

statewatch

monitoring the state and civil liberties in the UK and Europe

vol 13 no 1 January-February 2003



Free movement and the right to protest

Information, intelligence and "personal data" is to be gathered on: "potential demonstrators and other groupings expected to travel to the event and deemed to pose a potential threat to the maintenance of public law and order"

The freedom of movement for all EU citizens, one of its four basic freedoms of the EU, is under attack when it comes to people exercising their right to protest.

The "freedom of movement" of people is held to mean the right of citizens to move freely between the 15 countries of the EU without being checked or controlled or having to say why they are travelling. Martin Bangemann, then the EC Commissioner for the Internal Market, told the European Parliament in 1992: "We want any EC citizen to go from Hamburg to London without a passport" (*Statewatch*, vol 2 no 6). This "freedom" was never uniformly implemented but today it seems very far away given from the numerous checks faced by airline passengers - and a Spanish proposal would extend the USA demand for personal details on all travellers going there prior to take-off to travel within the EU.

Post 11 September 2001 these checks are said to be necessary for safe air travel and to exclude suspected terrorists, "illegal" migrants (who are all seen as potential terrorists or criminals) and so-called "inadmissibles" from entering the EU. These moves come on top of the EU governments plans to combat cross-border protests put in place after Gothenburg (June 2001) and Genoa (July 2001) (*Statewatch* bulletin, vol 11 no 3/4).

Most surveillance checks concern air travel but when it comes to combating protests they extend to land borders too. Since June 2001, powers to introduce land border checks, under Article 2.2 of the Schengen Convention, have been invoked on 16 occasions by EU states and 12 of these concerned anticipated cross-border protests (*Statewatch* European Monitor, vol 3 no 3, 2003). Tens of thousands of protestors have been checked at land borders and thousands refused entry - some have been recorded on the Schengen Information System (SIS).

In December 2002 the Justice and Home Affairs Council noted the production of a "Security handbook" to counter protests at EU Summits and international meetings (like G8) held in the EU. The power to revise this handbook is to be undertaken

by the unaccountable EU Police Chiefs Task Force, and the Security Office of the General Secretariat of the Council of the European Union (the 15 EU governments) is to "advise" on operational plans to combat protests (see Viewpoint, page 21). Information, intelligence and "personal data" on:

potential demonstrators and other groupings expected to travel to the event and deemed to pose a potential threat to the maintenance of public law and order

are to be supplied by each national police and security agency to the state where the protest is planned - on a monthly, then weekly and finally daily basis up to the event. There is no suggestion that the data supplied be limited to those convicted of violent offences. The handbook says that EU member states should:

utilise.. measures to prevent individuals or groups considered to be a threat to the maintenance of public order from travelling to the location of the event

At land borders "preventive patrols and controls may be carried out" and "necessary arrangements for a quick and efficient" expulsion should be in place. Such plans are clearly intended to undermine the right to protest by treating all protestors as potential "suspects". There are, however, real limits on how effective they can be when thousands upon thousands travel to join hundreds of thousands from the host country (as happened in Genoa).

An article in this issue looks at what happened at Davos, Switzerland in January when despite promises the protest was stopped far away from the World Economic Forum meeting. It also looks at the plans being laid by the Swiss and French governments to counter protests in Evian, France at the G8 meeting in June (see page 20).

Freedom of movement and the right to protest are intrinsically linked in a democratic society, but will the endgame be an attempt to ban on EU travel to take part in a cross-border demonstration?

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UK

Over 50,000 "innocent" DNA profiles on database

Last September's judicial review of the 2001 Criminal Justice and Police Act's amendments to the Police and Criminal Evidence Act, ruled that the retention of DNA samples is "necessary in a democratic society".

In October the Labour MP, Harry Cohen, asked in parliament how many individuals have personal data relating to fingerprints or DNA stored on national police computers and what percentage of these records relate to individuals who are not criminals and are not suspected of any criminality. Of the 1,884,450 DNA profiles maintained on the database 55,032 "profiles were marked as acquitted". These were taken from "all those charged with or informed they will be reported for a recordable offence, but against whom the prosecution was not proceeded with or those who were subsequently acquitted by the courts."

Last January the Home Office announced that it would take DNA samples from 13,000 prisoners and mentally disordered offenders who had been convicted prior to the database's introduction. They will be added to the profiles already on record. The Home Office will have the power to take the samples without consent and all such prisoners and patients will have the samples taken prior to their release from prison or hospital care. John Denham, a Home Office minister, said that: "DNA profiles of a minority of prisoners and mentally disordered offenders are not on the database. We are addressing that."

In February one of the scientists who co-discovered the DNA double helix, James Watson, told the BBC that everybody in Europe and the United States should have their genetic fingerprints entered into an international database (see also, *Statewatch* vol 12 nos 2 & 5). This would, he claimed, enable law enforcement agencies to fight crime and terrorism. Arguing that Europe and the USA could produce such a database "cheaply and easily", Watson dismissed civil liberties concerns as "irrational". He went on to advocate a policy of eugenics, suggesting that "stupidity" is a genetic disease that could be "identified" and "corrected". Such ideas were popular in Nazi Germany, where hundreds of thousands of physically and mentally handicapped people ("the feeble-minded") were murdered. In response to his question on fingerprints Cohen was told that the number of prints on the National Automated Fingerprint Identification System (NAFIS) was 5,213,106 at October 2002. Unlike DNA samples, "if a prosecution is not proceeded with or a person is acquitted by the courts, the fingerprint is weeded from NAFIS once the result is recorded on the Police National Computer."

Hansard 15.10.02, 16.1.03; Independent 3.2.03

ITALY

Terrorist suspects released

Twenty eight Pakistanis were arrested in Naples on 31 January 2003, accused of "international terrorism" after explosives, false documents and marked maps of Naples were found in the house which the migrants, many of whom were street vendors, used as a dormitory. They were suspected of planning terrorist attacks with possible targets including a British Admiral, Sir Michael Boyce. The suspects denied links to any of the confiscated material, and after the arrests, Pakistan reportedly presented a formal complaint to the Italian ambassador in Islamabad saying

that the men "did not have any terrorist links". The 28 suspects were released on orders from a Naples investigating judge, Ettore Favara, on 12 February. Favara argued that the supporting evidence was "confused and unclear", and that "elements collected...can only lead to a considerable reduction in the seriousness of the evidence regarding the [persons] concerned". He also noted that the building was managed by a man linked to the Giuliano family (involved in Neapolitan organised crime, the Camorra) in an area "where it is reasonable to hypothesise that there is almost complete control...by the clans of the area". Favara criticised the handling of the raid, claiming that "it would have been desirable that the searches and confiscations...should have been carried out on an individual basis, with a clear indication of the person from whom material was confiscated...", and that fingerprint tests were not carried out on the confiscated materials.

Pakistan's ambassador in Rome claimed that Pakistani citizens had been randomly arrested without grounds for suspicion in recent months. A number of operations have resulted in the arrest of citizens of Islamic countries in Italy on charges of "international terrorism", some of which have proved unfounded. 15 Pakistanis suspected of being part of *Lashkar i Jhangvi*, an organisation accused of links with *al Qaeda*, have been in prison in Caltanissetta (Sicily) for over five months as a result of an operation conducted on the night of 4-5 August on a Romanian ship, the Sara. They were crew members that should have disembarked in Tripoli, the ship's previous port of call. *Misteri d'Italia* newsletter reports that the arrests were based on the confiscation of false passports and the testimony of one of the Romanian sailors, who claims that he heard the Pakistanis talking between themselves, and that they were Talibans. However, the sailor does not speak Urdu.

Four Moroccan citizens and Italian pensioner Germano Caldon, a former art history professor from Padua, were arrested on 19 August 2002 accused of "subversive association" and "terrorism" as part of a suspected plot to carry out an attack on the San Petronio basilica in Bologna. The Moroccans, who hold residence permits and work in Italy, were suspected of planning an attack due to some comments made by the two of the men, Abdallah Wakouz and Lahacem Essaghir, when the five men visited the church. The comments referred to bin Laden, and when a better time to visit the church would be. A day after the arrests and renewed media panic over terrorism, the five were released. Prosecuting magistrate Paolo Giovagnoli withdrew his request for "preventative custody" after Caldon had explained that he suggested the visit as the four Moroccans had to collect some documents in the Moroccan consulate in Bologna. The prosecuting magistrate admitted that "at this point, the precondition leading [us] to believe that it was a visit to prepare an attack no longer exists" although the five remain under investigation.

A number of foreign nationals had also been arrested in June on suspicion of planning to bomb the church, famous for the frescoes on its ceilings, one of which depicts the prophet Mohammed in a region of Dante's inferno. All those detained were released, as investigating magistrates noted that allegations of an imminent bombing were "nonsense".

Guardian 8.2.03; Repubblica 12.2.03; Il manifesto; Misteri d'Italia newsletter no. 62, 18.2.03.

UK

Surveillance role for traffic cameras

From 17 February 2003, 200,000 motorists in London have had to pay a £5 "congestion charge" to enter central London. 688

CCTV cameras have been installed to enforce the charge around the edge of the zone and automatically issue non-paying motorists with an £80 fine by checking vehicle number plates against payments and driver licensing and car registration databases. However, just eight days before the congestion charge came into effect, it emerged that MI5, Special Branch and the Metropolitan police had been secretly involved in the development of the system since 11 September, introducing facial recognition technology to conduct surveillance and search for suspects.

Surveillance of the central London congestion charge zone extends the reach of the so-called "ring of steel", where the number plates of all vehicles entering the financial district in the City of London are checked against police and intelligence databases. The face recognition schemes that will be employed are already being used in the east London borough of Newham, and in Birmingham, and tested by four other local authorities.

The Home Office, meanwhile, is developing a new generation of road surveillance cameras, which can either be linked to existing CCTV road monitoring systems or used by mobile units in police patrol vehicles. Nine UK police forces are testing the system, which can scan up to 3,000 number plates an hour and cover three lanes of motorway traffic. The cameras are linked directly to the Police National Computer and other databases. Details of any vehicles of interest to the police are immediately passed to dedicated intercept teams who stop the driver.

Guardian 27.1.03; Observer 9.2.02

UK

Media broadcast of CCTV footage violates human rights

On 28 January 2003 the European Court of Human Rights ruled that a local authority who captured a suicide attempt on its CCTV system and then released the footage to newspapers and television companies violated the individual's right to privacy (Article 8 ECHR). In August 1995, Geoffrey Peck had attempted suicide on Brentwood High Street, Essex, by trying to slash his wrists with a kitchen knife. He was severely depressed after losing his job and learning that his partner and mother of his daughter had been diagnosed with a terminal illness. Police responded after a CCTV operator alerted them to the incident. Brentwood Council then released the footage to the media in order to promote the benefits of CCTV, resulting in several local newspaper articles, a feature in *CCTV News* magazine and television broadcasts of the footage on Anglia Television (audience 350,000) and the BBC's "Crime Beat" programme (audience 9.2 million). Despite token gestures to mask Mr Peck's face and conceal his identity, he was easily recognised by friends and relatives.

The ECHR also ruled that Mr Peck's right to an effective domestic legal remedy under Article 13 had been breached. In 1997 the British High Court ruled that the council was within its rights to release the footage and a subsequent request for leave to appeal to the Court of Appeal was rejected. UK judges have resisted the attempt to carve out a privacy law based on a reasoned interpretation of Article 8, ECHR, though it is hoped (perhaps naively) that the European ruling could usher in new privacy regulations in respect to CCTV.

Guardian 29.1.03; Times 3.2.03

Civil liberties - in brief

■ **UK: ID card consultation ends:** On 31 January 2003 the consultation period on the governments proposed introduction of

identity cards drew to a close. *Privacy International* say responses to the consultation were "at least four-to-one against the Government's proposals". The Home Secretary, David Blunkett, has said that he favours the introduction of a "simple smartcard" with a memory chip detailing personal details, a unique identification number and access to public services, but added that "members of the cabinet have different views on this". Gordon Brown, Chancellor of the Exchequer, and the Treasury are known to have strong reservations over the cost of the scheme, which has been estimated at between £1.3 - 3 billion, though the likelihood is that the public would foot the bill through a £15-20 individual charge for each ID card. The new Information Commissioner and head of the UK Data Protection office, Richard Thomas, also has serious reservations: "Identity theft is one of the arguments in favour [of ID Cards]. Well, in the United States social security cards which are de facto entitlement cards are forged in wholesale volumes and actually increase identity theft rather than reduce it". A second justification is social security fraud. The empirical evidence is that the vast bulk of social security fraud is caused by fraud about people's circumstances, not about their identity." *Guardian 8.1.03, 16.1.03; Times 21.1.03*

Civil liberties - new material

Put away the cuddly toys. Now it's time to get tough, Naomi Klein. *Guardian 3.3.03, p. 20.* Klein discusses civil disobedience. She considers the response expected by the Americans from the Iraqi people who are predicted to "refuse to obey orders or to participate in an unjust war" when the US invades. Given the US abandonment of the anti-Sadam rebels during the last Gulf war she is "sceptical" of this scenario. She also discusses another US initiative in San Francisco, where a coalition of anti-war groups is calling for a strike the day after the invasion begins: "Don't go to work or school. Call in sick, walk out. We will impose real economic, social and political costs and stop business as usual until the war stops."

Reconfiguring governance: politics, process and policy, Philip A Thomas, Northern Ireland Legal Quarterly, vol 53 no 4, Winter 2002. Examines laws passed in emergencies especially those after 11 September 2001: "while terrorism is a threat to democracy, so the legislative responses of nation states, and the European Union, carry similar dangers".

IMMIGRATION

SPAIN

Expulsions up by 63% in 2002

According to Interior Ministry sources, 74,467 illegal immigrants were expelled in 2002, compared to 45,544 during the previous year, indicating a 63% increase. The group that was most affected were again Moroccans, although slightly less were expelled than in the previous year. In contrast to this drop, Romanians and Ecuadorians saw a spectacular increase in expulsions: from 1,514 Ecuadorians expelled in 2001, to 5,558 in 2002; in the case of Romanians, the increase was from 1,607 expulsions in 2001 to 18,865 in 2002.

Moreover, the government began to put into practice the policy of hiring charter flights jointly with other European governments in December. Thus, on 4 December, together with France, it expelled 85 Romanians on a flight that left from Madrid and stopped over in France to collect another 22 Romanian citizens residing illegally there. On 10 January, 90 Romanian citizens, 78 men and 12 women, were boarded onto a charter flight going to Bucharest. 48 of them were expelled for

residing illegally in Spain.

The detentions of migrants who reached the Spanish coast in dinghies were 16,504 in 2002 compared with 18,517 in 2001. In regard to asylum applications, these decreased by 34% in 2002, largely as a result of the introduction of a visa requirement for Colombian and Cuban citizens. The decrease is from 9,490 asylum and refuge applications in 2001 to 6,227 in 2002.

SPAIN

Failure of the quota system

The so-called quota system, through which the government not only limits the number of job vacancies that can be filled by foreigners, but also the areas in which they may work, has proved a failure since its introduction in 1991. In spite of this, the government has tightened its parameters.

Last year it was made compulsory that job offers to fill vacancies be made in the countries of origin, expressly prohibiting immigrants already in Spain being part of the quota. Furthermore, it blocked the so-called "general regime", recognised in the Aliens' Law, that permits an immigrant residing in Spain who receives a job offer and possesses a certificate from the Employment Department (INEM) stating that no Spanish worker is available to fulfil the vacancy, to apply for work and residence permits. It also blocked the possibility, again recognised in the Aliens' Law, that employers could directly make job offers to persons residing in their own countries, using their relevant INEM certificates.

The stopping of the general regime prevented thousands of immigrants who were in Spain with job offers from being able to apply for work and residence permits. This has forced many of them to become part of the illegal employment market, without labour rights, regular salaries, social security or other benefits, such as sick leave or unemployment benefit.

Furthermore, the failure of the management of the quota system is shown by the fact that only 42.5% of job offers were filled (13,633 out of the 32,079) that were authorised by the government for the year 2002.

