during the so-called "years of lead", was typically racist: "We are a nation under threat, and with Italy, all of Europe is under threat. The physical, ethnic existence of our people is in doubt. In some years there will be 8 to 10 million less Italians: should we let in the same amount of immigrants?"

Repubblica 11.2.02; Il manifesto 10.4.01, 10.2.02; Philip Willan, "Puppet masters" Constable 1991 (ISBN 0-09-470590-9).

UK

Safraz Najeib - "Justice denied"

Two years after Safraz Najeib was brutally beaten in Leeds city centre, leaving him disfigured and struggling to rebuild his life, Hull crown court has passed sentence on two Leeds United footballers and their friends who were accused of assaulting him.

In March 2001 the initial trial was abandoned after a newspaper published an article, repeating the family's belief that the attack was racially motivated. The racial motivation for the attack had been excluded from consideration at the judge's insistence, although police officers had initially logged the incident as "racist". The Najeib family and their supporters felt that the use of a racist threat ("Do you want some, Paki?") by one of the assailants should have been taken into account. While racism may not have been the only motive for the attack, the family still do not understand why it was totally excluded from both trials (see *Statewatch* vol 10 no 1 & 2; vol 11 no 2).

At their retrial in December 2001, the England and Leeds United defender Jonathan Woodgate was cleared of grievous bodily harm with intent but found guilty of the lesser charge of affray. He was sentenced to 100 hours of community service. His team mate, and England international, Lee Bowyer was cleared of causing grievous bodily harm. In their defence both of the footballers insisted that although they had been in the vicinity of the attack they had - separately, and at slightly different times and locations - fallen over. Because of their clumsiness, they claimed, they could not have taken part in the attack.

Woodgate's friend, Paul Clifford, was found guilty of affray and causing aggravated bodily harm and was jailed for six years for his part in the drunken attack which left Safraz with a broken nose, a fractured cheek and a fractured leg. Safraz's brother, Shazad, was knocked to the ground and beaten in the same assault. Another of Woodgate's friends, Neale Caveney, was found guilty of affray but cleared of grievous bodily harm. He also received 100 hours of community service.

The Najeib family, who have been the victims of a number of serious racist attacks and threats since the incident, have expressed anger at their treatment by the Leeds United football club. They criticise Leeds United for allowing the footballers to play after they were charged, despite calls from anti-racist groups for their suspension. The family describe the attitude of the club as "insensitive and unsympathetic." They were particularly upset by the role of the club's solicitor, Peter McCormick, who had - according to evidence from Leeds player Michael Duberry - advised him to lie in order to protect Woodgate and Bowyer.

Following the outcome the Najeib Family campaign issued a statement in which they said:

We have done everything in our power to bring those responsible for the savage attack to justice, but justice has been denied. It has always been difficult for our communities to attain justice in this country and these verdicts only serve to shatter our faith even more. However, we remain determined to bring those responsible to justice, and would say to anyone who has faced racist attacks, stand tall and fight.

"Najeib Family Campaign statement: Bowyer/Woodgate trial verdict" 14.12.01.

SECURITY & INTELLIGENCE

SPAIN

New intelligence agency

The Spanish Congress (lower chamber) is debating a draft Bill to introduce a new intelligence agency, the *Centro Nacional de Inteligencia* (CNI, National Intelligence Centre). The CNI will become Spain's equivalent to the American CIA or MI5/MI6 in Britain replacing *CESID* (*Centro Superior de Informacion de la Defensa*, the army intelligence centre), which also carries out non-military intelligence duties. It will:

give the president and government information, analyses, studies and proposals to allow the prevention of any risk, threat or aggression

against the independence or territorial integrity of Spain, its national interests and stability.

The *CNI* will be attached to the Ministry of Defence, although the prime minister has the power to place it under a different body. Its targets and goals will be defined in a secret Intelligence Directive. Its functions will be to:

a) "obtain, evaluate and interpret information, and distribute intelligence necessary to protect Spain's political, economic, industrial, commercial and strategic interests";

b) "prevent, detect and neutralise activity by foreign intelligence services which might endanger the country";

c) "promote relationships of cooperation and partnership with the intelligence services of other countries, including international bodies";

d) obtain, evaluate and interpret "signal traffic of a strategic nature";

e) "coordinate the actions of government bodies which use encryption procedures and guarantee IT security".

This follows the example of other intelligence services, particularly "Anglo-Saxon" (USA, UK, Australia, New Zealand and Canada) ones, by linking wide-scale electronic surveillance, cryptography functions and "Spies-r-us" informal international bodies. This attitude was already apparent last June, when US President George Bush visited Spain and offered technological assistance to Spanish intelligence bodies, including the possibility of using the Echelon system in the fight against *ETA* in the Basque region (*CESID* seemed particularly interested in the decryption technology). On 5 January 2002 the Spanish daily newspaper *ABC* said that FBI experts were working alongside Spanish police to decrypt data in computers seized from *ETA* members.

The *CNI* will be authorised to establish links for cooperation/ coordination with other government bodies (most likely to be law enforcement agencies and organisations with information databases such as the Tax Office or Customs and Excise), "when relevant". Its director will, among other tasks, fulfil the role of National Intelligence Authority and head the National Cryptology Centre, a body which was unknown until recently.

The *CNI*'s work will be overseen by the executive, judiciary and legislative bodies.

The Executive: A commission of government representatives will set the annual goals for the Centre - including those to be included in the Intelligence Directive -, evaluate the *CNI*'s work and liaise with law enforcement agencies. This commission will include the First Vice-President (currently Home Affairs Minister, Mariano Rajoy), the Foreign Affairs, Defence, Home Affairs and Economy ministers, as well as the Secretary of State for Security and the director of the *CNI* (who will be proposed by the Defence minister to serve a five-year term).

The Judiciary: A parallel "Prior Judicial Control of the *CNI*" Bill states that a Supreme Court judge will grant authorisation to carry out surveillance of private communications and enter private homes, when such measures are needed to fulfil the Centre's goals. Such warrants will be valid for 24 hours, in the case of entry into people's homes, and three months in cases involving electronic surveillance. The responsible judge will be proposed by the president of the *CGPJ* (General Council of Judicial Power), Spain's highest judicial body, and approved by the plenum of the *CGPJ*.

Legislature: The Congress Commission responsible for controlling the use of "hidden budgets" for the police and intelligence services will oversee the *CNI*'s activities. However,

there are two instances in which members of Congress will not have access to information: a) when it relates to sources and means used by the *CNI*; b) when the information comes from foreign intelligence services and international bodies, if agreements on exchange of information state this. This means that information passed on by the CIA, NATO or obtained using foreign Echelon-style systems will not be overseen by the legislature. This will leave a door open to abuse, as there is no way of guaranteeing that such information has been obtained, transferred, or exchanged following the Spanish law (including privacy or data protection measures).

Although a reform of the Spanish intelligence services has been on the cards for a long time (it was one of the present government's electoral promises), events on 11 September have undoubtedly speeded up and influenced the process - the Bill includes a reference to the new challenges faced by intelligence services, such as so-called "emerging risks".

The draft Bill is currently undergoing scrutiny in the Congress' Defence Commission. The main opposition groups have already expressed their support for it, although *Izquierda Unida* (IU, United Left) and the *Partido Nacionalista Vasco* (PNV, Basque Nationalist Party) oppose it. It is expected that it will be debated in a plenary session of Congress and voted on soon.

CIVIL LIBERTIES

Civil liberties - in brief

■ **UK: Eight jailed under new terror laws.** Eight suspected "international terrorists" were detained on 19 December 2001 under internment powers introduced under the Anti-Terrorism Crime and Security Act, following a series of raids in London, Luton and the West Midlands (many more have been held under the 2000 Terrorism Act). The majority were North African political dissidents. The prisoners were held in Belmarsh prison in south-east London, and Woodhill in Milton Keynes and detained in Category A security conditions, despite not having been convicted of any offence; this categorisation limits their access to family and contact with their lawyers. John Wadham, of Liberty, said the detentions were utterly unjust and pledged to challenge the legislation in the courts. The Muslim clerics Omar Bakri Mohammed and Abu Qatada, targeted by the press and security services in the run-up to the Act's passage through Parliament, in a campaign "outing" them for "inflammatory comments" and involvement in groups linked to Al-Qaida, were not detained. *Independent* 20.12.01, *Guardian* 20.12.01

Civil Liberties - new material

Public emergency in the UK? *SCOLAG Legal Journal* issue 292 (February) 2002, pp33-34. This article reproduces the order putting into effect the UK government's derogation from Article 5(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms which "purports to make lawful the otherwise unlawful detention of *personae non gratae* under Section 23 of the Anti-Terrorism, Crime and Security Act 2001." *SCOLAG* comments: "It may come as a surprise to some that Mr Blunkett and Lord Irving believe we are living in a state of emergency."

Someone to watch over us: back to the panopticon? Richard Fox. *Criminal Justice* vol 1 no 3, pp251-276. Are we becoming a surveillance society? Sophisticated devices and techniques have greatly enhanced the capacity of government to intrude into the lives of citizens. Many of the new forms of surveillance are well suited to the networked society.