SPAIN

Seven migrants die in Malaga police cell blaze

Seven migrants from Maghreb countries died after suffering burns in a fire while they were in custody in a cell in Malaga police station on the evening of 27 December 2002. They were part of a group of 17 people detained in a 7 x 4.5 metre cell - with a view to being returned to Morocco - after their boat was intercepted 25 kilometres from Fuengirola and towed into Malaga. Police claim that the fire was started by the head of the expedition (one of the deceased) and two associates (including the boat owner, also deceased), who burned foam mattresses that had been provided, and subsequently prevented the other detainees from leaving the cell by obstructing the door. A number of issues have yet to be cleared-up, including how long it took police officers to open the cell, why they did not help to evacuate the cell, and why none of the available fire extinguishers were used. ATIME, the Association of Moroccan Immigrants in Spain, expressed its surprise that "the government simply blames a suspected member of an organised criminal gang and leaves aside its responsibility for the custody and evacuation of detainees". Local NGO *Malaga Acoge* filed a complaint with the ombudsman (*Defensor del Pueblo*) for Andalusia, Juan Chamizo, and relatives of the victims also filed a lawsuit. Investigations into the fire failed to attribute any responsibility to police

authorities.

El País, 2.1.02, 3.1.02, 8.1.02.

NETHERLANDS

Raids criminalise migrants

In recent months, Holland has seen a series of large-scale immigration raids. The first two took place in The Hague and Rotterdam and the media was invited. This created a spectacular event which served to act as a deterrent to potential immigrants and as a threat to those in Holland. It was intended to demonstrate to the Dutch public that the authorities were "doing their job". A series of raids followed in Amsterdam that focused on immigrants from Bulgaria, Romania and other Balkan countries. The raids were characterised by a deployment of a large police force, the stigmatisation of the immigrants and a lack of legal aid and adequate judicial scrutiny.

The first raid took place on Wednesday 4 September 2002. Eighty two people from Bulgaria were arrested and deported the following morning. On the Wednesday evening, police raided 23 houses in the Schilderswijk and Transvaal neighbourhoods in The Hague. The raids were carried out by a special police team, the city council and the border police. The mayor of The Hague, W. Deetman, announced that there will be similar actions in the future against "the illegal criminal circle".

In contrast to the stigmatisation of the immigrants as criminals, most of the deported Bulgarians were working in the horticulture business in het Westland (south-west Holland), the hotel and catering service and the cleaning industry. Most of these workers are employed for ten to twelve hours a day for about 35 to 40 Euro.

Until the mid-1990s, employers in het Westland mainly hired illegal workers from Turkey and Morocco but they changed to Eastern European workers, who are cheaper: they are paid 3 to 4 Euro an hour in comparison to 6 to 7 Euro an hour for workers from the Mediterranean countries. Another change is that since the implementation of the Linking Act, immigrant workers are dependent on "job agencies", which act as intermediaries between the employer and the workers, because the employers do not want to risk being caught by the WIT, (Westland Intervention Team, in which the Work Inspection Authority, the Tax Agency, the Public Prosecutor's Office, several social service offices, various agencies on workers insurance's and the foreign police work together). In 2001, WIT raided 451 of the 3,000 horticulture companies in het Westland as well as 218 "job agencies". Workers say these checks are most intense in September and October when there is not much work. Some workers feel that the employers call the Work Inspection Authority to get rid of them and workers from Bulgaria commented that if they demand their wages then most employers call the police to get arrested and deported.

A week after the much publicised raids and deportations, the issue created headlines again when it was reported that most of the Bulgarian deportees had returned to Holland. Most of them are members of Bulgaria's Turkish minority, for whom there is little future in their own country (34% of the young are unemployed). The raid was organised in such a way that no legal aid could be provided and it was not verified if people really came from Bulgaria or if their status was illegal or not.

On Wednesday 13 November 2002, another charter flight deported 115 Bulgarians who lived in Rotterdam and The Hague. Twelve women were arrested on Saturday, the other people were arrested in the days leading up to Wednesday. Those deported were made up of 76 men, 36 women and three children. According to Mr Schoof, the director of the Immigration and Naturalisation Service (IND), the flight made a stop in France and the passports of the deportees were withheld from them for a

year. On 17 November, Colonel Grigorov from the Bulgarian border police said that 33% of the 7,099 people deported to Bulgaria had not got their passports back.

That the raids seem to be staged for publicity was confirmed in an interview with the IND director Schoof. He commented that the Immigration and Naturalisation Service was called three weeks before the first raid and asked if he could "provide an homogenous group". Therefore the raids took place at peoples' homes rather than their workplaces.

There have been three raids in Amsterdam. The first one took place on 23 September 2002 and the most recent on 14 January 2003. The first and the third raid were mainly directed towards undocumented Bulgarian women who are working in the Theemsweg, a place where prostitutes can receive their clients.

The second Amsterdam raid took place on 25 November 2002. According to the police, they were looking for immigrants from the Balkans who "cause trouble". They raided twenty five addresses and arrested 87 people from Bulgaria and Romania. The following day, twenty-five people were arrested. They were deported in two planes, one of which was sent by the Romanian authorities together with Romanian security personnel. Holland had signed agreements with the Bulgarian and Romanian authorities about the withdrawal of the passports.

In some cases the police arrived too late and the immigrants had already left their houses. While neighbours said that the people had not bothered them and that they did not have any complaints, Amsterdam police spokeswoman Elly Florax said that the immigrants were suspected of all kinds of criminal offences such as pick-pocketing, shoplifting, burglary, conning tourists with money exchange tricks, fake money and the trafficking of women.

O van der Lee, lawyer for some of those arrested and deported, said that in none of the Amsterdam cases had a concrete charge with a specified criminal offence been brought. The regular procedure in Holland is that people are first treated under the penal code and after under the foreigner law. Van der Lee raised this point in court, but the judge argued that the authorities were entitled to arrest these people and that it was a separate issue how they presented this in the media. Effectively, the court ruled that undocumented stay was sufficient reason to arrest under the foreigners law and the law on identification.

But looking at the facts, the police actions reveal that there was little reason for them to believe that those they arrested were undocumented or criminal suspects. As a basis for their raids on the women in Theemsweg, the police presented a case from 2 October 2002 when a fight took place involving a group of drunken Bulgarian woman. Specific reasons for the other arrests - raids also took place there on 23 September 2002 and 13 January 2003 - were not given. For the raid of 13 January 2003, a chartered plane was waiting at Schiphol Airport and within six hours the women were taken from the Theemsweg directly to the airport so that the authorities did not have to notify legal aid.

The raids in different cities led to questions in Parliament by the Green Left party. When asked if the people who were deported were suspected of criminal offences, the Minister of interior affairs and the Minister of integration replied no. According to the Minister of integration lawyers had free access to the immigrants.

Furthermore the Minister's answers are strange concerning the women who were arrested on the Theemsweg. The lack of a clear explanation to the women of the so called B9 regulations, which should be explained to "illegal" women who are arrested in situations where there is a clear possibility of trafficking, shows that the police and public prosecution are not investigating possible cases involving the trafficking of women. Under the regulation women should be offered a period to "rethink their position" before filing a complaint about trafficking. Although the B9 regulation is not perfect and some women feel that the rethinking period is "a waste of time" the police should still

explain the regulation. In none of the raids did the police explain the B9 procedure to the women.

According to the IND, 1,000 people were deported on charter flights in 2002, 600 of whom came from Bulgaria. On Friday 21 February 2003 most of the national newspapers opened with the story that the Immigration and Naturalisation Service (IND) had signed a contract with the Dutch army to use military planes and airfields for the deportation of immigrants. A spokesperson from the IND said that the immigration service expected a rise in deportations (last year there were 25 charters and 36 are planned this year; this year there are plans for 18,000 people to be deported, for 2004 there are already 24,000 planned deportations). According to the Ministry the commercial airline companies who provide the charters (Transavia and Martinair) will not be able to fulfil the demands of the immigration services. But it is not only the number of deportations which led to the contract with the military. An IND spokesperson claimed that it was meant as an image rethink - to make clear that deportations are not holiday trips. Immigrants and refugees knew this already. Even the military police on Schiphol airport claim that more deportations will exacerbate an already tense situation and lead to greater insecurity for both refugees and police officials.

Immigration and asylum - in brief

■ **Spain/North Africa: The tragedy of the dinghies:** The end of 2002 and the start of 2003 were marked by the tragedy of the dinghies and the stream of dead migrants that they leave on the Spanish and African coasts. On Sunday 2 December the newspapers spoke of two shipwrecks. One involved a vessel off the Libyan coast heading to Italy in which 12 undocumented African immigrants and 56 others disappeared; 52 people were rescued. On the West Saharan coast of Daura, the Moroccan authorities found the corpses of 32 undocumented immigrants from sub-Saharan countries; in this case the dinghies were destined for the Canary Islands. On 2 January a dinghy sank in Tarifa and seven bodies were collected. On 14 January, 24 persons were shipwrecked near Fuerteventura, of whom only 12 were able to save themselves. The corpses of the twelve remaining persons were being found in the following days. On 19 January the Moroccan *gendarmes* found 16 corpses of persons who were washed back up on the shore in Tangiers after setting off for Spain. A Russian merchant ship collected a boat carrying twelve immigrants, six of whom were dead, in the Ionian Sea. The *Guardia Civil* found another body in Motril, in the province of Granada.

■ **Spain: Cooperation with Guinea Bissau in exchange for expulsions:** On 7 February 2003, the Spanish government signed two conventions, for bilateral cooperation and for the repatriation of illegal immigrants. The Spanish government is seeking to make the expulsion of third country nationals easier, and to commit the governments of their countries of origin to this policy. Sub-Saharan countries are some of the most frequent countries of origin of persons who try to reach the Spanish coast in dinghies. In the last five years the arrival of people from Guinea Bissau increased by 300%. Similar conventions were signed in 2002 with Poland, the Dominican Republic, Romania and Algeria, and are about to be concluded with Senegal, Cape Verde and Ghana.

■ **Spain: Immigrants registered in social security:** In the month of January 2003, one out of every two persons who registered in the social security system was a foreign worker from a non-EU country (14,646 out of 27,371). This figure reflects the great importance that the contribution of the migrant labour force has on the renewal of the active population in Spain. At the end of January, the number of foreigners in the social security system was 846,252, of which 179,604 came from the European Union and 666,648 from other countries. In the last twelve months, the rate

of growth of the latter group of workers was 45.55%.

■ **Italy: Regularisation of migrant workers:** An extraordinary regularisation of illegally employed migrant workers resulted in 702,156 applications being submitted by the 11 November 2002 deadline, divided into domestic and care workers (341,121) and persons employed in subordinate employment (361,035). A law decree passed on 9 September 2002 invited "Anyone" who has "had non-EU workers in an irregular position in his employment, in the three months preceding the entry into force of this decree", to make a formal declaration to confirm this, that would allow the regularisation of these workers. The unexpectedly large number of applications means the Berlusconi government will be responsible for the largest regularisation of migrants ever conducted in Italy, in spite of the belligerent anti-immigration stance held by some parties in the government coalition (especially the *Legha Nord* and *Alleanza Nazionale*). It also resulted in the Ministry of the Interior and the Ministry of Work and Social Policies employing 1,250 temporary workers in order to complete the scrutiny of applications. The head of the government's immigration department Anna Maria D'Ascenzo expects the scrutiny process to end within three months in smaller provinces, and by the end of 2003 in the five cities where the most regularisation applications were filed, that is, Rome, Milan, Naples, Turin and Brescia. *Decreto-legge (law decree) 9 settembre 2002, n.195; Ministry of the Interior press statements, 13.9.02, 27.9.02, 19.2.03.*

Immigration - new material

Contra las restricciones derivadas del sistema de cupos. Por otra política de inmigración. Propuestas desde SOS Racismo. *Federación de SOS Racismo*, January 2003. This pamphlet attacks the quota system that is currently in force in Spain because it institutionalises the subsidiary nature of foreign labour by only allowing migrants' employment if no Spanish people are found to fill a vacancy (see *Statewatch vol 12 no 5*). It is based on a policy of only recruiting foreigners abroad while many migrants who reside in Spain and have firm job offers are not allowed to obtain work and residence permits. Only 19% of the job vacancies on offer through the quota system were filled, and widespread abuses have occurred during the selection process and after arrival in Spain. Agreed work conditions have been amended (with pay and benefits lowered) by employers who also threatened foreign workers with expulsion if they report that the agreed conditions were being breached. The quota for 2002 is described as a "total failure", and the pamphlet notes that in spite of some "technical improvements", the planned quota for 2003 will follow similar lines. Statistics on the migrant workforce that entered Spain using the quota system are provided, as well as alternative approaches for managing migration. Available from: SOS Racismo, Passage de la Pau 10 bis, entlo 2º 08002 Barcelona.

■ **Los discursos del miedo**, Josep Ramoneda. *El País Sunday supplement*, 5.1.03, p. 9. Examines the political debate surrounding immigration. The most common themes, "swamping", a clash between cultures, vagrancy and the threat to workers, are dismissed as "false" by Ramoneda. Firstly, the percentage of foreigners in Spain (3.2%) is well below the European average (5%) and although the figure has been rising, this is due to increased labour demand. The "swamping" will not stop because immigration will slow down when labour demand also falls, it argues. Secondly, according to the trade union *Comisiones Obreras* in Catalunya, third-country nationals have a higher employment rate than Spaniards, because they come to work, often without their families. Likewise, migrants do not take workplaces away from Spanish nationals, although their exploitation by employers does affect conditions. The government's discourse is based on demagoguery, the whipping up of fear (the opposite of what public authorities should do) and the detachment of crime from social conditions to justify an aggressive "zero tolerance" approach to mirror the Sarkozy, and previously Giuliani, models.

■ **Inmigración, racismo y xenofobia, press review.** *Mugak* July-September 2002, (Centro de Estudios y Documentación sobre racismo y xenofobia) pp.92. A press review of articles on immigration, racism and xenophobia from national and Basque Country newspapers. Includes feature articles on cultural clashes, in particular the much-publicised case of a young girl, Fatima, who attended a school run by nuns in El Escorial wearing a *chador* (head-scarf), and the construction of a political discourse according to which migrants are "impossible to integrate culturally". In the Fatima case, newspapers initially blamed the father for not allowing his daughter to receive education, government and opposition politicians claimed that the *chador* represented female submission, but eventually the right to education won out. Writings by authors including *Foro de la Inmigración* president Mikel Arzumendi (multiculturalism as gangrene) and Italian writer Oriana Fallaci (who is against Islam) are also examined.

■ **Shame of a continent**, Gary Younge. *Guardian G2* 8.1.03, pp. 1-4. Younge investigates the plight of the Roma, "the forgotten people, persecuted throughout history, murdered in their thousands by the Nazis, seen as second-class citizens in much of eastern Europe." Younge wryly notes: "...soon the countries that treat them the worst will be our EU partners."

■ **Recent developments in immigration law**, Jawaid Luqmani, Chris Randall and Rick Scannell. *Legal Action* March 2003, pp. 25-27. Tri-annual update on developments in legislation, practice and case law.

LAW

Law - in brief

■ **EU: MEPs campaign to legalise drugs:** More than 100 MEPs are supporting a recommendation urging the repeal of prohibitive drug laws in EU member states. Patricia McKenna MEP (Green) suggested that heroin should be made available to addicts through GPs and that softer drugs could be sold legally to any adult who wants them. Likening the current situation to the prohibition of alcohol in the US in the 1920s, McKenna told the *Irish Times*: "As things stand, a lot of people in this country are taking drugs and the only way they can get them is by going to a criminal". *Irish Times*, 24.1.03.

■ **Belgium: Sharon faces war crimes charges for murder of refugees:** The Belgian Supreme Appeals Court has ruled that Ariel Sharon, the prime minister of Israel, can face a genocide lawsuit for the murder of between one and two thousand Palestinians at the Sabra and Shatilla refugee camps in 1982. The massacre was carried out by Israel's Lebanese christian allies, the Phalangists, a brutal and indiscriminate terrorist organisation that was armed and financed by the Israeli government. The support of the Israeli military, who sealed off the camps from the outside world so that the massacre could take place without interruption, was essential to the operation. An Israeli investigation found that Sharon, who was Defence Minister at the time of the slaughter, was "indirectly" responsible for the killings. Last summer a lesser court ruled that Sharon could not be tried under the law, but recent amendments have changed the situation. The present suit was brought by 23 survivors of the massacre under Belgian human rights law that allows for the prosecution of war crimes, crimes against humanity and genocide, no matter where they took place.