Technology now allows the compilation, storage, matching, analysis and dissemination of personal data at high speed and low cost. But the private sector is also involved. Simply by participating in modern commerce, individuals are significantly eroding their own privacy. While there may be broad public support for the preventive role of many forms of overt surveillance, there are also serious weaknesses in the legislative frameworks within which the monitoring of citizens by overt and covert means takes place. There are concerns about accountability, fairness and the effects on the privacy rights of those who may be unwittingly caught up in the process. The new forms of surveillance are evocative of the old methods in the use of surveillance as an exercise of power and discipline.

Statistics on the Operation of Prevention of Terrorism Legislation: Great Britain 2000. *Statistical Bulletin* (Home Office) 16/01, 2001, pp22.

PRISONS

UK

A penal third way?

On 4 February 2002, at the Prison Service's annual conference David Blunkett, the Home Secretary, announced a series of proposals which *The Guardian* was moved to call "a politically bold and admirable move" and widely seen by commentators as a break with the strategy of his two predecessors, Jack Straw and Michael Howard - by ditching of the "prison works" philosophy. Under Howard and Straw, prison numbers rose by more than 50% - from 40,000 to 65,000. Some 26 new prisons were built in a ten year period - 17 of them are now overcrowded. Douglas Hurd, another former Conservative Home Secretary, has commented that under such conditions, "prison becomes an expensive way of making bad people worse." After Blunkett's speech the Prison Governors' Association indicated their enthusiastic support.

Blunkett's proposal is far from detailed, but it is clear that he aims to remove short-term prisoners from the system - a "third way" between community programmes and prison. Various ideas are under consideration; intermittent custody (part community, part prison) a new intermediate sentence (special open prisons or hostels) or "custody minus" (a suspended sentence under which offenders complete a community programme). The enthusiasm for the proposals left some prison reform campaigners wondering if the enthusiasts had heard all of the speech, with its proposals for "harsher sentences and stricter supervision" for violent and sex offenders hardly a break from the "prison works" strategy.

Moreover, the new proposals do not abandon the strategy set out in the 2001 pre-election "Criminal Justice - The Way Ahead" document. This made explicit the link between the refusal of low paid work and crime and the need for short sentences to be tied into a "Jail to Work" scheme which allowed private contractors to set up prison workshops where inmates would earn less than the minimum wage with the possibility of a minimum wage job guaranteed on release. So far as the Home Office were concerned at this stage - crime was caused by the reluctance of the poor to do low paid work and the point of jail was to discipline them to do so. As David Blunkett's speech makes clear, the main attraction of the notion of "intermittent" custody is that "offenders are free to work in the week" and, after all, "prison is an expensive way of denying people liberty." What is most likely to be on offer is a variation of "Jail To Work" with hostels and special open prisons becoming workhouses for the new poor. David Blunkett is clear on this: "I am interested in creating special open prisons and hostels which would deny liberty but

allow offenders to work,...learn new skills." The penal third way appears to be, as a spokesperson for Miscarriages of Justice UK put it, "Jail To Work without the cost to the state of imprisonment, and an addition to the range of penal options not a limit to it."

Observer 3.2.02; *Guardian* 4.2.02; *Howard League, Miscarriages of Justice UK.*

NETHERLANDS

Prison officers do not have to guard asylum seekers

Since March 2001, asylum seekers, including families, have been held in Amsterdam's *Bijlmerbajes* prison. One of the prison's five towers is now used to detain asylum seekers, who in the past were held in the so-called border prison *Grenshospitium*, not far from the Bijlmer prison. In daytime, the refugees are guarded by special warders (*vreemdelingenbewaarders*, foreigner guards), but at night, the regular guards (PIW, *penitentiair inrichtingswerker*) have to assist, because of a lack of personnel. Four regular guards complained and tested their case in court, because they, and 24 of their colleagues, refused to guard immigrants because of conscientious objections. One of them told the *Volkscrant* newspaper: "I still have to do night shifts in the *Grenshospitium* and I think it's awful. When I look out from the ward to the prison yard where the families walk around, I feel pain in my heart."

Positive ruling

In July 2001, a civil court judge ruled that the four guards were not trained to work in the *Grenshospitium* and therefore do not have to do the job. The other 20 guards, who have not tested their case in court, still have to guard asylum seekers because, due to the civil nature of the claim, the ruling does not apply to them. The ruling was limited to six weeks, giving the Ministry of Justice until September or October 2001 to review the complaints. The representative of civil service trade union *Abvakabo-FNV* told the *Volkscrant* that it was politically immoral to imprison refugees in the same building as regular prisoners: "Refugees will be stigmatised, but the judge will never rule against this, because the imprisonment of refugees together with normal criminals is a political decision."

In response the Ministry of Justice decided that there was no reason to bring its policy in line with the court's ruling. The trade union therefore went to court again on 10 November 2001, and won its case. The guards claimed in *Het Parool*: "We are not trained to support these restrictive immigration laws, people who are not criminals should not be imprisoned."

Like "apples and pears"

Public prosecutor A van Vliet stated during the trial that the guards simply did not want to fulfil their night shifts, that there was no difference between criminals and refugees and that the guards criticised the immigration law without explaining how refugees should otherwise be dealt with. Presiding judge W de Klein ruled on 24 November 2001, that the shortage of personnel was the fault of the Ministry itself. He pointed out that occurrences of sickness leave amongst prison guards was more than 20% and said that the Ministry was not taking responsibility. de Klein also declared that the public prosecutor's assertion, that the guarding of criminals was the same as guarding asylum seekers, was ridiculous, and that this was like "comparing apples to pears".

De Volkscrant 26.7.01; *Trouw* 10.11.01, *het Parool* 24.11.01

Prisons - in brief

■ **Spain:** Officers under suspicion for Ghanaian's death in custody: Julious Ofasi, a Ghanaian citizen, died on 3 January 2002 after receiving a blow to the head on 30 December in Sangonera prison in Murcia. He was arrested for causing an altercation and violently resisting arrest on 29 December, resulting in two police officers needing medical treatment, according to police sources. The dynamics of the death are unclear, as early reports said that Ofasi struggled with prison officers on entry into the jail on 30 December, whereas later reports stated that the confrontation occurred as prison officers intervened because he was smashing the contents of his cell. Prison sources claim that Ofasi attacked the officers as they entered his cell and that, as they restrained him, he fell and banged his head on the floor. He was subsequently brought to hospital, handcuffed, where he was diagnosed to be in a coma. He died three days later of a brain haemorrhage. Experts from the *Instituto de Medicina Legal* (Legal Medical Institute) must now ascertain whether Ofasi's injuries are compatible with a fall or with violent acts. *El Pais* 27.12.01, 11-12.1.02

Prisons - new material

Recent developments in prison law, Hamish Arnot, Simon Creighton & Nancy Collins. *Legal Action* January 2002, pp 18-22. This update covers parole and lifers, categorisation, prison discipline and conditions and deaths in custody.

Securing Safety in the Dutch Prison System: Pros and Cons of a Supermax, A Boin. *Howard Journal of Criminal Justice* vol 40 no 4 (November) 2001, pp335-346. In the western world, prison systems have to deal with the inherent tension between the need for safety and the aim to offer rehabilitative opportunities to prisoners. Conventional prison wisdom tells us that safety concerns tend to constrain opportunities for rehabilitation, while treatment programmes undermine safety. The small group of violent and escape-prone prisoners found in most prison systems poses a special problem. In theory, two policy options exist in order to deal with this problem: (i) disperse high-risk prisoners throughout the system, or (ii) concentrate high-risk prisoners in a so-called supermax prison. The Dutch prison system has long shifted between concentration and dispersion. In 1993, a supermax was built. This article explains why this shift occurred and how penal experts have dealt with issues of safety and treatment in this new supermax.

EU-US

How the northern "axis" is taking shape

A common EU-US area on asylum/security, cooperation agreements and common databases

The letter of demands from President Bush to the EU on 16 October effectively defines the broad scope of the "axis" (see *Statewatch*, vol 11 no5). This letter from Bush was effectively to enforce the US-EU Ministerial Statement on combating terrorism on 20 September. The letter was followed up at a meeting in the US on 18 October attended by a EU Troika mission comprised of representatives of the EU's Police Chiefs Operational Task Force, Europol's newly-created anti-terrorist group, Eurojust and the security and intelligence services.

On the issue of "border controls" the letter said US-EU cooperation should cover transit procedures, "border security", "machine-readable passports and visas and explore further use of biometrics", exchange information on lost/stolen documents, and "improve cooperation on the removal of status violators, criminals and inadmissibles".

Just 10 days later, on 26 October, there a special meeting on the EU's high-level Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) with US agencies. The US demands at the meeting closely mirrored those in the Bush letter.

1. The US wants to introduce immigration and customs controls in airport transit areas which would require the major changes to all EU airports. Despite the EU reservations expressed at the meeting this issue is now being discussed.

2. The US said it wanted data to be exchanged "between border management services". This could include "passenger lists" and "data on persons known to be inadmissible due to involvement in criminal activity (trafficking, dealing in false documents etc)".

The US said that it had a database, drawn from different US agencies, on the 10 million a year visa applications made and the database contained the names of people "involved in various kinds of activities giving rise to concern." US consular officials when processing visa applications check names against the database and "signals" are given for: green (OK), red (refuse) and yellow (where a person should be checked/vetted further). A change in the US law meant this information could now be shared with other governments.