■ **UK: Court rejects concerns over sentencing of Asian youths:** The Court of Appeal has rejected concerns over the sentences handed out to youths of Pakistani descent who were arrested for participating in the Manningham riots in Bradford in 2001. The excessive sentences, mainly for stone throwing, were analysed by the Institute of Race Relations in a report last year that revealed "a huge discrepancy in the sentences imposed

against the Manningham rioters...and the sentences which have been brought in other cases of civil disturbance in the UK." Of the 15 appeals before the court, only four had their sentences reduced. Defence lawyer, Michael Mansfield, pointed out the judges had failed to take into account the provocations of the National Front, which had sparked earlier conflicts in Oldham and Burnley. Bradford's Pakistani youths have a long and honourable record of defending their communities against attacks by racists and fascists and harassment by the police. The Bradford 12 established the principle of "self defence - no offence", and it has taken a Labour government to undermine it.

Law - new material

Public Order review, Jo Cooper. *Legal Action* February 2003, pp. 18-20. Considers anti-social behaviour orders, which were introduced in the Crime and Disorder Act 1998, and are considered to undermine "the core values of the criminal justice system" by human rights activists. The Orders have been "significantly extended" since their introduction by the Police Reform Act 2002.

MILITARY

UK

MoD targets Greenpeace

The Ministry of Defence police recently used satellites and a spy plane to follow a psychedelic lorry housing a mobile generator used by the campaigning organisation Greenpeace to power music festivals across Britain. The MoD cited "credible" intelligence that the group was planning to use a heavy goods vehicle to attack a military spy base. This was later toned down, though it was admitted that "stunts" for the media are considered a threat to national security:

The information that the MoD received was that Greenpeace had laid up a lorry and were going to do something in Westminster or up in Fylingdales. They were endeavouring to create a major media impact. It was decided that this represented a threat to national security

A Greenpeace activist commented: "We'd never attack a military site with a truck, especially not after 11 September. We'd also never use one painted with pink, red, orange and blue checks...".

On 2 February police and MoD forces boarded Greenpeace's flagship, the Rainbow Warrior, after it had blockaded supply vessels due to leave for the Middle East from Marchwood Military Port in Southampton. The ship had been in the port for six days, following a High Court Decision refusing to grant the MoD an injunction to ban the Rainbow Warrior from the area. In turning down the Defence Secretary's request, the Judge granted an interim injunction stipulating that Greenpeace must not board or touch the Ministry of Defence chartered vessels.

Under the cover of darkness MoD officials defied the high court decision, forcibly removing the Greenpeace ship from the Southampton docks. The Rainbow Warrior was surrounded by six MoD and police boats and up to twenty police boarded the ship just after 10:00 pm Saturday night. By 3:00 am they had cut the anchor chain and towed the ship out of the way.

Two days later, 14 Greenpeace activists entered Southampton's Marchwood Military Port and occupied tanks and jeeps queuing up to be loaded on the roll-on/roll-off ferry Stena Shipper bound for the Gulf.

Sunday Times 19.1.03; Observer 2.2.03; <http://www.greenpeace.org/news/details?item%5fid=125528>

Military - in brief

■ **UK: Hoon signs Britain up for "son of star wars":** In January, Geoff Hoon, the Defence Secretary, announced that the government had agreed to an earlier US request for use of the Fylingdales radar station in West Yorkshire for its missile defence system - the so called "son of star wars" project. Despite concern from more than 200 MPs, there was no parliamentary vote or formal consultation - save for a glossy, "public discussion paper" which loosely spells out the government's intentions and cites the benefits missile defence will bring (job creation, security). The deal, which is likely to be the first of many on missile defence, will see batteries of "interceptor rockets" placed at bases in Britain. Although the US will pay for the cost of upgrading Fylingdales, UK tax-payers will foot the bill for the rockets. It is a further blow to hopes that multilateral arms proliferation treaties will survive the "war on terrorism" and "rogue states". Former defence minister Peter Kilfoyle accused the government of accepting any "crackpot notion" put forward by the "ideologues in Washington" and "furthering global destabilisation". *Guardian 16.1.03; Chartist, Jan/Feb 2003, p.16; Labour Left Briefing December 2001, p.8.*

■ **Spain: Eurofighter prototype crashes in Spain.** On 21 November 2002 the Spanish DA-6 prototype of the Typhoon EF-2000 Eurofighter combat plane that is being developed by a European consortium comprising German, Italian (Finmeccanica), Spanish (CASA-EADS) and British (BAe) firms, crashed in the mountains near Caceres (Extremadura). The Eurofighter consortium claims that the aircraft crashed after its EJ200 turbojet engines shut down due to a pressure change while flying at 45,000 feet at a speed of Mach 0.7, when the pilots sought an extra boost to break through the sound barrier. The official statement says that it was one of the first kind of engines that were developed for the aircraft, and that they were being changed on the remaining six planes that had them fitted. The two pilots survived after ejecting from the plane at an altitude of 40,000 feet (12,192 metres) so only the aircraft, valued at 72 million Euros, was lost. *El País 1.12.02, 13.12.02, 22.11.02.*

Military - new material

Proof of America's weapons of mass destruction, Mark Thomas. *New Statesman* 27.1.03, p.18. Mark Thomas discusses America's weapons of mass destruction or, as the US government would have it, their non-lethal chemical weapons, distinguishing them from Saddam's lethal variety. He asks the question: "Are the US's programmes "defensive" and therefore legal? and concludes that the only way to establish this would be an independent inspection team.

POLICING

DENMARK

Police chief lied about destruction of small arms

The Minister of Justice, Ms Lene Espersen (conservative), has admitted that the leadership of the national police force lied in a report to the United Nations (UN), giving the impression that outdated police guns had been destroyed and not sold on to the private international gun market. Since 1998 10,000 old Walther 7.65 mm calibre guns - popularised in the James Bond movies - have been replaced with new 9 mm weapons from the German arms producer Heckler & Koch. Part of the deal with the

producer was that the old guns would be bought by the company with the purpose of selling them on the open weapons market. Evidence has come to light revealing that some of these guns are being sold over the internet by an American arms dealer and by the Witham company in Colsterworth in UK.

There are a vast amount of small arms circulating in civil society. Increases in violent crime are blamed on easy access to small arms, which often escalate conflicts and confrontations. The UN General Assembly has adopted several resolutions calling on the authorities of the member states to make moves to limit the illicit circulation of small arms. It is especially mentioned in a resolution from 1997:

All States should exercise restraint with respect to the transfer of the surplus of small arms and light weapons manufactured solely for.. use by the military and police forces. All States should.. consider the possibility of destroying all such surplus weapons (The term "surplus" indicates serviceable and unserviceable small arms and light weapons held in stockpiles by military and police forces and the illicit weapons seized by such forces that they no longer need).

The Danish Foreign Office participated in the negotiation of these resolutions and Denmark voted in favour of them, both in 1997 and 1998.

An official police evaluation into the need to replace their old guns, which were first issued to them in 1948, involved arms specialists, ballistic experts and army personnel. The final report by the Ministry of Justice (then led by the now former Minister, Frank Jensen, social democrat) on 11 April 1997, authorised the national police force to go ahead with the deal. The price was 24 million Danish kroner and the counter sale of the old weapons was 7 million kroner, which saved the police budget a considerable amount of money. At no time during the deal did the police inquire of the Foreign Office if it would be violating official small arms policy. The police said that the deal would not be violating the resolutions and that if people wanted guns and "did not have the possibility to buy the police weapons they would, all things considered, buy other weapons".

In March 2001, as part of the UN's follow-up procedure, the General Secretary's office invited member states to "communicate the relevant information" about national measures to "destroy surplus, confiscated or collected small arms and light weapons". In their response the police claimed: "All small arms and light weapons of the police forces which have been taken out of service are destroyed centrally through melting or shredding". This, the Minister of Justice in an answer to Line Barfod MP (Red-Green Alliance) has now admitted, was a lie. She will now inform the UN about the correct state of affairs regarding Danish weapons policy.

NETHERLANDS

A chronicle of stop and search operations

Within the last few months, Dutch city councils have introduced new laws giving police powers to arbitrarily stop and search without "reasonable suspicion" (non-suspect related stop and search operations). In law enforcement terminology this is called "preventative policing", in practice, it is the criminalisation of poor and black neighbourhoods, in this case particularly Moroccan youth.

As part of the debate around the "powerlessness" of the Dutch police the authorities, backed by the Dutch Parliament, have changed the law to make non-suspect related stop and search operations possible. The Law on Weapons and Ammunition and the Council law were amended on 15 September 2002, allowing police to check people and vehicles in zones that are declared "security risk areas". Police can search these areas

for up to twelve hours. If they want to carry out daily search operations they have to get permission on a daily basis. The Council law changes give the city councils powers to delegate to the mayor the right to declare certain areas "security risk areas".

The changes to the law to make "preventative" stop and search operations possible started with a police action in the Millinxbuurt in Rotterdam in 2001 (and similar actions in Den Bosch and Eindhoven). There the police closed off a neighbourhood and conducted searches of people on the street. Although they found five weapons, the reaction from the public was furious. J Naeyé, a criminal law professor, said that they constituted a violation of human rights and the court also ruled that the police actions were unlawful. The Minister of Justice responded by amending the law.

In the first weeks after the legal changes, the police announced beforehand in which streets stop and search operations would take place. The police considered this to be inefficient and within a month the Rotterdam police force changed its strategy. While the new law has little to say on questions of operations, it does specify that the identification of a "security risk area" has to be approved by the council. The zones can be in place three months (in Rotterdam, for example) or for six months (Amsterdam), and during this period, the public prosecutor decides where the 12-hour stop and search operations can take place. This limited oversight at least prevents arbitrary operations everywhere.

Most cities, and even villages, have been implementing the new laws in their *Algemene Plaatselijke Politieverordeningen* (APV, general local police regulation). The "security risk areas" that have been identified so far are mainly in town centres where at the weekend people tend to go out partying. In Amsterdam and Rotterdam, areas with migrant communities have been assigned as security risk areas. The neighbourhood in Rotterdam is impoverished, with half of the houses empty and shuttered.

On 25 August 2002, Roermond decided to make preventative search operations legal, which meant its city council prefigured the national law passed by the Dutch Parliament on 15 September. The first city to introduce the new police powers was Den Helder, where search operations started on 20 September 2002. After three months the mayor announced that the stops and searches were unnecessary. The reasons for his decision are unclear.

Rotterdam was one of the first cities to change its *Algemene Plaatselijke Politieverordening* to make preventative stop and search operations possible. Here the Tarwewijk was pronounced a security risk area for three months, allowing the police to stop and search people for a twelve hour period every day over three months. Local police and judiciary now want to extend the area in which the operations take place. In an evaluation, the police claim that the operation has been, in general, positive. The chief of police claimed that the operations are successful and rejected claims that they were racist, as critics had argued. He claimed that police were stopping a wide range of people and if the majority of these were migrants, it was because the areas were inhabited mainly by migrants, and not because of police racism.

In November 2002, the council of Haarlemmermeer gave the military police at Schiphol airport powers for preventative search operations at the airport. The military police welcomed the extra powers, whereby they can search football supporters who arrive at the airport and cab drivers.

In Zwolle, the Christian Democrats announced they are planning to give the police powers to search particular areas mainly in the centre of town. They claim the move is aimed at preventing the possession of weapons and gun crime in the bars in the suburbs, despite the fact that the weapons detection systems at the entrances to bars and discotheques reportedly work very well. Heerlen has also introduced powers for preventative search operations. Since 3 December 2002, the police can search people

in the suburbs. On the night of 19 December 2002, Heerlen police stopped and searched 350 people and 57 cars, finding 18 knives, four weapons (a hammer, for example), three screwdrivers and five cans of pepper spray. The military police participated in the operation.

Eindhoven's city council discussed preventative search operations on 15 January 2003. A majority of the city council are in favour in the areas around the city. On 21 January, Leiden also agreed on possible preventive stop and search operations. According to a police spokesperson, one third of the criminal offences in Leiden take place in the Nieuwe Beestenmarkt and its surrounding area (the types of criminal offence were not specified). This is the area the city council targeted for arbitrary police stop and search operations. The liberals and the more conservative parties want to go much further and are urging the extension of the security zones.

A spokesman said that the police in Zeeland (south-west Holland) did not support the preventative search operations in their region. On 29 January, the Chief of Police gave a speech to this effect on his retirement. However, his analysis is premised on racism as he argued that this was because Zeeland does not have the same crime problems as other areas in Holland as there are less Moroccan youths residing there.

Zaanstad changed its general local police regulation on 1 February. Its city council gave the mayor powers to order the stopping and searching of people in specific areas at specific times. The pretext was a single incident in which the police searched some cars and found weapons. Even the commissioner of police said that the *Algemene Plaatselijke Politieverordening* did not need to be changed, because there were no neighbourhoods in Zaanstad where stop and search operations were required.

In Amsterdam, the city council decided last November that in the centre and south east of the city, neighbourhoods with largely immigrant communities, people will be subjected to arbitrary search operations. So far, the Amsterdam police force has carried out two operations, one involving 50 people (which found nine knives), the other 1,600 people (finding 44 knives, seven screwdrivers, a knuckle-duster, a fake gun and some drugs).

The security psychosis has gone very deep and is reflected in the fact that many small villages have also changed their APVs. The smallest village is Hummelo en Keppel, with 4,500 inhabitants. It changed its APV in February 2003. The mayor S Haasjes-van den Berg (Liberal) explained the change by claiming that it was necessary because "you never know what will happen in Holland!". Uitgeest, a small town in the neighbourhood of The Hague wants to have the new powers too so that police can stop and search in the suburbs. Some café and bar owners believe that the measures are unnecessary, saying that in recent years there has been no violence or weapons in the area.

Even some rural areas, such as the villages of Haaksbergen, Haelen, Heythuysen, Hunsel Heel and Thorn en Roggel en Neer have changed their local legislation to facilitate preventative search operations, leaving their councils open to ridicule by commentators who wonder if there really is a threat to security in these regions. The councils seem to think that there is, although this view is supported neither by statistics nor research.

These cases clearly indicate problems with the new measures. They give the police excessive powers that infringe on basic civil rights. While there are some critical voices, they tend to be a small minority. In Hummelo en Keppel two members of the council voted against the measures because they said they intruded on the private life of its citizens. Increasingly, local people are becoming irritated by the inconvenience caused by the measures. When Rotterdam declared the area around the city's central train station, which has 24 CCTV cameras and a high police presence, a security risk area, cab drivers complained

about the situation.

In the political arena some people doubt that this is the way forward. The former leader of the Democratic Party (D-66) said in an interview that Holland is witnessing an anti-liberal revolution that is attacking civil liberties. Although Dutch intellectuals are often silent when social and political issues are debated in public, a commission on norms and values (organised by ex-cabinet members from the Liberals, Christian Democrats and Conservatives) has argued that the government is losing touch with the population.

The Christian Democrats now want to extend the new powers to stop and search people on the public transport system. With the Social Democrats, they want cars to be stopped and searched on the ring-road around Amsterdam. Mr Donner, the Minister of Justice (Christian Democrats), has also raised the possibility of the police carrying out stop and searches around schools.

UK

£250,000 damages for victim of racist police beating

A middle-aged black delivery driver, who was violently assaulted, racially abused and falsely arrested by the Metropolitan police was awarded nearly £250,000 damages at Central London county court at the beginning of February. Sylbert Farquharson, who was described by Judge Michael Dean as "a respectable middle-aged family man of good character", brought a civil case against the force following his arrest in 1995 while making a delivery to a south London company that was in the process of being searched by police officers when he arrived. The award includes exemplary damages, which are awarded against defendants who have acted "in an oppressive, arbitrary or unconstitutional manner as agents of the state".

Sylbert Farquharson was delivering bread to a business that was being searched by police officers. Cafe owner Clinton Washington was arrested, after policemen observed him waving to a man in a car, on suspicion of drug dealing. Sylbert's cousin, Stephen Smith, intervened and he too was arrested, for obstructing a police officer in the course of his duty. When Sylbert tried to discover what was taking place he was, in the words of Judge Michael Dean, "assaulted by three police officers and thrown face down in the gutter in the presence of members of the public who were rightly appalled."

Sylbert was then handcuffed so tightly that he suffered paralysis to his right arm and is no longer able to work as a driver, suffering from chronic pain syndrome. He was "subjected to explicit racist abuse in the street and a particularly cowardly form of racist abuse at the police station." Both Mr Farquharson and his cousin were prosecuted in a case Judge Dean said was brought to disguise the officers unlawful actions: "Unhappily, the officers felt obliged to invent an account of events which they knew to be untrue in order to justify their actions".

After the police case was thrown out of court Sylbert proceeded with his civil case at the conclusion to which Judge Dean ruled that he had been assaulted, falsely imprisoned and maliciously prosecuted. The judge awarded him £243,488 exemplary damages saying that he was satisfied that Sylbert would never work again due to the injuries he sustained in the assault. It is reported that the police will also have to pay legal costs for Sylbert's claim that are estimated at £750,000. The Metropolitan police have already settled claims of £80,000 for Stephen Smith and Clinton Washington in out of court settlements.

In its initial response to the court's findings the Metropolitan police removed two of the police officers from frontline duty, but

refused to suspend them. The following day PC Trevor Brown and Brixton community relations officer Kevin Bridgemen were suspended and three other officers were removed from frontline duty. In "a message to the black community" Lambeth's acting commander, Brian Moore, said "I fully accept the damage this judgement has done to your confidence in us...". As a final part of their damage-limitation exercise Scotland Yard announced that the two officers at the centre of the attack would be investigated by the Professional Standards Directorate and could face prosecution for assault and racist abuse.

A separate "vicious attack", involving another police officer in south London, saw the perpetrator jailed for battery at Southwark crown court in February. PC Matthew Dunn, who was caught on CCTV taking a running "penalty kick" at his prostrate victim, Jason Hughes, was jailed for three months. Judge Christopher Elwen says that "The evidence plainly shows that when Hughes was brought to the ground you got out of your car, ran up past the car in front and without pausing kicked him twice." Dunn had argued that he had used "reasonable force" and that he had merely crossed a narrow dividing line between what is lawful and what is not. He will appeal against the conviction. The other officers, who did not intervene or prevent the assault, were cleared of any wrongdoing by the judge.

Guardian 1.2.03; Times 15.2.03.

UK

Alder police "walk" before inquiry begins

Five police officers who were present when Christopher Alder died face downwards, with his hands handcuffed behind his back, at Queen's Gardens police station in Hull in April 1998, will not lose their jobs, Humberside police have ruled. Humberside was instructed by the Police Complaints Authority (PCA) in February to put the five officers through an internal disciplinary hearing for neglect of duty over the death of the black ex-paratrooper, who was found to have been unlawfully killed at an inquest in August 2000. The policemen were cleared of manslaughter at a "bungled" trial at Teeside crown court last year. Humberside constabulary had argued that the internal hearing was unnecessary, and limited its outcome by ruling that the officers will not require legal representation. This rules out their dismissal if they are found guilty, and means that can only receive a caution, a reprimand or loss of pay. The force has rubbed salt into the families' wounds by excluding them from attending the hearing.

The Justice for Christopher Alder Campaign, has expressed its "fury" at the Crown Prosecution Service for its "handling of the bungled prosecution of the five police officers" last year. It has also made clear that it rejects the "holding of a private internal inquiry", particularly in light of new evidence supporting allegations of police racism. The CPS has uncovered police video tape that captures the sound of one of the policemen allegedly making monkey noises as Christopher lay dying, but can not establish which one was responsible and "cannot argue that monkey sounds are admissible [in court]". Janet Alder, Christopher's sister, described the Humberside inquiry as "a farce". She said:

I have seen these five officers walk away from an inquest, walk away from a trial and now they are going to walk away, careers intact from the internal inquiry...Before they even gave their accounts to senior officers, before the force holds its hearing, they know their jobs and pensions are safe and that disgusts me.

The Justice for Christopher Alder Campaign can be contacted c/o Red Triangle Cafe, 160 St James Street, Burnley BB11 1NR, Tel. 07831 39689. Justice for Christopher Alder Campaign, press release December 2002; Independent 21.2.03; Daily Mirror 24.2.03.

ITALY

Twenty-three activists arrested for G8 disturbances

On 4 December 2002, 23 activists were arrested in several Italian cities on orders from an investigating judge in Genoa for preliminary investigations in an operation, code-named "Delta", conducted by the national police force. The charges against the activists include violence against property (including an attack against *Marassi* prison, the overturning of rubbish containers to make barricades and breaking some shop shutters, and setting fire to cars and a police van), looting (of two supermarkets), possession of explosive and weapons (sticks and some molotov cocktails), violence against public officers, as well as "psychological participation", in connection with disturbances during the G8 summit in July 2001 in Genoa.

"Psychological participation" allows people who are present at the scene of violent incidents without participating to be charged for encouraging others. Participation in criminal acts may result from "making a criminal intent arise in others that did not previously exist", or from "strengthening another person's criminal intent that was already present". Thus:

their mere presence on the scene of the clashes, as part of a group with the more violent elements, strengthened their intentions through encouragement which does not in itself constitute criminal activity, but nonetheless concurring in the intent of others.

The charges of destruction and looting carry eight to 15-year prison sentences, whereas criminal damage carries a one-year prison sentence, or three if there are aggravating circumstances.

The charges are based on extensive video footage and photographic material available to investigating magistrates and police forces, which has been worked on by a specially constituted 12-man team. Aggressive actions, such as raids on Indymedia and Cobas (*Comitati di Base*) trade union offices in Bologna, Florence and Taranto were carried out in November 2002 to confiscate computers holding information, photographs and images that were considered to be of interest. Police sources reportedly claim that hundreds of activists were identified on the basis of this evidence, so further arrests or charges against individuals are expected. Activists claim that the decontextualisation of the images hides the fact that in numerous instances violence by demonstrators was a response to attacks carried out on them by the police or *carabinieri*.

A police charge against a legal march by the *Disobbedienti* (a protest group supporting civil disobedience and occupations) in *via Tolomaide* led to widespread clashes. Luca Casarini, spokesperson for the *Disobbedienti*, said the group was responsible for distributing gas masks, shields and padding, of making barricades to stop a police van driving into a crowd, and of violent acts in self-defence from an attack. He also argued that the gas masks were necessary, considering the vast amount of gases (which included canisters of CS gas) that was released on helpless persons.

The 23 arrests led to nine people being held in preventative custody, nine more placed under house arrest, and five being forbidden from leaving their home province. The justification for custody involved the danger that the activists may repeat their criminal acts. Eventually, preventative custody was confirmed for five individuals. On 11 February, after spending two months in Genoa's Pontedecimo prison, M. C. was placed under house arrest.

Investigations into the killing of Carlo Giuliani appear to be heading for an early shelving by judge Silvio Franz, with *carabiniere* Mario Placanica deemed to have acted in self-defence, although video footage shows him aiming with a straight

arm for several seconds before shooting Giuliani in the head, and failing to fire warning shots.

Four journalists, from *Il manifesto*, *Il Secolo XIX*, and *Repubblica* newspapers, were charged by the Genoa prosecutors office for including extracts from the questioning of several police officers and high-ranking officers relating to a violent raid in the *Sandro Pertini* school on 21 July 2001, in their articles (see *Statewatch* vol 12 no 5). The extracts included the admission that molotov cocktails were placed in the school by a police officer, that senior officers knew about this and had planned the set-up, that a policeman feigned being the victim of a knife attack to justify the violence with which the raid was carried out, and that the 93 arrests which followed the raid probably "stretched judicial rules". The head of the *Federazione Nazionale della Stampa* (Italian journalists union) Paolo Serventi Longhi claimed that "the journalists fulfilled their duty", at a time when "the climate surrounding the proceedings concerning the G8" is becoming "heavier", and certain prosecutors' offices are "taking initiatives that are surprising to put pressure on the free press".

Il manifesto 5.12.02, 6.12.02, 7.12.02, 12.12.02, 29.12.02, 5.1.03, 7.1.03, 8.1.03, 9.1.03, 12.2.03; *Repubblica* 4.12.02, 6.12.02, 7.1.03

UK

Metropolitan police deny they are "trigger-happy"

A Police Complaints Authority *Review of shootings by police in England and Wales from 1998 to 2001*, that was commissioned by the Home Office, has found that London's Metropolitan police force opens fire too quickly, uses "proactive tactics" and was too aggressive. The study was released at the end of January and focuses on 24 police shootings, and 11 deaths that occurred between 1998 and 2001, concluding that many of those shot were mentally ill or under the influence of alcohol or drugs. The report found that police in England and Wales opened fire in one in every 1,870 firearms incidents, whereas the rate for the Met was one in 913. The Metropolitan police's deputy commissioner, Ian Blair, dismissed the criticisms as "inappropriate" and "ill-advised".

Among the 24 case studies in the report are the Metropolitan police killing of Harry Stanley (Case L). Harry Stanley was shot dead by police officers as he made his way home from his local pub in September 1999, after they received information that he was a terrorist armed with a gun. The gun turned out to be a table leg wrapped in a plastic bag, which Harry had collected after it was repaired. The police officers account of events, that they challenged Harry and that he responded by pointing the plastic bag at them, forcing them to open fire in self-defence, was thrown into doubt by forensic evidence. An inquest, which was preceded by the leaking of a long-spent criminal conviction in an attempt to smear Harry's name, returned an open verdict. This was questioned by the family who argued that the coroner did not allow the jury to consider a verdict of unlawful killing. In February the family won permission at the High Court to apply for a fresh inquest.

Another case study is that of the death of James Ashley (Case A), who was shot dead by the Sussex police force as he lay naked and unarmed in bed five years ago. PC Chris Sherwood was later cleared of unlawful killing at the Old Bailey and three senior officers were cleared of misconduct. A senior officer, Mark Jordan, who faced disciplinary charges, retired on medical grounds and former chief constable Paul Whitehouse resigned on a full pension after the Home Secretary wrote to the Sussex Police Authority demanding action to restore public confidence. James' sister, Pauline Ashley said that:

No one had been punished for the death of my brother and we won't

go away until someone is. We want a full and open public inquiry

In its conclusion the report notes that there "are a number of cases that reveal significant problems with the management and administration of firearms incidents, with the culture of firearms units and with the methods of resolution used in a number of incidents" (p. 114). Given the problems in all of these fundamental areas it is surprising to find that the government plans to deal with the official increase in gun crime by increasing armed police patrols. In February it was announced that the Met's SO19 firearms unit would increase in size by a third next April to deal with "terrorism and gun crime."

UK

Open verdict on Jason McGowan vindicates family

The family and friends of Jason McGowan, the second black man from the same family to be found hanged within the space of six months, claimed that they had been vindicated after a jury returned an open verdict at an inquest in February. In 2001 a jury concluded that Jason's uncle, Errol McGowan, who was the victim of an intense campaign of racist intimidation before his death, had killed himself. The first inquest into Jason's death collapsed after the jurors were dismissed when they failed to reach a verdict last May. The family walked out of the opening day of the new inquest into Jason's death when it started, believing that they would not get a fair trial following a campaign by a local newspaper.

The collapse of the first inquest was followed by a series of prejudicial articles in a local newspaper, the *Shropshire Star*, that said that taxpayers would have to foot the £1 million bill for the investigation. The paper added that the new inquest would cost a further £250,000. The McGowan family wanted the new inquest to be held outside of the Telford area fearing that the paper's inflammatory remarks would prevent them from getting a fair hearing. Barrister Emily Thornberry explained that the family meant no disrespect to the jury "but for reasons of unfairness...[they] will take no further part in the proceedings unless forced to do so". The family returned the next day at the jury's request.

Shropshire police had taken only twenty minutes to conclude that Jason, who had been investigating his cousin's death by hanging six month earlier, had killed himself in a fit of depression. The open verdict, said Jason's grandmother Icyline McGowan, "proves to me and everyone else that Jason did not kill himself." The family also pointed out that the jury's conclusion leaves many questions concerning the deaths, the racially motivated campaign that preceded them, and the police investigation of the events, unanswered. They will continue to pursue answers through the Police Complaints Authority and are considering a civil action against the Shropshire police force.

Shropshire Star 28.5.02; *Voice* 3.6.02; *Independent* 4, 28.2.03

Policing - in brief

■ **UK: Home Office considering use of "Chechen siege" gas:** E-mails sent in error by the Home Office to the US-based Sunshine Group, which campaigns against the military use of biotechnology, show that it has enquired after the poison gas used by Russian security forces to end the Moscow theatre siege. A spokesman admitted the possibility is still under consideration as part of the so-called "less lethal technologies" programme. All but a handful of the 119 hostages who died in Moscow are believed to have been killed by the gas which is based on "fentanyl", an opiate close in effect to heroin. *Times* 31.10.02.

■ **UK: Injustice out on video:** *Injustice*, the film that highlights the struggles for justice by families' of people who have been killed in police custody, has been released on video. The film was launched in 2001, but cinemas were pressured by the police not to show it. It was shown at "private" viewings, but even these were subject to harassment. Despite impressive reviews television companies in the UK have yet to show it. Last September the film won the important BFM (*Black Filmmaker Magazine*) best documentary award. For more information see www.injustice.co.uk or contact Migrant Media on 0207 729 9109.

■ **Italy: First guilty verdict for Genoa clashes:** A 25-year-old demonstrator from Foggia (Apulia), is the first person to be sentenced in connection with events at the G8 summit in Genoa in July 2001. He was sentenced to nine months' detention under the *rito abbreviato* (shortened procedure involving hearings in front of a single judge introduced to speed up court cases, which may be chosen by the accused in exchange for discounted sentencing) for resisting and injuring a *carabiniere* with a metal bar during clashes on 20 July 2001, when *carabinieri* from the *battaglione Toscana* charged demonstrators who had erected barricades in piazzale Kennedy. *Il manifesto* 11.2.03.

Policing - new material

Under surveillance, Kim Hunter. *Police Review* 12.1.03, pp. 30-31. Article on how the "threat to national security" has led to a re-evaluation in the role of the Special Branch.

Crooked cops, Graeme McLagan. *Police Review* 21.2.03, pp26-27. This piece examines "bent coppers" and the most common crime among them, which is drug dealing. It looks at the Anti-Corruption Group (CIB, formerly the Complaints Investigation Branch) and its new branch CIB 3 whose "detectives were proactive, adopting the same methods as those against organised criminals." The CIB believes that claims of widespread police corruption are exaggerated and questions John Stevens, Commissioner of the Metropolitan Police, who estimates that there are between 125 and 250 corrupt Metropolitan police officers; they estimate that the real figure is "short of the 50 mark." Last October, Stevens lauded the fall in the number of complaints against the police, attributing it to "a change in attitudes" - though this may equally be due to peoples' lack of faith in the complaints system.

PRISONS

UK

Premier Services and "the worst prison" in England and Wales

Martin Narey, Director General of Prison Services, has described Ashfield jail, run by Premier Prison Services, as "the worst prison in England and Wales." A recent report by Anne Owers, Chief Inspector of Prisons, noted that escort van drivers and orderlies were being used as officers on some wings. Narey's condemnation came as the government's Youth Justice Board said conditions were so bad it was pulling out of the jail.

In her inspection report, Ms Owers points out that conditions at the jail are so bad that half the jail's 261 staff have left in the last year. She criticises Premier Services for not providing a safe environment for inmates. In one week, 168 bullying incidents were reported at the jail, and staff admitted that the prison has no anti-bullying strategy in place. The only inmates not locked in their cells were full time cleaners and orderlies. Ms Owers made clear that "purposeful activity" at Ashfield fell far short of the

standard required.

Disturbingly, officers were found to be carrying out strip searches of young offenders without a chaperone present. Juliet Lyons, for the Prison Reform Trust, questioned why "it was ever considered acceptable to place our most vulnerable and challenging children in the care of a company (Premier) with such a dismal international track record of work with young offenders."