The European Commission representative at the meeting

said that the EU was intending to create an online database on visas issued but shared a view - expressed by several member states - that "sharing information could give rise to difficulties at the level of data protection requirements". The US responded by saying that "data concerning US residents was protected" - which begs the obvious question: What about data on non-US citizens (the rest of the world)?

3. The US wants all EU governments to extend usage of airline passenger details held on APIS (Advanced Passenger Information System). At present, the US said, details on only 85% of passengers were available for checking against the "watch list". Their intention was to extend the system to cover the entry and exits of all passengers. Moreover, the US was looking into the Australian practice of using APIS: "for pre-boarding intervention especially in the case of "watch-list" persons". This would mean that people on the list, including so-called "inadmissibles" would not be allowed onto a plane going to the USA.

Asked by EU delegation representatives about the "handling of personal data" the US representatives said the data was limited to that a person would have to give on a landing card - the difference of course is that unlike the completion of a landing card by the individual concerned this would be recorded without their knowledge.

4. Under the heading: "Improve cooperation in the removals of status violators/criminals/inadmissibles" the US delegation requested:

greater cooperation from its European partners in assisting in the return of inadmissible persons to their country of origin

The US said that only 2,000 "returns" to country of origin (out of a total of 180,000 removals from the US) had been effected through using EU airports as transit stop-overs for expulsions to the Middle East and Africa. They complained that the procedures and rules imposed by the EU were hindering the work of the "US immigration service [which] was under great pressure to carry out removals".

The EU representatives responded by saying that the "role

and status of escorts" had to be clarified and that they had obligations under the Geneva Convention "(principle of non-refoulement)" and the European Convention on Human Rights. One EU delegation questioned whether this was an appropriate subject to discuss under "terrorism" measures as it fell into "the area of illegal migration".

5. The US, extraordinarily:

wanted the [EU] Member States to make fuller use of the expulsion possibilities contained in their aliens legislation rather than having to have recourse to extradition procedures

The EU representatives explained that expulsion and extradition were quite different procedures since their effect and "legal consequences were totally different".

However, the US raised the issue further with the statement:

With regard to expulsion procedures, the aim pursued by the US was not to abridge normal procedures but to make fuller usage of immigration proceedings to avoid having to have recourse to extradition.

This statement is coupled with the explanation of an overall shift in US policy covering the:

whole system of visas, border controls, management of legal migration etc... and there was a consensus in the US on the need for an effective system across the board, not targeted specifically at terrorism, but taking the events of 11 September as the trigger for developing a new approach

6. The US also called for US-EU cooperation on "border security" covering i) training; ii) "enhanced border security infrastructure" and iii) the exchange of "activities underway in third countries".

7. The US wants all travellers not in possession of a visa to have "machine-readable documents" from October 2003. The EU representatives said this could prove difficult "given the large number of non-machine readable documents still in circulation".

The US also wants an agreement on stolen passports and stolen blank passports with a view to a:

more regular exchange of information with [EU] Member States with a view to entering such information into its data base in order to facilitate the identification of the holders of such documents

This demand begs a number of questions because hundreds of thousands of lost or stolen passports are recorded on the Schengen Information System (SIS) every year. Is the EU already sending information of this kind to the US? What guarantees of data protection are being offered? The passing of such information would mean giving the US database personal details of quite innocent EU citizens whose passports are lost or stolen.

The US delegation concluded by saying that:

the list of proposals could evolve as the US sought to intensify effects not just to counter terrorism but also to combat all forms of illegal migration movements

EU visa database

Details of the EU's follow-up to this meeting are slowly emerging. The EU's Visa Working Party discussed a report in December last on the creation of an EU database of visas.

The objectives it said are to check the identity of the "holder and the carrier" of visas at the "external border checkpoint" or at "immigration or police checkpoints" in order to contribute to "combating terrorism and organised crime". At present each EU member state issues visas under general rules set by the EU and each may have a different policies towards certain countries.

The intended content of the EU's planned database on visas is worrying. It is not simply intended to be a short-term database of those entering the EU with visas. The database will hold, it appears indefinitely, details on visas issued and those refused, annulled or revoked.

Most extraordinary of all - but perhaps not so in the light of

the emerging EU-US northern "axis" - is a proposal that the database might contain:

certain visas categories to be refused at the request of the UN, NATO, WEU, CFSP etc

This would suggest that the EU visa database could in effect be one which also registers for exclusion of "inadmissible" people from the EU-US common area.

Equally worrying is the idea that there should be a differentiation for "nationalities according to the risk involved".

The report also asks which existing databases should be accessible by "consular posts" (EU member state embassies on non-EU states) and refer to:

Access to the SIS (list of inadmissible persons)

An EU visa database would be accessible by a host of agencies - member state consular offices throughout the world, national visa agencies, checkpoints at the land external borders, police and immigration officials.

It would eventually lead to a global EU database of all applications for visas, list those refused and people defined as "inadmissible" and - if located on the Schengen Information System - could also link into another proposal on the table to issue "alert" tags (for arrest and removal) on people who do not leave the EU on time (see *Statewatch*, vol 11 no 5).

Creating a "shared database" for the US and EU

In another follow-up to the 26 October meeting with the US a report to the EU's Working Party on Frontiers (false documents) summarises the false documents aspects of the outcomes as: closer scrutiny of transit passengers; "compilation of lists of data on passengers and persons to be refused entry"; coordination of border security and the creation of:

a shared database for the USA and Member States of the European Union.

Anti-terrorist "road map"

The EU Action Plan following the attacks in the US ("road map") gives more details of EU-US cooperation.

1. Intensifying cooperation between "Europol and US law enforcement agencies". The first agreement was signed on 6 December (but excluded personal data) and the JHA Council agreed on the same day that Europol "open negotiations for an agreement with the US (including the exchange of personal data)" - this despite strong reservations by the Europol Joint Supervisory Body (which oversees all agreements to exchange data from the data protection perspective). The US failed to provide the EU with requested information on its data protection law regarding police and other official data. Even if Eurpol rules are revised to weaken EU member states, as the "parents" of Europol, are bound by the data protection safeguards of Article 8 of the ECHR.

3. An FBI agent is to be seconded to Europol and in April a Europol liaison officer is to be sent to Washington.

4. Intensifying cooperation on mutual assistance in criminal matters (criminal investigations) - note this is not limited to terrorism. The EU is to draw up one or more EU-US agreements based on Article 38 of the TEU (which does not require national or European Parliaments to even be consulted).

5. Intensify judicial cooperation, including extradition. An "informal meeting" with a US delegation from the State Department took place on 11 February "to explore the negotiating boundaries for a EU-US agreement on extradition and criminal assistance in criminal matters".

The common feature on a number of these areas of EU-US proposed cooperation is that the US is *not* a signatory to: the EU data protection directives, the data protection rules of the Schengen Convention (indeed non-EU states cannot sign up to

this), Europol Convention, the Custom Information System Convention, nor to the European Convention of Human Rights and a number of Council of Europe Conventions.

EU Border police force and "border management"

The idea of creating a "EU border police force" was mooted in the summer of 2001 by Italy and Germany. After 11 September and the EU-US meetings in October 2001 the idea seriously came onto the agenda.

At this stage it is not proposed to create a single force but rather to introduce common standards, training, "best practices", common equipment and the "development of the early warning system with a permanent network". The objectives are to: "standardise European border controls", "facilitate crisis management" and "prevent illegal immigration and other forms of cross-border crime". The uniform training programme for "all border control services (immigration, police, customs and internal security agencies) will be furthered, for example, by "the establishment of a European training institute for the prevention and control of illegal immigration".

The "heads of external border control services" are to meet every six months under the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA). The Commission is to produce a communication on "European border management" and a feasibility study is being carried out by the Italian authorities.

Interestingly, the initial report to SCIFA on border management dated 23 October says that "at this point in time, the creation of an integrated European border police is certainly not the intention... thus at this state it is premature to talk of a "European border police"". However, this is deleted in final report to the Council of Ministers dated 27 November 2001.

There is little doubt that post 11 September the idea of an EU border management policy and the creation of a European border police moved right up the agenda.

EU plans on asylum and internal security

The new EU-US "axis" covers areas of *common interest* and, like the US, the EU is reviewing all its policies on asylum, protection and expulsion. The aftermath of 11 September has meant that a series of measures planned in the EU, many concerning migrants rights, are now being reviewed.

At the specially called EU Justice and Home Affairs Council on 20 September the European Commission was asked to:

examine urgently the relationship between safeguarding internal security and complying with with international protection obligations and instruments.

The Commission produced its response in December (COM (2001) 743 final, 5.12.01).

A special analysis for *Statewatch* by Steve Peers, Reader in Law at Essex University, concludes that the Commission paper:

- displays a flagrant disregard for basic human rights obligations
- suggests solutions that are not coherent
- and would apply to situations wholly unrelated to terrorism

The *Statewatch* analysis on the Commission's ideas on protection against expulsion says that as far as Article 3 of the European Convention of Human Rights is concerned:

the Commission recognises that protection against expulsion to face torture or other inhuman or degrading treatment is absolute, but then suggests that there might be future case law of the European Court of Human Rights which "balances" state security against this absolute right. The Commission's suggestion here quite simply betrays a profound contempt for one of the most fundamental human rights, as there is no indication of such a possible change in the established case law of the Court

The Commission's proposal that the Eurodac fingerprint database could be used for general crime-fighting purposes is

also highly disturbing. The database is intended solely to provide data for EU member states considering an asylum application:

"the Commission fails to point out that any further use by Member States of the fingerprints of asylum-seekers is governed by the data protection rules of the 1995 EC data protection directive, the 1981 data protection Convention of the Council of Europe and Article 8 of the European Convention on human rights.