Prison Reform Trust 5.2.03; *Times* 5.2.03; *Miscarriages of Justice UK* 5.2.03

ITALY

"Mini-pardon" approved by parliament

A decree introducing a three-year prison sentence discount for prisoners who have served over a quarter of their sentence and have three years or less left to serve, was approved by the Italian parliament on 4 February 2003. The measure is a response to protests that have been mounting in Italian prisons since the summer (see *Statewatch* vol 11 nos 3 & 5), and the ongoing problem of overcrowding (57,000 prisoners in a prison system with a capacity of 41,000). The so-called "mini-pardon" will now be subject to scrutiny by the Italian senate, where it faces a rocky ride as it only enjoys divided support in both the government and opposition coalitions.

The effects of the decree "for the suspension of the execution of detention sentences for a maximum of three years" will apply to crimes considered "minor", and includes the expulsion of foreigners who fulfil the criteria for inclusion in the pardon. Released prisoners will be required to regularly visit a parole officer in a police station, not to leave their town of residence, not to leave their house between 9 pm and 7 am, and not to travel abroad without special authorisation from a parole officer. If a pardoned prisoner does not comply with the conditions, or commits a new criminal offence carrying a sentence of over six months during the next five years, the suspension will be revoked. The categories of prisoners who are ineligible for the pardon include those who are under special surveillance (art. 14-bis), those sentenced under the special regime imposed by article 4-bis which covers organised crime, people trafficking and subversive association and related destruction, looting, kidnapping, or forcing people into slavery or paedophilia. Persons who have committed crimes of theft or extortion with aggravating circumstances, as well as criminals described as "habitual", "professional" or "by nature" are also excluded.

The measure represents a watered-down version of the "generalised pardon" demanded by prisoners. This was one of several demands including improved prison healthcare, the repealing of the "hard prison" regime introduced under article 41-bis in relation to crimes envisaged by article 4-bis (see above, *Statewatch* vol 11 no 5), the decriminalisation of lesser crimes, an end to life sentencing, an increase in early release and alternative sentencing schemes, and expulsion for foreigners who request it. The prisoners cultural association Papillon, run from Rebibbia prison in Rome, expresses delight for the prisoners who will benefit from the measure, but called for a more widespread pardon that could have a significant effect on problems in the Italian prison system. The association says that according to Dap (*Dipartimento di amministrazione penitenziaria*, the prison management body) estimates, only between 3,000 and 4,000 prisoners would be affected.

Ddl Camera 3323 - Sospensione dell'esecuzione della pena detentiva nel limite massimo di tre anni. Camera 4.2.03, "Parliamentary law decree 3323 - Suspension of the execution of custody sentences up to a maximum

DENMARK

Solitary confinement on remand continues

The extensive use of solitary confinement during pre-trial detention in Denmark has over the last 20 years been criticised from many perspectives, national and international. The practice has been described as cruel and inhuman and even as torture, as well as a infringement of civil liberties and human rights. Amnesty International (in 1983), the Committee for the Prevention of Torture (CPT) in 1990, 1996 and 2002 and the CAT (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) in 1997 and 2002 have in their reports recommended the improvement of conditions for remand prisoners, either by restricting or stopping the use of solitary confinement. The most recent CPT report (2002) says that: "it would be desirable for the Administration of Justice Act to include a maximum limit for the duration of solitary confinement of remand prisoners by court order."

The criticisms led to changes in the Administration of Justice Act in 1978, 1984 and most recently in June 2000. Each of these amendments has seen a move towards the more restrictive use of solitary confinement, while the total number of prisoners held in isolation has decreased. In July 2002 4.9% of pre-trial detainees were held in solitary confinement, but at the biggest Danish remand centre in Copenhagen it was closer to 9% (down from 20% in 2001). The most recent amendment (2000) does reflect an understanding of the well documented damaging consequences of solitary confinement, particularly long-term confinement. The law sets a maximum term of confinement of three months "in principle". However, the same law allows the possibility of dispensating a maximum with no upper limit. It is still possible - despite the criticisms - to place minors (under 18 years of age) in solitary confinement for up to eight weeks.

In 2001, after the amendment of 2000, 375 out of 553 "finished isolations" had been held in solitary confinement for less than 28 days, 57 between 29 and 42 days, 42 between 43 and 56 days, 71 between 57 days and three months. Eight prisoners were held in isolation more than three months. These numbers need to be related to the findings in a large-scale research programme initiated by the government and published in 1994 and 1997. The researchers concluded that 28% of the isolated had psycho-pathological symptoms, compared with 15% in the non-isolated group. Of those isolated for longer than two months, 43% received a psychiatric diagnosis. The risk of being transferred to a psychiatric hospital after two weeks in isolation was five times greater for the isolated compared to the non-isolated. By the fortieth day this risk was 50 times higher for the isolated.

This "dark underbelly" of the Danish justice system will be continuously monitored and critically followed by national and international organisations and groups.

Prisons - in brief

■ **UK: Overcrowding leads to increase in prison suicides:** The Howard League for Penal Reform has claimed that the record rise in the size of the prison population has contributed to the 28% increase in prison suicides recorded in 2002. A total of 94 inmates took their lives in 2002, compared with 73 in the previous year. A further 141 inmates were resuscitated by prison staff. The Howard League noted a large rise in inmate numbers, which had overburdened the system, an increase "which people have paid for with their lives." The prison population rose by

6,840 in 2002, to a record 72,500. In her 2002 Annual Report, the Chief Inspector of Prisons, Anne Owers, condemns the "debilitating and chilling effect" of prison overcrowding and notes that: "There can be no doubt that prisons are less safe than they were a year ago, and many are also less decent places." Suicide rates are rising faster than the prison population - 133 for every 100,000 in 2002, compared with 110 for every 100,000 in 2001. *Annual Report of the Chief Inspector of Prisons; Howard League for Penal Reform, Guardian 31.12.02*

■ **UK: Inmate Protests at HMP Shotts:** HMP Shotts, in Lanarkshire, has been hit by a wave of inmate protests over conditions at the maximum security jail. Three prison officers were injured in an incident on 8 January at the jail's secure unit. Earlier in the week, over 80 inmates had taken part in a 19 hour protest at the jail, which has a history of protest over deteriorating conditions and alleged brutality by prison staff. *BBC News 8.1.03; Guardian 8.1.03.*

■ **UK: Prison doesn't work:** New Home Office research, which flies in the face of the government's "prison works" strategy, shows that community based sentences cut re-offending rates more effectively. The research, Home Office Ministers admit, shows that 44% of offenders given community-based sentences are re-convicted within two years, compared with 56% of those sent to jail. The Home Office further concedes that, if the prison population continues to increase at its current rate, it will have risen from 72,000 to 110,000 by 2009. *Independent 4.2.03; Miscarriages of Justice UK 4.2.03.*

RACISM & FASCISM

UK

Fifth council seat for BNP

The British National Party (BNP) picked up its fifth council seat in the Yorkshire ward of Mixenden, Calderdale, in January. Adrian Marsden's victory increases the BNP's representation in the north-east from the four seats they already hold across the Pennines in Lancashire; three BNP candidates were elected to Burnley council in May last year and a fourth was elected in Blackburn six months later. Marsden won with 679 votes on a 37% turnout. Within days of his victory the Labour Party's national executive committee held a formal investigation into the BNP's victory, but their primary concern was that a weakened Conservative Party would allow opportunities for the far-right to make headway in May's council elections. The BNP have also announced that they will target Foreign Secretary Jack Straw's constituency in Blackburn at the next general election.

Andrew Marsden is a known fascist who was once involved with the International Third Position as well as the nazi Combat 18 (C18). He was C18's regional organiser for the Halifax region, until 1999 when his house was raided by the Special Branch as part of a nationwide clampdown on right wing violence. He then joined the BNP which, at least superficially, has distanced itself from C18 by instructing party members not to associate with the organisation.

The BNP's vitriolic campaign against asylum seekers has been taken up by much of the UK's tabloid media, local radio and some national television programmes. The Labour government has not only taken on their rhetoric, but argues that it is essential that they put anti-refugee policies into practice in order to counter the rise of the far-right. Labour MP Jon Owen Jones, for instance, has argued that the Labour Party needs to find a "middle way" between "the rabid right wing press sensationalising it or the

liberal press ignoring it." This "middle way" has been mooted by Tony Blair who envisages the prospect of ending the UK's asylum commitments under the European Convention of Human Rights while introducing temporary migration, with few or no rights, for skilled immigrant labour, based on the German "guestworker" model.

In Calderdale, of the nearly 300,000 residents in the borough there are about 130 asylum seekers. The BNP's racism was condemned by the Labour MP Alice Mahon who criticised the "false perception that asylum seekers are to blame for everything". Anti-racist campaigners from the Coalition Against Racism have launched a campaign, "Unite to Stop the BNP", which will co-ordinate actions across the UK to prevent the fascists from being elected and to counter them when they have gained office.

The Coalition Against Racism can be contacted at PO Box 263, Oldham OLE 1PZ. Halifax Today 31.1.03.

ITALY

Fascists attack Muslim on live television

Adel Smith, head of the *Unione musulmani d'Italia* (the Italian Muslim Union), and his secretary Massimo Zucchi, were attacked by a gang on 11 January 2003 in Verona during a debate on local television station *Telenuovo*. The programme's host Mario Zwiner has also come under scrutiny for telling the attackers to leave "before the police arrives". Six militants from *Forza Nuova* were arrested at the time of the raid, and were later placed under house arrest on 14 January for violence against individuals with the aggravating circumstance of instigating racial hatred. Three days later, after a number of FN offices were raided, a further 15 were also placed under house arrest, including the organisation's regional secretary in Veneto, Paolo Caratossidis. The charges they are facing include causing bodily harm, insults, violence against individuals and participation in the crime, with a further aggravating circumstance (apart from inciting racial hatred) resulting from the large number of attackers.

In a hearing in the Italian parliament, (see *Statewatch News online* January 2003) Interior Minister, Giuseppe Pisanu, referred to FN and the attack on Adel Smith when he spoke of a "widespread political illegality that can no longer be tolerated". He then gave examples covering a wide range of political activities, including picketing and entry into a detention centre that was under construction in Bologna suggesting they were associated with terrorism. The opportunistic use of the attack was further compounded by the wording used by Pisanu, who spoke of an "attack on the provocateur Adel Smith" to imply that Smith was responsible for the attack because of the views he expressed.

FN is a neo-fascist organisation set up by Roberto Fiore, and now-deceased Massimo Morsello, on their return from London - where they were on the run from Italian justice that sought them for involvement in right-wing terrorist attacks. It ran as a political party in the last Italian national elections on an anti-immigration and anti-abortion ticket.

Links between FN and two parties (the *Lega Nord* and *Alleanza Nazionale*) that are part of the Berlusconi government are apparent. On 15 January, under a week after the attack, FN held a press conference in Verona town council, with backing from LN councillor Flavio Tosi, who recently spoke in favour of segregated buses, and is under investigation by the Verona prosecutors office for collecting signatures to rid "the city of gypsies". LN MEP Mario Borghezio has spoken at FN rallies, notably in December 2002 in Rome, where he attacked "the global attempt to corrupt and bastardise our blood". Borghezio is well-known for racist initiatives such as disinfecting trains used

by immigrants, calling for the establishment of a database of Muslims in Italy and for a boycott of Benetton after the clothes manufacturer allowed Muslims to use the sports hall in Treviso, which it owns, to be used for Ramadan celebrations.

Il manifesto 14.1.03, 15.1.03, 16.1.03, 18.1.03.

NORTHERN IRELAND

Unionists halt Portadown mosque

Portadown's unionist have blocked the building of Northern Ireland's first purpose-built mosque, claiming that Muslims are plotting to destroy Christianity. The 200-strong Muslim community in Portadown, Co Armagh has been using a small community centre for their Friday prayer meetings, since their temporary mosque was burnt down five years ago. Planning permission has been granted for the new £200,000 mosque, which is funded by the Muslim community and will be located three miles outside Portadown, but final approval was delayed when Unionist councillors voted for it to be reconsidered. They raised objections on the grounds of "sewerage problems" and traffic congestion, with one councillor claiming that the development would pave the way for an *al-Qaeda* terrorist cell.

Portadown is a major centre for the Orange Order, which counts unionist politicians and loyalist paramilitaries among its numbers. An indicator of their religious "tolerance" is the violent, long-term campaign against the nationalist community on Portadown's Garvaghy Road, where the Order insists on its "god-given" right to march through the Nationalist community's streets while refusing to negotiate with their representatives over arrangements. When members of the Portadown lodge marched in London a few years ago they were stewarded by Combat 18. Portadown's small Muslim community has become another victim of Orange bigotry.

Racism & fascism - in brief

■ **Austria: FPO, Schussel's party of choice.** The Austrian chancellor, Wolfgang Schüssel, announced that his party would allow the far-right *Freiheitliche Partei Österreichs* (FPÖ) to rejoin his government as the junior partner at the beginning of March. Although he will not be in the new cabinet the FPÖ's Hitler-admiring leader, Jörg Haider, will once again assert a strong influence on Austrian government policy. The previous coalition collapsed last September when, at Haider's command, FPÖ ministers resigned their positions. In the ensuing elections the far-right party saw its vote collapse and acrimonious arguments broke out within its ranks, leading to the election of three leaders in a two month period. In November the latest of these, Herbert Haupt, a slaughterhouse vet and Haider supporter, took control of the party. Now Schüssel, who once pledged that he would rather go into opposition than share office with Haider, has thrown the FPÖ a lifeline once again. The new cabinet will include three FPÖ ministers.

SECURITY & INTELLIGENCE

Security & intelligence - in brief

■ **UK: New head for GCHQ:** David Pepper has been named as the new director of GCHQ, the government electronic surveillance centre based in Cheltenham. Pepper will take up his position in April after the current director, sir Francis Richards, takes up the post of Governor of Gibraltar in the Spring. Pepper,

an Oxford graduate, joined GCHQ in 1972 and "spent most of his career in intelligence operations". He became director of personnel in 1995 and transferred to the Home Office three years later as director of corporate development. He rejoined GCHQ during 2000 and rejoined their board as director of finance, and will oversee the building of a new headquarters for the agency, (a project that has run into difficulties after parliamentary concerns over delays and costs). According to Richard Norton-Taylor in the *Guardian* newspaper GCHQ has an annual budget of £700 m., the bulk of the £1 billion spent every year by Britain's three security and intelligence agencies. *GCHQ press releases*

18.12.02, 31.1.03; *Guardian* 1.2.03.

Security - new material

High-tech spy centre circles London at 44,000 ft, Michael Evans & Stewart Tendler. *Times* 14.2.03, p 15. Looks at the RAF's airborne "high-tech spy centre" or "communications platform", the Nimrod MRA2. The deployment of the Nimrod, which circles London at 44,000 feet, and provides secure communications for MI5 officers, the SAS and police officers, "brings together every aspect of government surveillance machinery and counter-terrorist expertise"

The new border regime at Bug River

Under the PHARE project the EU finances control towers and helicopters, optical and electronic hi-tec surveillance of Poland's eastern borders. The future border regime is a social and technological attack on the

Until 1997, research into Polish refugee and migrant politics was relatively easy: you only had to look at the allocation of finances and regulations laid down by the German government, which primarily invested in the infrastructure of the *western* Polish border police in the form of sturdy police equipment and deportation prisons.

In July 1997, Poland started implementing the EU and the Schengen acquis and in July 2002 the accession negotiations on Justice and Home Affairs cooperation were completed. Under the enlargement procedure, the militarisation of borders shifted from west to east Poland. The future EU mainland external border will separate Poland from the Russian Federation (except Kaliningrad), from Belarus and from the Ukraine. Measuring 1,143 kilometres, the border will be more than twice as long as the German-Polish border.

During the same period, the financing of the border project under the EU framework has become more varied and a lot more substantial. The European Commission is responsible for the budgetary framework for the EU enlargement process while the financing of EU projects in Eastern Europe is laid down by the PHARE programmes.[1] Since November 1997 the Commission has invested significant finances into the militarisation of Poland's eastern borders. For these projects the general rule is that every euro that the Commission puts into accession countries via the PHARE programmes triggers the spending of four more euro by other countries or international institutions but creates costs of three euro in the accession country.

The PHARE plans for 2001 and 2002, only recently published on the internet, provide insight into the modernisation and extension of Poland's eastern borders. Section PL01.03 of the 2001 programme outlines 11 different projects implemented under the Polish National Programme for EU accession in the area of Justice and Home Affairs; the annual programme for 2002 (PL02.03) so far contains two different projects[2]. The projects specify a planning framework that will last until 2005/2006, in which the Polish government has outlined a "Strategy of integrated administration at borders" (2000) and a Schengen Action Plan (2001). Within that period, the militarisation of the EU's eastern borders is supposed to have been completed. Only then, at the earliest in 2006, at the latest in 2008, will controls at the Polish EU internal borders be abolished.[3]

To date, PHARE 2001 and 2002 (Part I) for Poland has cost 450 million euro. 77 million euros are allocated to Justice and Home affairs and customs. Border controls and, according to EU logic, the closely related fight against crime receives 31 million Euro, almost exclusively for equipment: sophisticated technology for border controls as well as computers, software and fibre optics for data transfer. These are the largest individual projects

in the history of the PHARE programme.

Europe's outskirts: war, oppression and poverty

Poland's borders with Belarus and the Ukraine serve as an example for the whole of Europe in that the local population, since the end of the Cold War, has played a role in defining borders. During the 18th and 19th century, the Polish-Belarus-Ukrainian border region was on the periphery of the Prussian agricultural state and Tsarist Russia. Its population has never accepted these borders but has utilised them within the framework of a west-east migration economy in particular through Kaliningrad. There is almost no other region that was devastated to such an extent in the 20th century: initially through the First World War and the anti-Bolshevik civil war, then through the Nazi occupation, which the Jewish population particularly fell victim to. Today, different nationalities overlap in the border regions, and Lithuanian, Roma, Muslim, Russian and other groups are settled there. During the politically ambivalent inter-war period, many were politically abused as national minorities or stigmatised as a fifth column. The immediate post-war period, with its mass migrations, the bloody Ukrainian national uprising and the forced resettlement of most east-Polish Ukrainians to west Poland, has left deep scars.

The poor farming population still constitutes more than half the population in these parts of Poland. The dying industries (textiles, refineries, coal power stations) were based on the suppressed wages of workers, who drew their living wage mainly from their own food production. The land reforms, which were aimed at triggering a large-scale selling of the small land holdings, have failed so far. There is currently another attempt at land reform through a merging of small land holdings with a view to the EU accession procedure.

After the opening of the Soviet borders in 1991, the currency rate between Poland and its eastern neighbours developed to 10:1. Bazaars run by tourist traders and other informal cross-border economies developed all over the country. Some regions experienced an enormous, albeit short-lived, economic upturn. In Poland, cross-border trade led to the development of new agricultural centres. Six of Poland's ten biggest dairies are located in Podlachien in the north-east of Poland. The Elizowka market, which is the most modern vegetable market in eastern Poland is located on the outskirts of Lublin. East Polish timber firms manufacture furniture from wood exported from Russia and export it back again. Various small goods are brought into Poland from the Ukraine, Belarus and the Russian Federation. Sometimes economic-political centres lie outside the borders, so that many more buses depart daily from the south-eastern Polish city of Przemysl to the west Ukrainian metropolis Lwiv (Lemberg) than to Warsaw. In short, the region survives on

agricultural self-sufficiency and on cross-border small scale trading.

The beginnings of the new border regime predate the Polish accession procedure. A readmission agreement with the Ukraine has been in force since 24 May 1993. Similar agreements followed, with the Russian Federation in May 1994 and with Belarus in August 1996. In 1997, Warsaw restricted immigration criteria for Ukrainians: although they do not need a visa, they have to provide enough cash and a reliably documented reason for travel. As Kiev introduced value added tax at the same time and Russia's financial crisis also gripped the Ukraine and Belarus, the statistically documented Polish east-export dropped by 75% in three years, and many newly established businesses declared bankruptcy.[4] Since 2000, Poland's employment offices, border guards and police have been hunting undocumented Ukrainian workers and staging spectacular deportation actions.[5] The Polish ministry for economic affairs is initiating direct attacks on the welfare social support structures of industrial society, which also have created niches for migrants and refugees: international second-hand car markets as well as milk bars (cheap subsidised restaurants that are present in every part of town) and second-hand textile shops, which live off the international trade. The latter comprises around 75,000 jobs in the sorting lines and retail sector, not to mention the importance second-hand businesses hold for low income households.[6]

The birth of a comprehensive foreigners police

The future border regime - as an overview of the eleven PHARE projects of 2001 exemplifies - represents a socio-technological attack on the informal cross-border economy and on transit migration. The first project concerns Polish asylum bureaucracy, which includes a central administration focusing on foreigners and which, via computerised software, will be linked to Poland's eastern border control units. At the beginning of the 1990s, under pressure from the German and Swedish governments, the Warsaw refugee and migration bureaux was formed. Since 1993, it has been responsible for nationwide decisions on asylum applications as well as running refugee camps.[7] During 2001/2002, the bureaux's tasks included the setting up of a comprehensive central register for foreigners, OBCY-POBYT ("Aliens-Residency"). It further took on the cases of Russian immigrants of Polish descent and on 1 July 2001 was renamed the "Office for Return and Aliens". The common theme in the Office's various tasks is the administration of the personal data of all non or newly arrived Polish people.

The call for tenders for the expansion of the register is run by the European Commission.[8] From mid-2003 onwards, the Office for Return and Aliens will be assisted by an EU "Pre-accession Adviser", who will supervise the development of the register in cooperation with the interior ministry, the border police and the ministry for employment and social affairs.[9] PHARE has already financed the computer installations and the first expansion phase, the German government took over the costs of the nationwide laying of fibre glass cables and implementation of safety measures for data transmission.[10]

The historical importance of the foreign central register is the computerised collection of positive and negative asylum decisions by the refugee and migrant bureaux since 1995. Little by little and with the help of the German government and the PHARE programme, this register became a data bank for various statuses of residency, orders to leave the country and notices to be rejected at the border. Since 1999/2000, it also contains details on visas and the relevant invitations, limited residency permits and entry refusals. The regional administrative districts and larger border guard offices have had online access to the register since 1998/99 and the decentralised terminals along the eastern border are currently being connected, in particular those of the border police. The reformed Aliens Act (1.7.01) allows other authorities

(justice, customs, various police offices, etc.) direct access to the data held in the register. Further, Poland introduced a new machine-readable passport in 2001.[11]

The automated fingerprinting identification system (AFIS) represents the Polish link to the EU-wide fingerprinting database Eurodac. From 2003 onwards, Poland is supposed to have at its disposal a national component for the Schengen Information System (SIS).

Visa politics and border surveillance

The second project deals with visa politics. On 27 July 1999, the Polish government declared that it would implement the harmonised EU visa policies before the accession date.[12] In 2000, Poland imposed visa requirements on Azerbaijan, Georgia, Kyrgyzstan, Tajikistan and Turkmenistan; in 2001-2002, Poland did not renew expiring agreements on visa-free entry with 54 more states. Citizens of the Russian Federation, Belarus and the Ukraine will require visas from 1 July 2003, but are supposed to be able to receive multiple and long-term visas in fast-track procedures after the negotiation of relevant agreements. The central visa register, which consular personnel abroad will have access to, is planned to be online by the end of 2004.[13] If a substantial number of the ten million CIS citizens who travel to Poland every year cease to come because of new visa restrictions, the bankruptcy of numerous businesses is foreseeable, and the subsistence economy on both sides of the border is threatened with collapse.

The third PHARE programme (2001), as well as that from 2002 are dedicated to the surveillance of borders. Alongside the regular border police are deployed police and customs units as well. The regular border police (border guards), which was once a military unit (border troops), had 17,210 staff in 1998, of which 3,700 were civil service workers and 3,050 conscripts who mostly worked along the eastern border.[14] From 2007 Poland plans to cease deploying military conscripts for border surveillance. The number of border guards deployed at the eastern border is planned to be more than doubled from its current 5,300 by new recruitment and the transfer of units currently serving at the western borders. Some technical equipment will also be transferred from the western to the eastern border and new acquisitions will be made.[15] The biggest areas of investment by the PHARE programme for the eastern border are communications technology (contract with Motorola) and optical technology (contract with Zeiss). Planned purchases include five military helicopters for "aerial reconnaissance" at more than half a million euro each, 60 mobile optical surveillance devices at a price of 413,000 euro per unit as well as 236 mobile hand held heat-sensitive cameras at 49,000 euro each.

Unlike the German-Czech border, the demarcating barbed wire which dates before the collapse of the Berlin wall will not be removed. The fortified border watchtower, invented by conquering and territorial states, celebrates its resurrection. It is intended to build such towers every 15 to 20 kilometres, each equipped with the most advanced and expensive electronic and optical paraphernalia. Spying from above and hunting with special units on the ground - with the surveillance of Poland's eastern border, military and police units will converge in new ways. However, the EU and the Polish government have exchanged the traditional military front-line position towards the neighbouring countries for one in search for cooperation.[16] In particular the German government is pushing for Poland to declare its eastern neighbours "safe third countries" and safe countries of origin, thereby enshrining in law the possibility of the immediate removal of migrants within 48 hours of their arrival.[17] In future, border police units from Poland and its eastern neighbours will cooperate more closely on the fight against refugees and migrants - including through bilateral contact centres. A relevant treaty with Lithuania has been in force

since 10.11.2001.[18]

The border police units will be highly mobile, networked through numerous authorities, electronically and optically equipped: but it is not only German, British and Dutch units that train the Polish border guards.[19] Within the framework of the PHARE Horizontal Programme (PHP) and through the EU-Odysseus programme, international organisations - in particular the International Centre for Migration Policy Development (ICMPD) and the International Organization for Migration (IOM) - have taken over a substantial part of border police training. Furthermore, their training concepts and international border police conferences are helping to root the border police firmly into the socio-political system. They advise the EU and its accession countries in police-political matters and on the new personal data collection projects.[20] Also the Warsaw Helsinki Foundation, which was funded on its refugee-political work by the UNHCR in the 1990's, became an advisory body for the EU Commission in questions of the east-Polish border militarisation.[21]

Projects four, five and six deal with the border management of all pan-European passageways, which are extended in particular to deal with traffic from the east to the west. At the main Polish-Belarus and Polish-Ukrainian check points, gigantic border crossing constructions are in the making, replacing smaller check-points. In these inflated structures, which house digitally recorded personal data and goods mobility, local border-crossers will be separated from international long-distance travellers. The architecture of these mammoth border crossings will make protest blockades substantially more difficult. Staged by the local population, especially in the Bialstoyl area since 1997, their actions have repeatedly paralysed the management of the borders.

Projects seven and eight deal with the "political" dimension: local NGO's and community representatives will receive funding, albeit small-scale, to help build a "consensus". International advisors are hired to work locally on the more sensitive aspects of external border policies. They are responsible for parts of the accompanying evaluation of the PHARE projects.

What is particularly striking in projects 9,10 and 11, is that they are seen in the context of east-Polish border management, the fight against crime (project 9) and especially deal with the connection of the online-databases located at the eastern border to the SIS and Europol, with the creation of a DNA database with British and German support and with the centralised fight against organised crime. The social conditions relying on income from the economic "grey" zones, as one PHARE point details, should also be fought with police force. Judicial and police cooperation, both in the EU and Eastern Europe, and the prison system (projects 10 and 11) will also be extended with a view to the new border regime. Poland signed a cooperation agreement with Europol on 3 October 2001. A national Europol unit already exists. In the near future, liaison officers will be sent to Britain, Austria, Italy and the Scandinavian countries. Police agreements on the "Fight against Organised Crime" have already been completed with Finland (4.11.1999), Lithuania (4.4.2000) and Germany (18.2.2002), and more are being planned.[22]

Modern state-customs border

A restrictive asylum politics involving a new foreigner and border police can be seen by the west-European experience. On the German side along the Oder and Neiße, the current EU external border has been based on a combination of electronic equipment and the willingness of the local population to "inform" since at least the 1990's. With the implementation of the PHARE programmes, the new external border at the river Bug returns to 18th and early 19th century customs, which also targeted people living in the border regions. Secret border crossings and the blockade of official checkpoints were a legitimate tool in social disputes. The old Cold War military front-line position towards

neighbouring states has become outdated. Instead, new police and military instruments are brought into play when it concerns the fight against poverty-stricken cross-border "enemies".

The PHARE programmes, with their economic and neo-liberal lay-out, are imposed by Brussels and Berlin. But the destruction of the informal border economy will also benefit a new political elite, which views EU accession as a political as well as an economic opportunity to break out of centuries of marginalisation. It will also have an interest in the border police keeping the controlled traffic passageways relatively free of obstacles and in being able to deport many unwanted refugees and migrants eastward.

More attention needs to be directed at the following question: Is eastern Poland being used as a laboratory for new executive powers, carried out by mobile units linked through advanced communication technology? The border population has repeatedly demonstrated against the new border regime and has on many occasions paralysed the region with blockades. They have forced a delay in the imposition of visa requirements for neighbouring countries citizens'. A lasting bond could be created between refugees and migrants and the impoverished communities in the border regions.

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Footnotes:

1. PHARE, initially standing for "Pologne - Hongrie: Assistance à la reconstruction économique."
2. <http://europa.eu.int/comm/enlargement/pas/phare/programmes/national/poland/2001> (and .../2002 respectively). Access to the file "PL01.03.02: Twinning for border and visa policy"; is denied. If not otherwise specified, the information given is based on these documents.
3. Council document 11087/02, 23.7.2002 (Enlargement: Preparation of the next Accession Conference with Poland; Chapter 24: Cooperation in the Fields of Justice and Home Affairs).
4. Frankfurter Rundschau, 8.12.2000
5. Frankfurter Rundschau, 11.4.2001
6. Neue Züricher Zeitung am Sonntag, 2.7.2002
7. In 2001, 4,500 persons officially lodged an asylum application. 1,820 asylum procedures have discontinued because the applicant had apparently travelled on westwards. For more information on the Polish government's practices hostile to refugees see the publication by Forschungsgesellschaft Flucht und Migration (FFM) "Poland", Berlin - Göttingen (1995); see also "Ukraine", Berlin - Göttingen (1997) and the FFM press release from 30.10.1996 as well as Dietrich, Helmut: "Akcja Obcy" (Action Foreigners") in Poland, published in *Mittelweg* 36, 1999, H. 2, pp. 2-11
8. see "PL-Warschau: Phare - Modernisierung des Systems OBCY-POBYT, no's 134361-2001 and 119523-2002, in : "Supplement to the Official Journal of the European Community, p.197, 12.10.2001 and p.151, 6.8.2002
9. <http://www.esteri.it/polestera/ue/twinning/2002/polonia/pl02jh02.doc>
10. From 1998 to 2000 (implementation period: 2000-2001) German financial support for the extensions of the OBCY-POBYT system encompassed 302,500 €, the PHARE programme contributed 640,000 €, the Polish state 1,35 m. _
11. Council Document 11087/02, 23.7.2002
12. Government of Poland: Poland's Negotiation Position in the Area of Free Movement of Persons. Synthesis (= document 2), Warsaw 27.7.1999, p. 40. Armenians are required to apply for a visa already since the Armenian-Azerbaijani war. Around 15-20,000 Armenians live in Poland.
13. CONF-PL 8/02 (The abbreviation CONF-PL refers to documents related to the conferences on Poland's accession to the EU.)
14. EU Commission: Regular Report on Poland's Progress on the Path to Accession, 4.11.1998, p.48
15. CONF-PL 46/02
16. Compare Kempe, I.; Meurs, W.; Ow, B.v. (eds.): *Die EU Beitrittsstaaten*

und ihre östlichen Nachbarn, Gütersloh 1999

17. According to the UNHCR, in 2001, 14 people were able to lodge an asylum application on the border to Russia, 34 on the border to the Ukraine and 523 on the border to Belarus. 1,187 were taken into detention awaiting detention.