The Commission further suggests that the reception conditions for asylum seekers could be reduced if it can be shown if they "aided or abetted" or financially supported a terrorist group as defined by the EU. What the Commission fails to consider is that the EU's Framework Decision defining terrorism (December 2001) only cover acts committed wholly or partly *within the EU, by EU nationals or residents or against EU nationals or residents* (it is not plausible that asylum-seekers are residents under this definition). Allegations of "aiding and abetting" terrorist groups in most cases concerns third countries and acts committed against third country nationals. The Commission's proposal therefore fails to recognise the jurisdictional limits of the Framework Decision and confuses:

political violence in a democratic society and acts of violence in defence of democracy in a non-democratic society

The Commission is also proposing to amend the draft Directive on long-term residents third country nationals. It proposes to *delete* the rule that a criminal conviction of a long-term resident third-country national would not automatically result in expulsion:

Deleting this rule would obviously affect many people who are not involved in terrorism, even allegedly, but rather are convicted of possibly minor crimes

If carried through into the new planned measures the Commission's proposals will have a major effect on the rights of refugees and asylum seekers and on migrants resident in the EU.

Changes in practices, however, are likely to have a more immediate effect on asylum rights. As the Commission report notes a number of EU states are: "considering introducing standard "frontier-checks", by which all claims for asylum would be checked upon as potential security risks, running personal data through the available and relevant databases".

What is further deeply worrying is that throughout the Commission's paper it is clear that such vetting and resultant refusing of refugee status could apply to alleged or actual criminal acts and also lead to the removal of migrants having residence status. Not only does the Commission extend its proposal from terrorism to crime in general it also includes the all-embracing "catch-all" of "public order and national security". For example, for:

an individual asylum-seeker [who] has criminal affiliations likely to pose a risk to public or and national security, detention would be an appropriate tool

However, "criminal activities" in an undemocratic state could include peaceful freedom of expression and trade union activity and, in any state, this phrase could cover public order offences which fall well short of "terrorist" activities in the true sense.

The full text of this analysis is on: www.statewatch.org/observatory2.htm

Chronology of EU-US meetings

The areas for planned EU-US cooperation are set out in a number of documents, these cover a whole range of issues including many which are not related to "terrorism". They include:

- 20 Sept: US-EU Ministerial statement on combating terrorism
- 25 Sept: G7 meeting
- 18 Oct: EU "Troika" meeting with US
- 19 Nov: Three members of Pro-Eurojust visit Washington to

"intensify cooperation"

6 Dec: Coln Powell attends JHA Council in Brussels to sign first agreement on mutual assistance in criminal matters

2002

Jan: EU-US Summit in Washington

22 Jan: JHA-EU-US Troika meeting, Madrid

23 Jan: Meeting of EU-US Foreign Ministers in Madrid

25 Jan: EU Working Party on False Documents/US & Canada

8 Feb: "Informal meeting" with US, Madrid

18 Feb: EU Troika-US meeting on drugs

12 Mar: SCIFA-US meeting

10 May: CIREA-US-Canada meeting

28-29 May: CIREFI-US-Canada meeting

no date: COTER Working Party on Terrorism Troika meeting with US

26-27 June: G8 meeting in Kananaskis, Canada

Canada too is included in many meetings including joint meetings with CIREA, CIREFI, the Multidisciplinary Group on Organised Crime and the Working Party on Mutual Assistance in Criminal Matters. The "unseen" influence of the US (and Canada) on EU policy-making and practice can, at this stage, not be fully determined as the process of complimentary initiatives is not complete.

EU

The concept of terrorism grows ever wider

Protestors to be targeted, terrorism clauses to be inserted in agreements with third world

Council adopts new definition of terrorism

On 27 December, just after Christmas, the Council of the European Union adopted four Acts by "written procedure" (the measures were simply circulated to EU governments and adopted unless any objections are raised) on "terrorism". None of the measures was subject to democratic scrutiny.

The first, the "Council Common Position on combating terrorism", is based largely on the UN Security Council Resolution 1373 (2001) which was passed on 28 September in the immediate aftermath of the 11 September attacks on the USA. There are however very significant differences.

Point 2(a) of the Security Council Resolution says that "states" are obliged to refrain from supporting "entities or persons involved in terrorist acts". Article 4 of the EU's Common Position is instead worded to require Member States to prevent "the public" from offering "any form of support, active or passive" to such persons or entities (Article 4 of the Common Position). The change of meaning by the EU fails to distinguish between individuals who consciously assist those involved in terrorist acts and those who simply share the same goals as the "terrorists" but who do not pursue these goals by violent means or knowingly assist with the preparation of violent acts. Nor does this EU definition distinguish between support for "terrorist" groups and liberation movements - as does the Statement attached to the proposed EU Framework Decision on harmonising national laws on terrorism agreed by the Justice and Home Affairs Council on 6-7 December.

The last seven points in the EU's Common Position, Article 11 to 17, are *not* binding in the UN Security Council Resolution but they are made binding by the EU. Article 16 says:

Appropriate measures shall be taken in accordance with the relevant provisions of national and international law, including international standards on human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts. The Council notes the Commission's intention to put forward proposals in this area, where appropriate (emphasis added)

Under EU law this Common Position is binding on all Member States and will mean that all asylum-seekers and refugees are subject to vetting by the police and security services before their status can be granted.

This provision, taken in conjunction with Article 4 of the EU Common Position covering "**any form of support, active or**

passive" for terrorist activities, could mean that a person who had helped raise funds to support the humanitarian needs of, say PKK prisoners in Turkish jails, could be refused refugee status.

No democratic accountability

The adoption of the two Common Positions by the Council of the European Union (the 15 EU governments) by "written procedure" were made under Article 15 of the Treaty on European Union which gives a very general power simply to "adopt common positions" and "Member States shall ensure that their national policies conform to the common positions". Common Positions are thus binding on all EU Member States but do not have to be submitted to national or European parliaments for scrutiny: they are simply adopted. In these two instances the measures adopted cover both Common Foreign and Security Policy (CFSP) and "third pillar" issues on police and criminal cooperation (Title VI of the TEU) and the European Community's migration and asylum policy (Title IV of the TEC).

By choosing to adopt these measures as Common Positions the Council has not only by-passed the European Parliament, it also means that their validity cannot be challenged before the Court of Justice.

Sources: 1) Common Position 2001/930 (OJ 2001 L 344/90); 2) Common Position 2001/931 (OJ 2001 L 344/93); 3) Regulation 2580/2001 (OJ 2001 L 344/70) - freezing of assets; 4) Decision 2001/927 (OJ 2001 L 344/83) - implements Reg. 2580/2001 for the first time, listing the persons, groups or entities covered by the freezing of funds and the ban on the supply of resources.

Presidency proposals extend "terrorism" to protestors

A series of proposals and reports in January and February appear to have confirmed the worst fears of critics of the EU definition of terrorism. The Spanish Presidency of the EU Council has put forward a draft Council Decision "introducing a standard form for exchanging information on incidents caused by violent radical groups with terrorist links". The proposal explicitly says - despite previous assurances - that the EU definition of terrorism includes:

violence and criminal damage orchestrated by radical extremists groups, clearly terrorising society, to which the Union has reacted by including such acts in Article 1 of the Framework Decision on combating terrorism

Article 1 of the draft Decision says - in a clear reference to Gothenburg and Genoa last summer - information should be

exchanged on:

incidents caused by radical groups with terrorist links... and where appropriate, prosecuting violent urban youthful radicalism increasingly used by terrorist organisations to achieve their criminal aims, at summits and other events arranged by various Community and international organisations

The Presidency says in explanation that these "incidents" are:

the work of a loose network, hiding behind various social fronts, by which we mean organisations taking advantage of their lawful status to aid and abet the achievements of terrorist groups' aims

Tony Bunyan, Statewatch editor, commented on *Statewatch News online*:

Protest groups are not terrorist organisations. There is no evidence whatsoever that groups protesting, for example, against the effects of globalisation, have any links with real terrorist groups.

Sources: EU documents: 5712/02 and 5712/1/02 REV 1.

On 31 January the Article 36 Committee of the EU (high-level interior ministry officials) received a report from Europol entitled: "Situation in the terrorist activity in the EU: situation and trends". Apart from summarising the situation in regard to well-known groups like the Real IRA, ETA and Al Qaeda the report, for the first time, extends to so-called "anarchist terrorism" (and "eco-terrorism", no evidence is presented to justify its inclusion).

The evidence presented to justify the inclusion of "anarchist terrorism" is solely based on examples from Italy. A special report by *Statewatch* examines the "evidence" and shows not only that it has little substance of "anarchist" involvement but ignores the proven involvement of rightwing/fascist groups and agents of the security services in bombings. The *Statewatch* report also criticises the inclusion of political groups in Spain who support the cause of Basque independence.

EU document 5759/02 and see:

www.statewatch.org/news/2002/feb/10anarch.htm

On 13 February the EU Presidency put forward a proposal for the creation of "multinational investigation teams" to track down terrorist organisations. The proposal is in the form of a "Recommendation", another intergovernmental instrument, which does not require any consultation with national or European parliaments.

The proposal extraordinarily makes clear that these teams would not concern:

criminal offences and thus do not and cannot give rise to any actual legal proceedings

It is argued that these "non-judicial operational investigations" would involve establishing "teams" (multiple) for:

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

In effect the proposal would create free-ranging, unaccountable "Anti-terrorist squads" which raises the spectre of self-regulating practices like the scandal in the *van Traa* inquiry in the Netherlands, if not the infamous activities of GAL in Spain.

EU documents 5715/02 and 5715/1/02 REV 1

Linkage in "foreign policy" and aid

In a move reminiscent of the creation of the High Level Group on Migration (back in 1997) the "war against terrorism" or rather its extension to cover the broad "third pillar" (justice and home affairs) including "terrorism" is set to "contaminate" the aid and development programme of the EU.

A discussion paper for the EU General Affairs Council on 18 February argues the need to improve the "linkage" between the EU's "political priorities" and the "resources committed" in the

light of "the new international situation arising after the events of 11 September". The paper says: "Fighting poverty is not just a moral responsibility but an investment in the EU's own security", not that this document is at all concerned with increasing aid to the third world. Having said that the EU needs to adopt a "much more "political" cooperation approach" it goes on to say:

Development cooperation is not and should not be transformed into the handmaid of security, economic or political concerns. The goal is rather to recognise the political dimension of poverty-related phenomena helping to overcome the apparent division between development and foreign policy objectives and clarifying the status of the fight against poverty in the geopolitical debate of the EU

Which in plain language means that development and aid do indeed become "the handmaid of security".

In addition a report on "relations with third countries with specific focus on Justice and Home Affairs (6232/02) considered the issue of requiring the "insertion of a possible anti-terrorism clause in agreements with third countries" and "setting up specific instruments from political demarche to commercial measures ("carrots and sticks") - or in lay language how to bring economic (aid and trade) and political pressure to bear to enforce the EU's views. The report also raises the issue of using Article 38 of the Treaty on European Union to conclude agreements with third countries (non-EU states and agencies) which "might cover judicial and police cooperation, including the fight against terrorism" - Article 38 agreements do not require parliaments to even be consulted.

Chronology selected meetings post 11 September

20 Sept

Special EU Justice and Home Affairs Council

16 Oct

"Jumbo" Ecofin-JHA Council discussed in particular the freezing of assets of suspected terrorists and organisations

30-31 Oct

Police Chiefs Operational Task Force, Belgium

6 Nov

Warsaw Conference on combating terrorism (inc USA): heads of state from the central and eastern European countries discuss plan to combat terrorism

19 Nov

"Club of Bern" meeting in Bruges, Belgium (Internal security chiefs. "Club" started by Germany, Italy, Austria, Switzerland and France, now includes EU and applicants states). Some concern was expressed that "cooperation between the secret services" was being discussed at an informal working group - whose members are nominated by the agencies - not accountable to democratic scrutiny.

6-7 Dec

Justice and Home Affairs Council: reaches "political agreement" on the definition of terrorism and the European arrest warrant. Also discusses confidential list of terrorist people and groups - this list is compiled by the police forces, security and intelligence agencies and the member state anti-terrorist units (it is a longer list than the one published on 27 December).

27 December

Council of the European Union adopts by "written procedure" two Common Positions, one defines terrorism in line with the UN Security Council Resolution 1373; a Framework Decision adopted in the same manner gives the EU's list of terrorists and organisations.

Final decision on surveillance of communications

European Commission sells-out, European Parliament vote due in May

The Council of the European Union (the 15 EU governments) and the European Parliament are on a potential collision course over data retention. The issue is whether details of all telecommunications (phone-calls, e-mails, faxes and web usage) should be retained so that the EU's law enforcement agencies (LEAs, police, customs, immigration, security and intelligence agencies) can get access (see *Statewatch* vol 11 no 3/4).

At the end of January the European Commission caved in and lent its support to the Council's Common Position on the issue - thus abandoning its long-standing support for the EU's Data Protection Commissioners and the Article 29 Data Protection Working Party who oppose data retention.

The European Parliament is due to adopt its 2nd reading report in Committee on 18 April and to vote on this report in the second half of May. The European Parliament will be under great pressure to abandon its opposition to the general surveillance of telecommunications now that the Council and the Commission are in agreement.

The final measure has to be agreed by the three institutions under the co-decision procedure. The history of the procedure so far is that the Commission put forward a proposal to update the 1997 Directive in 2000 (this contains few major changes), the European Parliament adopted its 1st reading position on 13.11.01, the Council adopted its "Common Position" on 28.1.01 and just two days later the Commission produced its assessment of the Council's view. The parliament now has to adopt its 2nd reading position after which (unless it accepts the Council's position), the Council will in turn reject, then the issue will go to a Conciliation Committee.

The battle lines

The division of opinion between the Council and the European Parliament (and the European Commission until December 2001) concern: i) the current requirement for service providers to delete call and traffic data when no longer needed for billing purposes; ii) replacing a current provision under the 1997 Directive allowing for the retention of data in specific cases (ie: when authorised to do so by a warrant or judicial order) by a power authorising the retention of all data - which can be accessed by the law enforcement agencies.

The pressure for the Commission to cave in built up after 11 September. On 20 September the specially called meeting of the Justice and Home Affairs Council called for the LEAs to have access to data "for the purposes of *criminal* investigation" (emphasis added).

On 16 October the pressure mounted with the US/Bush letter to Romano Prodi, President of the Commission, which called for reconsidering "data protection issues in the context of law enforcement and counter-terrorism imperatives" and for the revision of "draft privacy directives that call for mandatory destruction to permit the retention of critical data for a reasonable period" - the powers being demanded by the US in the EU do not exist there even after the far-reaching PATRIOT Act was passed.

At its meeting on 16 November the Council's Working Party on Telecommunications was close to finalising its draft "common position" which was adopted by the Telecommunications Council on 6-7 December. This proposed that Article 15.1 of the revised 1997 Directive should include:

Member States may inter alia provide for the retention of data for a limited period justified on the grounds laid down in this paragraph, in accordance with the general principles of Community law

When combined with the deletion of the obligation to erase data from Article 6 this proposal renders privacy in communications worthless.

The European Parliament's 1st reading position says:

These measures [to retain data] shall be entirely exceptional, based on a specific law which is comprehensible to the general public and be authorised by the judicial or other competent authority on a case-by-case basis. Under the European Convention on Human Rights and pursuant to ruling issued by the European Court of Justice, any form of wide-scale general or exploratory electronic surveillance is prohibited

At the meeting of the Telecommunications Council on 6-7 December the Commission signalled that it intended to drop its opposition to changes leading to the retention of data (Article 6) and to the Council's formulation for Article 15.1. In response the EU's Article 29 Data Protection Working Party issued a strongly worded report on 14 December. This said that:

Measures against terrorism should not and need not reduce standards of fundamental rights which characterise democratic societies.. [and rejected the] increasing tendency to represent the protection of personal privacy as a barrier to the efficient fight against terrorism

This was to no avail. On 29 January the Council issued its "Statement" of reasons for rejecting the parliament's position which was based on:

a wording better reflecting the balance between protection of privacy requirements and the needs of Member States authorities responsible for ensuring security in a democratic society

A euphemism for saying that the latter has priority over the former with the Council explicitly saying that certain issues had to be clarified "in the light of the threat posed by the events of 11 September 2001".

On 30 January the European Commission issued its official reaction to the positions of the Council and the parliament and said: "the Commission can accept the added sentence in Article 15.1" by the Council.

The Brussels "spin machine" is saying there is no problem, the power set out in the Council's Article 15.1 is not binding on member states and therefore cannot be portrayed as introducing the general retention of data. What this view ignores is the fact that all EU governments are committed to introducing the general retention of data because surveillance only works if all countries have the same powers. Even before 11 September the Netherlands, Belgium and France had, or were planning, to introduce such powers and the UK had a voluntary agreement in the pipeline (now superseded by the Anti-terrorism, Crime and Security Act 2001, ATCS) - now across the EU these powers are being introduced. The "Regulatory Assessment" on the UK ATCS Act says:

"Data relating to specific individuals under investigation will only be available if data relating to the communications of the entire population is retained"

The EU's Police Chiefs Operational Task Force wants to get access to communications data for "research purposes", that is, not for specific investigations but for "fishing expeditions".

Once the fundamental principles in the existing 1997 Directive on privacy and telecommunications are cast aside they will never be reinstated. It is to be hoped that the European Parliament maintains its opposition to the proposals and insists that fighting "terrorism" cannot lead to the undermining of democratic standards.

The Netherlands after 11 September

The "war on terrorism" in the Netherlands

Holland's reaction to the attacks of 11 September last year was similar to that in other European countries. It offered military backing to the "war on terrorism" and the Dutch Central Bank was one of the few Central Banks to immediately offer its support to the FBI in their search for "terrorist" money. In a joint European police operation, Dutch authorities also arrested suspected "terrorists". However, questions have been raised regarding the evidence that led to the arrests and recent developments have revealed the involvement of the French security services. Holland also introduced a series of anti-terrorist measures. Marking a break with the apparently tolerant Dutch handling of diverse communities, the intelligence information guiding the "war against terrorism" is critical of Muslim organisations and mosques for their alleged failure to "integrate" into Dutch society.