18. CONF-PL 5/02

19. CONF-PL 5/02 and 46/02

20. See ICMPD (ed.): *Border Management in Europe. An Overview [of the border control systems of EU and candidate countries]*, December 1999; ICMPD (ed.): *Future External Border of the EU. Teaching Material*, edited by R. Schweighofer, September 1999, Seminar "External Borders" for Hungary, Poland, Czech Republic, Slovenia and Estonia (Klagenfurt, 19-23 October 1998), Seminar "Mediterranean Borders" for Cyprus (Larnaca

17-21 May 1999), Seminar "Austria Second Round" for Romania, Bulgaria, Slovakia, Lithuania and Latvia (Illmitz 21-25 June 1999). On border police activities of the IOM in Middle-eastern Europe see FFM: Ukraine cited in footnote 7, p. 15 et seqq.

21. Kazmierkiewicz, P.: *Case Study. Polish Helsinki Human Rights Foundation from the Implementing Partner to UNHCR to the Advisor to the European Commission Delegation (1999)*; <http://www.policy.hu/kazmierkiewicz/polishcase.html>

22. Council Document 11087/02, 23.7.2002

UK

The worst law yet: the Nationality, Immigration and Asylum Act 2002

In a test case in February 2003 brought by a number of destitute claimants, the High Court ruled that the government's denial of all support to late asylum claimants was illegal and breached their fundamental human rights. David Blunkett immediately complained that the judges were frustrating his policies and parliament's intention and making a proper asylum policy impossible. An appeal against the decision was rushed forward and was heard on 3 and 4 March.

The test case was brought by a number of refugee organisations against provisions of the Nationality, Immigration and Asylum Act 2002 which came into force on 8 January 2003. Under the new law, adult asylum seekers deemed to have applied for asylum late get nothing at all to keep them alive, unless they have children under 18. The result of the new law was asylum seekers, some physically injured or psychologically disturbed, having to queue for hours in the bitter cold outside the Home Office, and then having to sleep rough because NASS refused to provide them with support on the ground that they should have applied at the port. On the first day of the measure's operation, three people were taken to hospital with hypothermia.

Section 55, which penalises late claimants, was one of a number of ever more draconian measures introduced by government amendment as the Bill went through parliament. The normal process of negotiation resulting in compromise and softening or withdrawal of the tougher provisions was reversed, as the government used the parliamentary process to make a harsh law harsher. Other late amendments disentitled refugees resident elsewhere in Europe, and EU nationals, from social service assistance and support; re-introduced the notorious "white list" of "safe" countries of origin abolished in 1999; and for the first time removed in-country appeal rights from asylum claimants whose claims the Secretary of State deems "clearly unfounded".

Since the "white list" provisions came into force on 7 November 2002, asylum seekers whose claims are deemed 'clearly unfounded' by the Home Office have no right of appeal before removal from the UK. Asylum claims from countries on a list must rebut a presumption that they are clearly unfounded in order to obtain an in-country appeal. The list comprises the ten "accession states" of central and eastern Europe accepted for membership of the EU in 2004 - including the Czech and Slovak republics, Hungary, Poland, Slovenia, Estonia, Latvia and Lithuania. The government argues that the countries on the list are safe and democratic and so no-one coming from them is expected to be a genuine refugee - despite the fact that the Roma

populations in at least four of the accession states are the most persecuted group in Europe, enjoying (according to a January 2003 UNDP report) a sub-Saharan standard of living, with one-sixth of them starving and one-third of their children unable to complete primary school, and suffering (according to a UN report) "degrading treatment" by police.

"White list" nationals are detained at Oakington, where they are processed within seven days and can be removed from the country in ten. In one of the first legal challenges under the new regime, the Court of Appeal upheld the Secretary of State's contention that rape of a Roma woman by Czech police was not enough to rebut the presumption that her asylum claim was ill-founded. In February 2003, in response to a sustained anti-asylum seeker campaign by the *Sun* and the *Daily Mail*, David Blunkett, the Home Secretary, announced an extension of the "white list" to Albania (where politics can resemble gang warfare), Bulgaria, Jamaica (where the biggest threat is from organised crime), Macedonia, Moldova, Romania (with its large, persecuted Roma population) and Serbia/Montenegro (where ethnic tensions are bubbling and minorities continue to be at risk).

Support and control

The asylum support provisions of the Act further refine the control exercised by NASS (the National Asylum Support Service, the branch of the Home Office responsible for the support of asylum seekers), and blur further the distinction between welfare and policing functions. All asylum seekers who are not detained can be required to go to an induction centre for a fortnight when they make their claim. There they are photographed, fingerprinted, and told what is expected of them during the asylum process. In a recent pilot, 5,000 asylum seekers in an induction centre were subjected to screening for TB - although revealingly, the tests showed up no TB but gunshot, whipping and beating injuries.[1] Asylum seekers may not work (in summer 2002 the government withdrew the concession allowing them to work if the claim took over six months to determine), they are told where to live, and are obliged to report to immigration officers on specified dates on pain of having their claim deemed withdrawn.

Regulations will enable NASS to dictate that the price of support is isolation from refugee communities: asylum seekers will no longer be allowed to opt for cash-only support to enable them to stay with friends or relatives, but will have to accept the whole support package, which means going into NASS

accommodation - whether the slum inner-city housing, or the new "accommodation centres" to be set up under the 2002 Act. These are large 750-bed camps with their own on-site educational and health facilities, which will isolate destitute asylum seekers further, prevent their integration into local communities and make removal at the end of the process easier. Disciplinary rules will make unauthorised absence from the camps lead to disqualification not just from support but from the entire asylum process.

Asylum seekers forced into utter destitution, excluded by law from any and all support, will clearly be reduced to beggary or crime to survive. But those who steal must beware: under further provisions of the 2002 Act, refugees and asylum seekers who commit offences for which they are sentenced to two years imprisonment are to be deemed a danger to the community, with the result that their refugee status can be revoked or their claim discontinued.

Information-gathering

The 2002 Act contains further policing powers for immigration officers and information gathering by the Home Office. The Tories introduced fingerprinting for asylum seekers in 1993, as part of the pan-European control of asylum claimants through the 1990 Dublin Convention - designed to prevent asylum seekers claiming in more than one EU member state, and the Eurodac Convention enabling exchange of fingerprint data to prevent multiple claims. Under the new Act, Labour takes the principle further, by enabling immigration officers to require asylum seekers and others to provide iris imprints. The 1999 Act allowed Home Office officials to compel airlines to provide passenger lists and details of flights carrying non-EEA passengers, registrars to disclose "suspicious marriages" between EEA nationals and non-EEA nationals, the Post Office to disclose redirection notices for asylum seekers' mail (to ensure they had not moved from the dispersal addresses). Now, an "authority to carry" scheme under the new Act requires carriers to seek advance authorisation before allowing passengers to board aircraft. Regulations under the 2002 Act will allow the Home Office to require carriers to key in details of all passengers in advance, to obtain Immigration Department authorisation to bring them into the country, and to prevent passengers boarding if the authority to carry is not given. Operational measures not put into legislation allows the screening of all asylum seekers for "terrorist" connections, which gives security services a central role in visa, asylum and residence applications - the very same police and security services who are collaborating with their counterparts in torturing countries like Turkey, Algeria, Sri Lanka, Pakistan, India, Egypt, Saudi Arabia and Morocco.

Detention upheld

The 2002 Act also gives immigration officers all the powers of police officers to make arrests of those believed to be in breach of conditions, to search people, homes and business premises, to seize material, to use "reasonable force" and to detain on suspicion. Many more asylum seekers, including families with young children, are detained as the government's immigration detention centres continues its four-fold expansion. The 2002 Act renamed detention centres "removal centres" - although detainees are still held for months in grim conditions before being removed. The Act repealed never-implemented provisions for automatic bail hearings for asylum seekers in the 1999 Act, ending the stillborn right to bail for asylum seekers which was meant to give them similar protection to that of criminal defendants.

In October 2001, the High Court had ruled that detention of asylum seekers who were not suspected of wanting to abscond was arbitrary, and a breach of the European Human Rights Convention. A year later, the House of Lords upheld the government's right to detain any asylum seeker in Oakington and

similar short-term detention centres for up to seven days to decide their claims. As the House of Lords extinguished the last hopes of those who believed that Australian-style detention could not happen here, the Court of Appeal held that there was nothing unlawful about the indefinite detention of foreigners suspected of being "international terrorists" under the Anti-Terrorism, Crime and Security Act 2001. The judges endorsed David Blunkett's declaration that a "public emergency threatening the life of the nation" exists so as to justify derogation from fundamental human rights guarantees which prohibit such open-ended detention, and held that it was perfectly permissible to discriminate against foreigners in doing so. In earlier cases on national security detention, the courts have ruled that the ministers know so much more than they do about the issues that they should not presume to overrule them on what constitutes a threat to national security.[2]

National security and naturalisation

The 2002 Act also brings political criteria into citizenship procedures. To naturalise as a British citizen, candidates must now possess not only a clean criminal record and adequate knowledge of the language, but also an understanding of 'democratic' values assumed to be uniquely British, and British citizens can have their citizenship withdrawn if they do anything the Home Office considers seriously prejudicial to British interests.

No to human rights

In the run-up to Christmas 2002, Beverley Hughes, Home Office Minister, denounced the fact that large numbers of asylum seekers were being granted exceptional leave to remain after their asylum claims were rejected. An "unacceptable" increase in the numbers - mainly Zimbabweans, Somalis and Iraqis - being allowed to stay on humanitarian grounds caused such alarm that the minister announced plans to abolish exceptional leave to remain and replace it with something called "humanitarian protection", which was to be granted only if a person's removal would be unlawful under the UK's international human rights obligations.[3] Even this guarantee of compliance with human rights obligations was questioned in January by Tony Blair, the Prime Minister, unless asylum seekers' numbers came down by half by the end of the summer, the government would consider opting out of fundamental human rights commitments under the European Convention on Human Rights.[4]

Footnotes:

1 *Guardian* 7 February 2003.

2 *In Rehman v Secretary of State for the Home Department* [2002] *Immigration Appeal Reports* 98.

3 *Guardian* 30 November 2002.

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Davos and Evian

This feature looks at: Davos (Switzerland) - an account of the planned prevention of a demonstration and plans to combat protests at the Evian (France) G8 Summit meetings

In the run-up to this year's World Economic Forum (WEF) in Switzerland, the authorities, in the canton of Graubünden, had promised more openness. In 2001, the demonstration in Davos had been banned altogether. In 2002, this private gathering of the powerful and their entourage fled to New York. This year was the first time a mass demonstration was legally permitted but the police prevented it.

Long before 25 January 2003 it became clear that it would not be easy to demonstrate in Davos. Already in the late autumn of 2002, the authorities estimated that additional security measures for the WEF would amount to 13.5 million Swiss Francs (about 7.5 million euro) - to be divided between the federation, the canton of Graubünden (three eighths each), the local authority of Davos and the WEF (one eighth each). A unique deployment of state power was thereby financed.

Between 1,200 and 2,000 police officers from all over Switzerland - precise numbers are not available - were concentrated in and around the winter sports centre. 1,300 soldiers - armed with assault rifles - provided protection for buildings, 320 professional soldiers of the *Festungswachtkorps* ("fortifications guard") were responsible for the protection of foreign politicians. The Swiss Air Force looked after the WEF's safety from terrorist attacks from above, six water cannons and 77 police officers from the German Länder of Bavaria and Baden-Württemberg helped from below.

By the end of December, the "Service for Analysis and Prevention" (*Dienst für Analyse und Prävention*, DAP), the state political police, had banned over 100 foreign demonstrators from entry to the country. The DAP has not disclosed how many entry bans were finally issued. Also secret was the number of people against whom the police from Graubünden planned to issue a ban (*Aufenthaltsverbot*). Here also, intelligence was issued by the DAP, and the people concerned were by no means only those with former convictions, but also people who had merely been "noted by the police" - which means nothing other than that they were on the records of the political police of the federation or the cantons.

The cattle gate in Fideris

During the winter, Davos is only accessible from one side, via the *Landwasser* valley, at the base of which the village of Landquart is located. Trains of the Federal Swiss Railway (SBB) run up to that point, anyone wanting to travel further has to change to the railway company *Rhätische Bahn* (RHB). In Fideris, which is half an hour before Davos, the police installed a special check point, through which all demonstrators had to pass: the plan was that RHB short-distance trains were supposed to stop at a specially constructed platform, which led to a square that was fenced in by gates on the one side and the *Landwasser* river on the other. The square could only be left through a tent on one side. In this tent, 12 corridors had been constructed with barrier fences, at the end of which employees of the Zurich airport police would search demonstrators for "dangerous objects". Behind them, police officers familiar with the "scene" would identify potential troublemakers, pick them out of the crowd and issue a travel ban (*Aufenthaltsverbot*). About 100 metres further, another train to Davos would already be waiting for those allowed to pass.

The organisers of the demonstration, the Olten Coalition, had inspected this control scenario one week before the

demonstration and had decided: "we will not pass through these cattle gates". They decided to negotiate in Fideris. If the police did not allow uncontrolled access to Davos, they would simply demonstrate in Landquart.

On Saturday, most WEF demonstrators arrived in Landquart station, which was surrounded by police, on the "Davos Social Express" (a special train of the SBB), which crossed the country from Geneva via Bern and Zurich. Around 200 of the Coalition delegation, changed to a RHB train at 10 am. At half past ten, the train stopped in Fideris and the passengers announced through the megaphone: "We are the delegation of the Olten Coalition. We will not get off the train and will not pass through the controls". Shortly afterwards, buses from the construction and industry trade union stopped on the street before the police control area. The trade unions expressed solidarity with the demands of the Coalition. Several hours of negotiation followed with the police officer-in-charge and the official representative of the cantonal authority, the Davos municipal council member Hans Peter Michel. A compromise was reached around 12.30 that there would only be luggage checks on the train. The police would abstain from person checks and nobody would be picked out of the crowd by police officers familiar with the "scene".

Before the "luggage inspectors" from the Zurich airport police boarded the train, the officer-in-charge checked with the Olten Coalition, if the people arriving in the other trains would also adhere to the arrangements agreed, pointing out to them that he did not want to negotiate a second time. The Coalition delegation then phoned the people in Landquart, and the deal was done. Mr. Michel announced the outcome over the megaphone and the train departed at 12.45.

Twenty minutes later, the officer-in-charge called the media and retracted the agreement. Before the next train arrived shortly after 2pm, it has become clear that the police were insisting on control checks. This decision had nothing to do with the fact that the train was crowded, or with the allegation that the "black bloc" is on board. All negotiations were useless, police refused to carry out the checks on the train or on the platform. At 15.17, the train with the demonstrators, returns to Landquart. Together with the buses and the first few trains, only 2,000 demonstrators made it to Davos. Escalations in Landquart and on the way to the Swiss lowlands was inevitable from then on.

Landquart - Wollishofen - Bern

By 16.30, over 3,000 people were still waiting in Landquart station, which was still surrounded by police. When some people tried to block the motorway, which runs parallel to the tracks, the police used teargas, rubber bullets and water cannons against the crowd in the station. Around 5 pm, the SBB provided a train which stops in the Zurich suburban station of Wollishofen and finally in Bern. There, the police welcomed the demonstrators with tear gas and rubber bullets, claiming that property had been damaged as an excuse. Their only aim was to stop demonstrators reaching the city centre, to break up gatherings and to push people towards the autonomous cultural centre, *Reitschule*. At a press conference on Sunday, the police director of Bern spoke of "terrorists of the worst kind". The *Reitschule*, which had always been a thorn in the side of the authorities, was now a centre of "militancy".

Political afterpains

In the run-up to the demonstration, all the media, including the otherwise left-liberal paper *Tagesanzeiger*, had attacked the Olten Coalition. The argument being that those not accepting checks and controls, did not want a peaceful demonstration but violence. The head of the Social Democratic Party used the same argument, making the Coalition and not the police responsible for the failure of the mass demonstration in Davos. Despite the massive presence of media in Fideris, the Sunday and Monday papers gave a distorted account of the negotiations between the Coalition and the police. The breach of promise by the police was either concealed or brushed under the media carpet. On Monday, the Construction and Industry Trade Union, the Democratic Lawyer's Association of Switzerland (*Demokratische JuristInnen Schweiz*) and left-wing social-democratic MPs tried to set the story straight.

Meanwhile, the Christian Democratic People's Party (*Christdemokratische Volkspartei*, CVP) has proposed a change in the law. A Federal Law should prescribe a ban on the wearing of balaclavas during demonstrations. For nationwide demonstrations, the Party wants to introduce control scenarios such as in Fideris as a general principle. The CVP further demanded that organisers of demonstrations take part in the identification of demonstrators. If public order disturbances during demonstrations are predicted, they will be "spatially relocated": for example, to an open field rather than sensitive inner city areas.

The next summit in line is the G8 summit in June. It will take place in Evian, on the French side of the Lake Geneva. The Swiss authorities have already calculated the cost of security measures for Switzerland as 40 million Swiss Francs. During its March session, the federal parliament most probably will agree to send 4,500 soldiers to support the police forces during the summit. The French police, the notorious *Compagnies Republicaines de Sécurité* (CRS), will, if necessary, be deployed on Swiss territory.

On the French side, the state will be deploying a massive military presence in order to prevent any trouble. A special

working-group, headed by Jean-Claude Poimboeuf, ex-Australian ambassador and now General Secretary of G8, released a report in November 2002. According to excerpts published in *Journal du Dimanche* three army corps - Air Force, Navy and Army - will be mobilized. An "aeronautical bubble" will protect Evian from any possible action from the air such as "dropping flyers from microlights or unexpected landings from paragliders".

Navy troops and GIGN swat teams will watch over the Lemane lake. It is said that the authorities fear hijacking of tourists boats or landing of hordes of small boats coming from the Swiss coast.

The Army will provide its: "electronic warfare know-how (basically the 44th and 54th Régiments of Transmissions) in order to disrupt protesters' communication means" and to locate any source trying to enter the reserved military radio spectrum. A common practise for international summits, except it is usually not advertised.

The theatre of operation includes three zones:

Zone 1, Evian city, will be sealed off and access will be restricted to authorised participants, inhabitants and workers; every person above 13, will have to get personal badges.

Zone 2 is a restricted coast area dedicated to media facilities.

Zone 3, the rural areas surrounding Evian, will be heavily controlled.

The French Prime Minister, Jean-Pierre Raffarin, declared in January that he will make sure anti-globalisation groups "who want to can express themselves in a free and democratic way...and not under police surveillance". But the G8 working group mentioned earlier said that there was one condition, "that they stay far away". Swiss Confederation president Pascal Couchepin's answer in February was the protest "must happen on French soil. We are going to urge France to find a solution."

Sources: Report by the Observation Delegation of the Demokratischen JuristInnen Schweiz (DJS) in Fideris from 25.1.2003 (www.djs-jds.ch), *Wochenzeitung* 23. and 30. January 2003 (www.woz.ch), *Vorwärts* 31.1.2003 (www.vorwaerts.info)

Viewpoint

The birth of the EU's Interior Ministry?

The maintenance of EU-wide policing, public order, internal security and external border management is to be handled by a secretive and unaccountable new committee

The final report of Working Party X ("freedom, security and justice") for the Convention on the future of Europe proposes changes to the structure of decision-making on third pillar issues (policing and legal cooperation) which raise fundamental constitutional and political questions.

In particular this article looks at its proposals the creation of a potentially hidden and unaccountable committee to coordinate EU-wide police cooperation, internal security and external border management.

"Strengthening operational cooperation"

The introduction to the Working Party report says that "Citizens need to feel a proper sense of "European public order" ("ordre public européen)". To bring this about a "golden rule" is proposed to:

Introduce, as much as possible, a separation between "legislative" and "operational" tasks"[1]

The key section of the report says that "current operational collaboration lacks efficiency, transparency and accountability". Efficiency, it is argued, is hampered because "operational responsibilities are split" between national police and judicial

authorities, Europol, Eurojust and OLAF (fraud). The example given is the "efficient control of the Union's external borders".

It is true that current operational cooperation lacks "transparency and accountability". Numerous issues come to mind, the Schengen evaluation reports are kept secret, so too are most of the documents on EU-US cooperation and opinions of the Legal Services, and the workings of the Police Chiefs Operational Task Force etc. As to accountability on "operational collaboration" there are no mechanisms for parliamentary or public scrutiny of the implementation of policies - save for sanitised annual reports. The Working Party proposals offer little or nothing to correct these problems, rather it want to make operational matters even more secretive and even less accountable.

To understand the fundamental nature of the proposal, to separate "legislative" and "operational" tasks, it is necessary to step back for a moment and put the idea in context. At the European level, a number of stages are involved in a democratic political process in respect to *third pillar* matters:

1. *Treaties (setting out the legal and constitutional basis)*

2. *"Legislation", based on the Treaties. This may be binding or allow*

for "approximation" (that is, in a binding form that brings national laws into line but adapted for national traditions and laws)

3. "Policies" may be defined in "legislation" or be defined in subsequent decisions - the latter is particularly the case in the "third pillar".[2] The term "policy-making" is thus confusing as it can apply strictly to "legislation" or to policies adopted later which are based on the legislation[3]

4. "Operational issues" are based on legislation and defined in policies, which in the third pillar often take the form of Decisions, Recommendations or Conclusions, or in some cases are exercised by an EU agency

5. "Operations" per se take place on the ground, for example, controlled deliveries, the surveillance of suspects, patrolling the seas for migrants etc

6. "Evaluations" concern reviewing a series of "operations" as to their effectiveness or otherwise, which may or may not leave to a review of policies

7. "Changes in policy" can come about in a number of ways. At present changes usually come about because officers, agents and officials want more powers and put a proposal to the Council.

8. To come full circle, fundamental changes result in the amendment of Treaties.

With the sole exception of point 5 - actual "operations" - all the other stages (with a few additional, very narrowly defined, exceptions) should be subject to parliamentary scrutiny and public debate. A corollary to this is that all documentation should be publicly accessible, subject again to a few, very narrowly defined exceptions.

Thus while parliaments and civil society do not have a right to see information or "intelligence" held on individuals (unless the individual directly concerned is involved) nor the precise details of planned or ongoing operations before they happen, they do have a right to know: what happened after the event, to facts and figures, to any proposed policy changes and to evaluation reports etc.

Only in this way can the fullness of the democratic process be realised. The Working Parties proposals would potentially remove from public scrutiny points 3, 4 and 6 above and only making public sanitised evaluation and annual reports - no additional powers of scrutiny are envisaged.

To return to the concrete proposals from the Working Party. It proposes that:

a more efficient structure for the coordination of operational cooperation at high technical level be created in the Council.. [by] redefining in the new Treaty the current mission of the Article 36 Committee, which should in future focus on co-ordinating operational cooperation rather than becoming involved in the Council legislative work. How best to associate the Chiefs of Police Task Force with this work is a question deserving further examination

The Article 36 Committee is comprised of high-level officials from Home, Interior and Justice Ministries meeting in the Council HQ in Brussels. Its current work is largely concerned with new measures that come up through the Council's working parties and to some extent with evaluations of different kinds (eg: on the workings of the Schengen Convention).

The report's primary argument, one often heard in Brussels, is that this new role is "technical" and therefore not legislative. It could be, says the report:

a technical one of coordination and oversight of the entire spectrum of operational activity in police and security matters [in the EU]

Well, there we have it - a permanent committee of officials will run EU-wide policing and security and, as mentioned elsewhere, external border management from Brussels.

Added to this is the idea that the Police Chiefs Operational Task Force (PCOTF) could be involved in the new central

committee. The Working Party seem to be unaware that the *ad hoc* status of PCOTF has been a matter of concern ever since it was set up after the Tampere Summit in October 1999. It started out as a "think tank" but post-Genoa and 11 September it quickly acquired a whole range of sensitive roles including intelligence and information gathering, cooperation between anti-terrorist "intervention units", opening up the Schengen Information System for security agencies' surveillance purposes, harmonising informant codes, airport security, the coordination of paramilitary national police units and security at summits meetings and international fora held in the EU.

The position of the PCOTF is controversial because it has no legal basis, no formal rules of procedure, no mechanism for scrutiny and therefore cannot be held publicly or legally accountable for its activities.

The report goes on to say that:

The exchange of personal data should continue to take place within the existing systems (Europol, Schengen, Customs Information System, Eurojust etc) for which adequate rules on data protection and supervision systems are in place

Again the Working Party seems to be totally unaware that the roles of the Supervisory Authorities (or Bodies) are limited strictly to data protection and do not cover the liberties and rights of suspects (for example, was information improperly obtained).[4] They do not have the power to order the deletion, correction etc of data (unlike first pillar bodies), nor is there any requirement that national authorities - who initially supply the data - should have these powers either (again unlike the EC Directive on data protection). Data protection rights were simply ignored when it came to the Europol-USA exchange of personal data. Supervision of the operation of these EU agencies is carried out by Management Boards similar to the Article 36 Committee (that is, officials from Home and Interior Ministries). Proper external scrutiny and accountability is limited to sanitised annual reports which leaves these agencies, in effect, as self-regulating.

This proposal would create a committee of officials at the EU-level for policing, the maintenance of public order, internal security and the management of external borders. It will be unaccountability, self-regulating and largely run in secret.

The maintenance of law, order and internal security in the EU: a seven level system

The Working Party's proposals will introduce a new level of EU third pillar coordination through the re-cast Article 36 Committee which will be firmly under Council control (level 4 below). This development needs to be located within the on-going levels of police, public order and internal security cooperation in the EU. These fall broadly into seven levels:

1) issues which have no cross-border implications would remain at *national level*, policies and measures to be implemented by national agencies under national governmental direction;

2) issues which have cross-border implications will (for an infinitely expandable list of offences) be covered by increased harmonisation, approximation or mutual recognition for prosecutions, sentencing and judicial decisions. Policies and measures will be set at the *EU level* but implemented at the national level;

3) *EU-level bodies and agencies*. Europol and Eurojust come under a category called "Union bodies"[5] and the Working Party proposes that their roles, as defined in the Amsterdam Treaty will be deleted and replaced by: "shorter and more general provisions" which give the "legislator a greater margin to develop Europol's/Eurojust's tasks and powers". In short, very general powers in place of specific objectives. Moreover the Council has already decided that once the Europol Convention is converted into a Regulation (which will allow its powers to be amended speedily and with far less national parliamentary scrutiny) the

Europol Working Party will be abolished. This will leave Europol as a free-standing agency with its own rules of procedure and access to documents policy.[6]

There are in addition a number of *EU-wide databases* the most prominent of which is the Schengen Information System (SIS) based in Strasbourg. Its original role covered stolen vehicles, lost or stolen documents, people to be refused entry (largely migrants who have been expelled) and the surveillance of "suspect" individuals. It is this latter role which is now being expanded in relation to terrorism and public order.

Schengen related cooperation: Since the Amsterdam Treaty came into force on 1 May 1999 there have been no annual reports on Schengen cooperation on policing, immigration and bilateral agreements and cross-border cooperation.

4) *EU-wide operational coordination* will be carried out by a renamed and revamped Article 36 Committee covering policing, public order, internal security and external border management (the latter being displaced from the first pillar). This is likely to pull in the JHA Working Party on Terrorism and COTER (the second pillar group on counter-terrorism), EU-USA cooperation across the New Transatlantic Agenda and planned cooperation agreements (such as joint EU-US investigation teams operating within the EU), and cross-pillar issues like civil protection (from the second pillar).

5) There are a number of intergovernmental *ad hoc* bodies and working groups within the EU. Reference is made to the possible inclusion of the Police Chief Operational Task Force coming under the re-vamped Article 36 Committee. But whether or not this happens there are a number of other *ad hoc* fora like the EU Security and Intelligence Chiefs coordinating meetings and multinational teams (eg: France, Italy and Spain) created under the Spanish Presidency measure to combat and destabilise suspected terrorist groups.

6) the *transgovernmental* level is where EU police and security agencies sit on external international fora like G8, ILETS (International Law Enforcement Telecommunications Seminar), the Club of Bern (security services) and the Warsaw Conference on combating terrorism. Some of this interface happens at the European level, some directly with the USA and some at the international level. A number of significant global plans start out in these fora, for example, the surveillance of telecommunications through data retention and the introduction of APIS (Airline Passenger Information System). The USA and the UK are leading players at this level partly due to their long-standing cooperation on intelligence-gathering (eg: ECHELON) and the so-called "Atlantic Alliance".

7) this new and developing level concerns EU-US cooperation. It might be seen as *inter-regional* or *enhanced transgovernmentalism* but neither of these terms adequately describe what is happening. Since 11 September 2001 and Bush's letter to the EU of 16 October 2001, containing 47 demands for the EU to cooperate with the USA, an exceptional level of cooperation has developed. However, it is cooperation based on US demands, not on reciprocal arrangements (ie: the issue of EU data protection standards has arisen on at least four issues but the USA has shown no willingness to adopt a law of its own).[7] The cooperation goes even deeper still with US officials sitting on key Council working parties and high-level committees such as SCIFA and the Article 36 Committee as well as re-vamped meetings under the New Transatlantic Agenda (NTA).[8] Requests for documents from the Council where the USA is concerned are almost routinely refused. It is hard to determine - on EU-US cooperation on justice and home affairs issues - whether the USA has become the 16th member state of the EU or whether the EU has become the 51st state of the USA.

The second and third levels would be covered by the new legislative forms being discussed in the Convention but with a shared right of initiative between the Commission and Member

States on substantive "hard" law. "Soft" law measures, like Resolutions, Recommendations and Conclusions, will continue to be introduced at the sole initiative of the Council or Member States.

The fourth tier would see the creation of the new structure to cover "operational matters", the constitutional status of its decisions and accountability is very unclear. While the fifth, sixth and seventh levels remain intergovernmental and transgovernmental and outwith any accountability.

The new "Article 36 Committee", supported by the large staff in DG H in the General Secretariat of the Council, will become the hub of *EU-wide operational decision-making and implementation* on policing, public order, internal security and external border management (including a European Border Police Force). In addition to this formal role it, most crucially, will have informal links and input from the plethora of *ad hoc*, informal, unaccountable, fora at the EU and international levels. Thus it may well become the *de facto* "Interior Ministry of the EU", overseeing the use of coercive powers in the emerging EU state. Heiner Busch describes this as:

The EU is in the process of becoming a full-blown state - with a central police force, extensive databases, closed-down borders and a harsh criminal law... The "area of freedom, security and justice" turns out to be an "area of security, security and security" [9]

Tony Bunyan is editor of *Statewatch* bulletin

Footnotes:

1 Repeated references are made in the Working Party report to "experts" and "expert testimony" from the Council, Europol and national police officials - they appear to have had a major influence in the decision to separate policy making on third pillar issues.

2 An example might be the Schengen Convention which set out general principles but was followed by a swathe of implementing policies (termed the *Schengen acquis*) on the Schengen Information System (SIS) and numerous manuals.

3. There are innumerable instances of where a general power is given under a legislative measure which is then used to legitimise further action. A good example in the present context is the Police Chiefs Operational Task Force (PCOTF) which has no legal basis for its activities in the EU. The Council has suggested that its work is covered by Article 3 of the 1997 Joint Action on cooperation on law and order and security. However, this Article gives no legal authority for the creation of an "operational" working party. Article 3 allows for an annual meeting (each "spring") of the "heads of central bodies for law and order and security to discuss matters of common interest" (Article 3.a) and the "holding of exercises and exchanges and training secondment" (Article 3.c). It confers no powers: i) to create a permanent working party; ii) to exchange information or iii) to engage in operational issues.

4. There are no EU-wide data protection rules covering the third pillar - discussions in the Council on this issue, which had been going on for years, were permanently shelved in April 2001.

5. There are curious references throughout the report to "Union bodies" which are undefined as a category. In effect the report is referring to EU-level state agencies created by the EU.

6. Europol has yet to adopt the standards in the EC Regulation 1049/2000 on access to documents.

7. The same goes for the imposed agreement on the right of US Customs officials to inspect any container leaving an EU port for their country and the imposed agreement on access to airline passenger personal details. See *Statewatch* News online, January and February 2003.

8. At a recent meeting of the NTA the USA asked for direct access to the Schengen Information System.

9. Heiner Busch, *CILIP* no 73, nr 3/2002. www.cilip.de

A longer version of this article will be available on the *Statewatch* website, see:

<http://www.statewatch.org/news/2003/mar/tb.htm>

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Statewatch bulletin

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

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

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

ISSN 0961-7280

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