Questions raised over arrests

On 13 September 2001, four people, Rachid Z., Saad I., Jérôme C. and Mohammed B., were arrested in Rotterdam on the grounds of "membership of a strategically important cell of the European al-Qaida terrorist network". The same day, police made arrests in Brussels and Hamburg. The operation was a joint action between the French, Belgian, German and Dutch police. The arrests were made on the testimony of Djamel B., a French national born in Algeria. Djamel B. was arrested in Dubai on 28 July 2001 because he was carrying a false passport. During his two-month stay in the prisons of the United Arab Emirates, he was interrogated and gave the names of twenty alleged al-Qaida members in Europe.

In October 2001, Djamel B. was extradited to France, where he told a very different story. He claimed that he was tortured during his interrogation and a medical investigation conducted in France proved his claim. During the interrogations, Djamel said that he had planned to bomb the American Embassy in Paris. The driver was supposed to be Nizar T., a Tunisian man living in Belgium, who was arrested in Ukkel, Belgium on 13 September 2001. Djamel B. had already been arrested in 1994 by the French police on suspicion of membership of the GIA (Armed Islamic Group from Algeria).

The Rotterdam arrests raise some serious questions. Of the four men (two French, one Algerian and one Dutch), two, Saad I. and Rachid Z., have been released. At the time of their arrest, the four men were in the house of Saad I., who works as a civil servant in Rotterdam. Saad was imprisoned until 7 February 2002, in a cell measuring three by four metres, without television, mail or newspapers and he was denied family visits. Saad I. claimed that he only gave shelter to the two Frenchmen, a fact which the two had confirmed before the inquiry judge. Saad I. had met them at the mosque, and took them to his house when he found they did not have shelter. Saad I. was held for more than three months in isolation before being released.

Rachid Z., an Algerian, who was also in the house was released quickly, at the beginning of October 2001. The public prosecutor claimed that there was insufficient evidence to imprison him any longer, but that he could be prosecuted under immigration laws, (apparently Rachid Z. had no documents). But because of a misunderstanding between the public prosecutor and the Immigration and Naturalisation Service, the authorities argued, Rachid Z. was released. He received more than 1,000 Euro compensation for the time he was in jail.

The French connection

The case was discussed in Parliament, where Benk Korthals, Minister of Justice, had to answer questions about the release of the Algerian man. The two other suspects, Jérôme C. and Mohammed B., who reject all of the accusations against them, are still in jail. On 17 December 2001, the court decided that the two men could be held for another three months. The suspects' lawyers raised questions about the prosecution's evidence and wanted to interrogate Rachid Z., who, it was later disclosed was an informant for a French Intelligence Agency. The lawyers argue that his differential treatment by the authorities supports their suspicion. Rachid Z. however, has disappeared. The court ordered the public prosecutor to find him.

It is not surprising that the defence lawyers would like to talk to Rachid Z. since the main evidence linking their clients to "terrorism" comes from him: Jérôme C.'s lawyer, Inge Saey, said that it was Rachid, in particular, who was interested in watching videos of Osama bin Laden's speeches and instruction videos on how to make bombs. These videos were found in the house where the suspects were arrested and it has now been confirmed that it was Rachid Z. who had brought them into the country. Saey said that Rachid Z. tried to provoke Jérôme and Mohammed. The suspicion that Rachid Z. worked as an *agent provocateur* for the French intelligence services would also explain Jérôme C.'s claim that Rachid Z. had asked them how he could get military training in Afghanistan, to fight in the jihad. He also did not work but always had money.

"Some things have changed"

That the legal principles usually applied in liberal democratic countries have lost their meaning since 11 September, was made very clear during the above proceedings. When van der Sande, Saad I.'s lawyer, demanded the release of his client because there simply was no evidence that linked him to any of the other suspects (Saad had only just met them, and does not speak the same language as the two Frenchmen), public prosecutor Noteboom claimed that:

after 11 September, some things have changed...We learned after 11 September that our western society is vulnerable to martyrs and suicide groups, that means that you have to act in a cautious, precise and restrained manner (de Volkskrant).

Although the court ruled that Saad I. could be imprisoned for a further three months, he was released on 7 February 2002 after the prosecution withdrew its charges.

In practice, the suspects were "convicted" without the trial having started or the evidence weighed. Their names were put on the "most wanted terrorists list", which President George Bush released at the beginning of October. In the same vein, the Dutch Central Bank immediately added their bank accounts to a list of accounts which might have been used for terrorists means. On 14 March 2002, Jérôme C. and Mohamed B. will appear in court, although their full trial will not take place before the spring.

Anti-terrorist measures

The prejudicial attitude towards Muslims which appears to guide law enforcement agencies is also found in the new anti-terrorist provisions, which have been subject to criticism by Islamic organisations. On 5 October last year, Prime Minister Wim Kok presented a list of 43 measures. A special Steering Group had prepared the "Action Plan on Terrorism and Security", with the

Prime Minister stating at a press conference that it would make Holland a safer country. Benk Korthals, Minister of Justice, denied that the privacy of civilians was in danger, he thought that the measures were "responsible" (NRC). On scrutiny, the direct link between the Dutch measures and the EU level becomes evident.

The 43 measures can be divided into:

- budgetary increases for research and specific police forces,
- intensified border controls at airports and external borders,
- more powers for police forces to increase surveillance,
- a series of measures in the financial field, and
- new rules to increase the accountability of money transfers by lawyers, estate agents and notaries.

In line with the JBZ (Commission of Justice and Home Affairs) meeting in the Dutch parliament on 20 September 2001, it was decided that Holland will expand its intelligence and security services and the government will try to make the Police Chiefs Task Force work according to agreements made on 20 September. The key point in these agreements is the extension of the information exchange between services within Europe. There will also be an intensification of cooperation with services in the United States.

One of the points in the Action Plan is the strengthening of the Dutch Intelligence Agency (*Binnenlandse Veiligheids Dienst*, BVD), both on the national level and on the regional level. The work of the agency will be more embedded in the work of the police forces, thereby blurring the line between security and law enforcement. The information exchange between police and security agencies is not only boosted from top to bottom, but also from national to supranational forums. The BVD as well as the KLPD (National Police Corps) have placed a liaison officer with Europol.

A reading of the Dutch Intelligence Agency annual report (2000) gives an insight into what the agency's expansion will mean on the ground. The BVD writes that "Islamic organisations and Imams in Holland, with the support of financial institutes abroad, consciously frustrate the integration [of Muslims]". The BVD further claims that the Turkish and Moroccan authorities, in particular, are trying to influence their citizens through the mosques and Islamic organisations. The intelligence service is investigating the extent that Islamic educational institutes are used for the distribution of radical anti-western ideas. The Islamic community in Holland has described the BVD writings as accusations: "Islam is not the same as anti-integration. We are in favour of integration, but we want to keep Islamic values", Mohammed Cheppih, from the Muslim World League told the NRC.

War on terrorism = war on migration

The new "war on terrorism" is also a "war on migration". Border controls are intensified by, for example, the deployment of military police at the Amsterdam airport Schiphol. Since October, 30 military police officers support the control of passengers at the airport. Also, the *Unit Mensensmokkel* (UMS, a special unit of the Dutch police force which conducts research on human trafficking) will be expanded to look "at possible links with terrorism". Apart from the UMS, the Information and Analysis Centre for Human Trafficking, the Cross Border Criminality unit and the military police will receive a budgetary increase. The military police will also get more personnel to support the *Mobiel Toezicht Vreemdelingen*, mobile border control unit. Their work area and their tasks will also be expanded.

Alongside these measures, the Dutch authorities want to use more biometric identification methods. These methods are to be

used in the surveillance of foreigners, as long as they remain within Holland. In particular, they will be applied against refugees. A central fingerprinting system will be created and made operational with a unique number, personal information on the refugee and visa information.

The measures in the "Action Plan on Terrorism and Security" concentrate on the extension of the technical possibilities for the police and investigation services to surveil all means of communication. Actions 14 to 19 are concerned with the interception of communication, proposals to extend rights for police services to get access to cryptographic services by third parties, the interception of satellite communication, the expansion of the means to analyse international phone traffic data and the extension of the surveillance of the internet.

Finally, 14 of the 43 measures of the Action Plan concern the "integrity" of the financial sector. Some days after the presentation of the Action Plan by the Dutch government, the business magazine *Femdeeweek* published an article entitled "The Ministry of Justice closes a surveillance deal with the banks". The banks agreed to investigate 545 people and organisations targeted by the FBI, the German Federal Crime Police Authority (*Bundeskriminalamt*), the Dutch Intelligence Agency and the Dutch Ministry of Justice. The banks received a list, not only with names but also with dates and places of birth, addresses, phone numbers, websites and e-mail addresses of the suspected persons and organisations. In return for their cooperation, the banks will not be prosecuted for violations of the Law on the Announcement of Unusual Transactions (a law which obliges the banks to report transactions above 5,000 Euro), if they report any unusual transaction over the past years.

Official banks have a bargaining position to negotiate with the authorities. People who send money back to their relatives in their home country do not. Somalis in Holland were concerned when the US Security Council accused a Somali telecommunications firm *Al-Barakaat* of skimming-off money destined for families in Somalia to financing an Islamic group which is presumed to be part of Osama Bin Laden's network. *Al Barakaat* is the only firm that transports money from the United Arab Emirates to Somalia. Some Somali refugees in Holland have been threatened because their call centre, which is also a centre for transferring money to Somalia, carries the name *Barakaat*.

Emergency measures

In line with the 43 measures, Mr Van Boxtel, Minister for Integration, argued that it was the time to have a blanket duty to provide identification on demand in Holland. On 21 December 2001, in line with van Boxtel's statement, the Minister of Justice presented an extension to the Law on Identification in cases of terrorist threats. In case of a concrete terrorist threat, the public prosecutor has the possibility to install a general duty for identification for a specific time span. In February, this proposal will be discussed at the Council of Ministers.

Considering the Action Plan's budget (90 million Euro for the next five years, compared to Germany's budget of roughly 1.5 billion Euro for the recent security measures), it has to be evaluated more as a judicial and police force "wish-list", which under the guise of safety, boosts their budgets. The measures are mainly geared towards putting migrants and refugees under surveillance. The government is currently preparing a law which outlaws "membership of a terrorist organisation" (an anti-terrorist provision which had not existed in Holland), which is likely to entail even more severe restrictions as well as unclear criteria about what these organisations might be.

Volkskrant 15 & 25.9.01; 11.10.01; NRC 14.9.01; 9-11.10.01; *Parool* 18.12.01

Blunkett's security nightmare: the 2002 White Paper

"Refugees are to be cherry-picked abroad; others, if they get here, must be policed, detained, harried and hurried through an increasingly harsh asylum determination system"

Finally, on 7 February, the long-trailed White Paper on immigration, nationality and asylum, *Secure Borders, Safe Haven* was launched. The title - and the sub-title, *Integration with Diversity in Modern Britain* - indicate the themes and suggest a careful balance to the various interests engaged. The message is that while refugees will continue to be protected, there will be no compromise on the security of the state, post-September 11, and the 'war on illegal immigration' will continue to be fought. The sub-title echoes the argument of the Cantle report (1) into the disturbances of last summer, that multi-culturalism has gone too far and 'a new framework of core values' is required 'which would set limits to the laissez-faire pluralism of the past'.

Many of the provisions of the White Paper had already been announced. We had been told to expect provisions for language and citizenship classes for intending British citizens, so these came as no surprise. The same is true of the proposal for a new asylum support system, in which policing asylum seekers is the main priority. We had already been told that vouchers were to be replaced with new technology, that the 'detention estate' was to be increased to 4,000 places, all in dedicated centres rather than in prisons, and that the aim was to remove 30,000 rejected asylum seekers a year, up from around 12,000. We had also been told that there would be no need for asylum seekers to rely on dangerous and illegal means of reaching safety, and that economic migrants would not need to pretend to be seeking asylum any more as the opportunities for migration for work would be opened up. But the gateways to safety proposed here will be narrow indeed, and the economic opportunities similarly limited, save for the "globalised" few.

The White Paper deals with, in turn, citizenship; migration for work; asylum; trafficking and smuggling; border controls; and marriage, family and war criminals.

New Britons for new Labour

The white paper concedes that there is "historically a weak sense of active citizenship' in the UK. The government will change this; it has introduced citizenship classes into the national curriculum, and as a result Britons will become 'active citizens'. They will be joined by naturalised Britons - immigrants who will have been taught (by "light-touch education for citizenship") the virtues of human rights, democracy and law and the duties of citizens, and who will have passed an exam in it and taken a pledge of citizenship in a special ceremony. The white paper hopes that these new Britons will not engage in polygamy, underage marriage, forced marriage or arranged marriage to people who are unfamiliar with British values and so need the 'light-touch education' all over again.

Language classes are clearly of vital importance, and their free provision to all coming to the UK for settlement is long overdue. No-one can seriously object to preventing forced marriage - and there are criminal offences of kidnap, rape and assault to deal with it. But the rest - the talk of undesirable attitudes and practices, of the need to accept responsibilities as well as rights - is redolent of the Victorian missionary attitude to the blighted natives, or the Victorian industrial capitalist's attitude to the undeserving poor. More seriously, it conceals a failure to engage with institutional racism as the real cause of segregation and social fracture, as Kundnani points out (2), instead blaming the victims who lose faith in the ability of the system to deliver justice.

But the white paper adds the insult of forgotten obligations to the injury of citizenship tests. In the mid-1980s, Labour in opposition proposed to abolish the racist provisions of the British Nationality Act 1981, which took away the right to British citizenship by birth in Britain - a right which was of great symbolic and actual importance in ensuring that British citizenship was inclusive. The 1981 Act also removed citizenship rights from erstwhile citizens whose connection with Britain was through the colonies, creating the empty mockeries of British Dependent Territories citizenship, British Overseas citizenship, and other species of sub-citizenship conferring no right to enter Britain. Only when the numbers of dependent territories citizens were reduced by millions with the return of Hong Kong to China in 1997 did the government act to restore citizenship rights to this group. It has never acted to restore rights to the British Overseas citizens (mainly east African Asians) or the other groups. A radical and moral approach to citizenship would have recognised the government's responsibilities to these former citizens by restoring their citizenship rights. That mutuality of obligation is lacking in the white paper.

Migration for work: the globalisation model

The white paper acknowledges "recruitment difficulties at the high and low end of the skill spectrum". The difference in approach to the two ends of the skill shortage is revealing. The Highly Skilled Migrant programme "represents a further step in developing an immigration system to maximise the benefits to the UK of high human capital individuals, who have qualifications and skills required by UK businesses to compete in the global marketplace". This is a points-based system where education, work experience, past income and achievements win fast entry for the fortunate few and their families, although elsewhere the white paper promises (in true new Labour fashion, without telling us how this miracle will be achieved) to 'ensure that migration policies do not worsen skills shortages in developing countries'. Priority will be given to doctors coming as GPs. Graduates from UK universities, medical and nursing schools will be able to stay on for work instead of going home. But to fill the "low skill" recruitment difficulties, there is no similar fast-track entry for settlement. Instead, a new immigration category of "short term casual labourer" will be created, similar to the "seasonal agricultural worker scheme" whereby agricultural gangmasters pay minimal wages to students who must leave at the end of the season. Labourers will similarly be required to leave after six months, and cannot bring their families. New Labour's other answer to the low-skill shortage is to encourage more Commonwealth working holiday makers, under 27 year olds who work and holiday in the UK for up to two years before "settling down" at home. The low-skilled are not to be permitted to settle in the UK.

These measures are suggested as an alternative route by which those currently coming to the UK as asylum seekers - whom the government insists on seeing as economic migrants - will be able to come here for work. But there is not much comfort here for the huddled masses from Iraq, Iran, Somalia, Afghanistan, Sri Lanka and the FRY, the nationalities currently risking their lives and spending their life savings to claim asylum here. Six months' labour and then out is not an alternative which is designed to have many takers.

Asylum: the strait gate

The government proposes to offer refugee status and resettlement to an as yet undefined number of asylum seekers before they come to the UK. At first sight this is a welcome provision, providing a means of lawful entry for refugees and so removing the need for costly and dangerous journeys or false documents in order to reach safety. Those granted status would be given the necessary travel documents to come to the UK and would be assisted once here. The UN High Commissioner for Refugees would probably be responsible for selecting the refugees according to criteria agreed with the Home Office and on a quota basis. Refugees assisted would be those "whose lives cannot be protected in their *region* of origin" (our emphasis).

This measure goes hand in hand with Britain's 'key role' in the EU feasibility study of "region-of-origin protection". The idea is that the vast majority of refugees can stay close to the country they fled from: there is no need for Afghans to leave Pakistan, Iran or Russia, or Somalis to leave the desperate poverty and disease of the camps in Kenya and Ethiopia. We have been here before. This used to mean thousands of Vietnamese boat people behind barbed wire in Hong Kong, invisible for the most part to western eyes, waiting for years in inhuman conditions for "resettlement" or rejection and return. It means refugee camps in Turkey, "safe havens" in northern Iraq (safe if you don't mind being strafed by Turkish, British and US war planes), camps for Afghans in Iran and Pakistan, for Sudanese in Eritrea and vice versa. It means refusal of asylum to those who arrive in Britain unscreened, who 'should have stayed in your region of origin'. This is the reality of "managed migration".

Of course, the quota of resettlement refugees does not (yet) replace the system for the reception of ad hoc, "unmanaged" asylum seekers. But their life is to get much more difficult. Not just the journey - of which more later; but the tracking from claim to refusal and removal. The celebration of the end of vouchers was premature; their replacement - a system of almost entirely institutionalised asylum support - ensures more, not less social exclusion. Asylum seekers will first go to induction centres, where they will stay from one to seven days. Those who require no support, because they can stay with and be supported by friends or have private means, will be given an interview date and reporting dates to go to a reporting centre; some of those needing support will be sent to an accommodation centre. One of the sites being considered for such a centre is Throckmorton airfield, a disused airstrip in Worcestershire banned from development by local planners because it is squeezed between the county landfill site and the burial ground of 130,000 carcasses of foot-and-mouth diseased cattle. The centres will be open; but leaving one will result in no more support of any kind.

To speed up the system, appeals will be "streamlined" again, grounds on which asylum seekers can appeal to the Immigration Appeal Tribunal curtailed and stricter timetables imposed. After appeals are dismissed most rejected asylum seekers, including families, will be detained in removal centres (including the now destroyed Yarl's Wood, Haslar and the former HMP and Lindholme; the government kept its promise to get all asylum seekers out of these prisons in January 2002 by the simple expedient of re-designating them 'removal centres'). Everything will be faster. There will be no room for prolonging the appeal process.

Speed kills

In taking speed as its mantra, the Home Office appears to have learned nothing from the shambles of the years after the introduction of the last 'reforms' to the asylum system in 2000. Then, the emphasis on speed led to over a third of applications being refused without consideration, because non-English speaking asylum seekers were unable to return complex 17-page

application forms in English within two weeks of getting them, as they were required to do. Dispersal compounded the problems, with notices being delivered to the wrong addresses, not being sent on, so that many more asylum seekers were unaware that their claims had been refused until they were evicted from asylum support accommodation. There were hundreds of mistaken refusals by Home Office officials who lost forms which had been sent back within the time limit. The emphasis on speed - of decision, rejection, return - led to thousands of cases going before the High Court for Home Office attempts to remove failed asylum seekers on spurious grounds or without proper consideration of their claims. But the Home Secretary refers to this chaos as "reforms" making "improvements", by dishonest, meaningless conveyor-belt criteria: so many thousand claims were "decided", the backlog was "reduced". The Home Office has still not learned that more haste means less speed. We are not told how many judicial review challenges were brought or were successful, although in one revealing statistic we do learn that the proportion of successful appeals is now 17% (it was 4% five years ago). In February, a High Court judge ordered the Home Office to return a Tamil man from Sri Lanka after he was removed too hastily, before his solicitors had had a chance to put in an appeal. Now, in the whirl of further reform to make the system even faster, the safeguards against removal to torture or death are further whittled down.

Other safeguards are going too. Part III of the 1999 Immigration and Asylum Act was devoted to a system of automatic bail referrals, so that all detained asylum seekers would have their detention judicially scrutinised within 8 days of arrival and again after 35 days. It has never been brought into force, and the white paper proposes its abolition. The Home Office uses detention a lot, finding that it is easier to interview people on their claims if they are on-site, and the Home Secretary became very annoyed when a High Court judge held in October that detaining people for "administrative convenience" at Oakington "reception" centre outside Cambridge was illegal. The judge ruled that article 5 of the European Convention on Human Rights, which became part of British law to a great fanfare in October 2000, allowed the detention of immigrants (including, obviously, asylum seekers) only "to prevent their unauthorised entry" or for removal. In November the Court of Appeal allowed the Home Secretary's appeal on the highly dubious ground that the Oakington detainees were held to decide whether to "authorise" them to enter, and was within the law (people could be held for short periods). The white paper now proposes to detain families as well.

Charter flights have been used to get larger numbers of rejected asylum seekers out at once. 1,700 Kosovans have been removed in this way since March 2001, and the white paper proposes more. Removals are set to increase to 2,500 a month - an impossibly ambitious number which guarantees more deaths caused by violent restraint of panic-stricken deportees. (The Met police predicted this outcome in a memorandum asking for the immigration service to have separate custody facilities in the capital and to stop holding immigration detainees at police stations - the memorandum observed that deaths of deportees are no good for community relations.) It proposes, too, to give detention custody officers (ie Group 4 staff), powers to enter and search private premises. There is a plan to establish the National Intelligence Model in the Immigration and Nationality Department, to share intelligence with "other systems within the department and outside". There will also be a confidential immigration hotline, where ordinary members of the public can vent their racism in confidence.

Trafficking and smuggling: confusing the issues

The section on trafficking and smuggling begins hopefully by distinguishing between the usually willing "customers" of the

smugglers and the often unwilling "victims" of trafficking. But that distinction is blurred in the treatment of both smugglers and traffickers, customers and victims. The increased maximum sentence of 14 years for assisting illegal entry is apparently to be the same whether the people concerned are trafficked or smuggled; the new offence of trafficking for the purpose of sexual exploitation carries the same maximum, as presumably will the new offence of trafficking for the purpose of labour exploitation. The white paper suggests that those who 'harbour' illegal entrants (put them up or give them work) will be subject to the same maximum penalties. Worse, victims of sexual or labour exploitation will not be given any guarantee of being allowed to stay, even if they give evidence to secure the conviction of the traffickers, so putting themselves and their families back home at risk.

Once again in this section there are suggestions of "more information sharing with other agencies", working with business and trade unions to prevent illegal working. There is to be a separate consultation on the issue of "entitlement cards" (new Labour-speak for identity cards), and (one of the nastier minor suggestions in the white paper) UK-born children of children without leave are to be brought into the 'immigration process' earlier (at present such children, although not British, can stay in the UK but if they leave they cannot return without permission). There is already coordination within a multi-agency task force including the National Crime Squad (NCS), National Criminal Intelligence Service (NCIS), the Foreign and Commonwealth Office (FCO), the intelligence and security agencies, the Met and Kent police and British Transport police. An EU 'High Impact Operation' in autumn 2001 focussed on the eastern borders of the accession countries, and EU immigration liaison officers form an emerging network in eastern Europe and Turkey as well as the EU. While the countering of sexual and labour exploitation is of course welcome, here we see the shading that goes on from countering "trafficking/smuggling" to securing borders and keeping out the "undesirables", foremost among whom are of course the asylum seekers.

Border controls: the world is our border

Most of the so-called border controls set out in this section are in fact pre-border controls, which operate in other countries to prevent people departing for our shores. Visa requirements prevent the citizens of 110 countries from coming to the UK without obtaining a visa. Airline liaison officers, initiated in 1993 to help carriers identify 'inadequately documented' passengers, now cover 20 locations and prevented over 22,500 passengers boarding last year alone. In addition, immigration officers carry out 'pre-clearance' checks at Prague airport and have prevented many Roma from coming (although the white paper is not so crude as to spell this out). "Juxtaposed controls" mean that immigration officers can treat all passengers boarding Eurostar in France as potential illegal immigrants to the UK, even those only going from Paris to Lille, and demand to see their travel documents. And now the Home Office officials have thought of yet further checks: carriers will be able to obtain advance "authority to carry" by checking passengers against Home Office databases, for instant confirmation that they pose "no known security or immigration threat" (note the elision of security and immigration, terrorism and illegal entry). Disregard the breathtaking data protection implications of commercial carriers having access to such information, and the less than impressive reliability record of Home Office databases - the proposal does not spell out what happens if the Home Office database fails to provide such instant confirmation: passengers being preemptorily told they cannot travel.

Meanwhile, frequent flyers will gain entry to the UK in the wink of an eye, thanks to biometric controls such as iris recognition. Scanner technology will be used to detect

clandestine entrants in lorries, with mobile task forces and integrated intelligence networks backing them up.

Marriage: return of 'primary purpose'?

Registrars reported 700 "suspect marriages" in the first year of operation of the 1999 Act provisions imposing the duty to do so. There is no analysis telling us the proportion of those which were proved "immigration marriages"; instead there is an assumption that all were sham, as the figure is uncritically adduced in support of the conclusion that sham marriages are increasing, leading to the proposals that people who marry while here as visitors cannot stay as spouses but must apply from abroad, and that the "probationary period" for spouses should increase from one year to two. At the end of the period, before settlement is granted, the couple would be subjected to searching inquiries to ascertain that the marriage is genuine and subsisting. It was just these intrusive and demeaning invasions into couples' privacy that underlay the primary purpose rule, whose abolition in 1997 was one of new Labour's few positive reforms in the field.

The last part of the paper, bizarrely tacked on to family visitors and marriage, deals uncontroversially with war criminals, providing for indefinite leave to be revoked, for deprivation of citizenship and for the role of SIAC to be extended to cover exclusion from the UK for commission of such crimes.

The model adopted by the white paper is a form of new Labour cloning. The values of globalised capital predominate: individuals with "high human capital" are to be welcomed, while the poor and uneducated are to be allowed in only for six months at a time to do the dirty work, with no possibility of settling or bringing families. Refugees are to be cherry-picked abroad; others, if they get here, must be policed, detained, harried and hurried through an increasingly harsh asylum determination system, and as far as possible to be hidden out of the way in diseased post-agricultural backwaters. What a vision for a brave new immigration and asylum system.

Sources:

- (1) *The Cantle report*, available on the Home Office website www.homeoffice.gov.uk.
- (2) *Community cohesion: Blunkett's new race doctrine in CARF 66*, Feb-Mar 2002.

Statewatch has now produced ten detailed analyses on the post 11 September threat to civil liberties and democracy:

1. EU "Conclusions" on counter-terrorism (JHA Council 20.9.01)
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3. The European arrest warrant
4. EU definition of terrorism
5. "The enemy within": plans to put protestors under surveillance
6. Analysis of legislative measures
7. Analysis of "operational" measures
8. EU measure on terrorism criminalises refugees and asylum-seekers
9. EU terrorism situation report: Anarchists are "terrorists"
10. Asylum and "safeguarding internal security" post 11.9.01.

These are available in "pdf" format on Statewatch's Observatory on freedom and democracy on: www.statewatch.org/observatory2.htm

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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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