

Statewatch bulletin

Vol 5 no 4, July – August 1995

EUROPE

COREPER signs three Conventions

On 26 July COREPER, the Permanent Representatives Committee of the European Council, signed - on behalf of their governments three "third pillar" Conventions on: 1) Europol; 2) The uses of information technology for customs purposes (Customs Information System, CIS); and 3) The protection of the Communities financial interests. This unusual move followed an "agreement" at the Cannes Summit, under the French Presidency, on the three Conventions.

All three were on the agenda of the meeting of the Council of Justice and Home Affairs Ministers in Luxembourg on 20-21 June. The outstanding issue from that meeting, affecting all three Conventions, was the role of the European Court of Justice (ECJ). At the Cannes Summit the governments divided 14-1 with the UK maintaining its opposition to any involvement of the ECJ. The meeting compromised by agreeing that the Europol Convention should be signed without any reference to the ECJ - it was decided:

"to settle the possible jurisdiction to be attributed to the Court of Justice of the European Communities at the latest by the meeting in June 1996".

European Commission President Jacques Santer commented on the decision:

"the main thing is that the Convention has been approved and that it matters little to the citizen whether the Court of Justice has competence regarding Europol. What counts is that citizen's security is strengthened."

But the Luxembourg Prime Minister, Jean-Claude Juncker, said the inclusion of the ECJ was a case of ensuring "the elementary protection of citizens' rights".

The delay between the Cannes Summit on 25-26 June and the 26 July COREPER meeting stemmed from this decision. The Benelux countries said they would formally sign the Convention but not put it to their parliaments for ratification until the question of the ECJ was resolved. Similar reservations were later expressed by the German government after the Bundestag's European Committee said it should not be signed without the ECJ.

As the scheduled meetings of Council of Ministers in Brussels passed without final agreement - the Sweden and Finnish governments wanting to consult their parliaments too - the decision fell to the last COREPER meeting in July before the summer break (COREPER's next meeting was not until 6 September).

A member of COREPER said that while in Cannes the EU Prime Ministers focused almost entirely on Europol COREPER had taken this to mean that the necessary steps should be taken on the other two Conventions as well. As sometimes happens after EU Summits COREPER is left to interpret what the Prime Ministers intended.

UK Home Secretary Michael Howard commented: "The signing of the Conventions represents a major achievement of the Third Pillar of the Maastricht Treaty, and is a direct result of effective intergovernmental cooperation". The decision to rush these three Conventions through COREPER rather than wait until the next

meeting of the Council of Justice and Home Affairs Ministers, scheduled for September, stems from the need to show that the "third pillar" is working in the context of the 1996 intergovernmental conference (IGC).

While the Europol and other Conventions have now been signed on behalf of the 15 EU governments the process of ratification may well not start in several EU parliaments until next June. This process, on past evidence, will take several years - the Dublin Convention signed in June 1990 still has not been ratified by all EU countries.

EU national parliaments are now being asked to ratify four Conventions on:

- * Simplified extradition (signed on 9 March)
- * Europol
- * Customs Information System (CIS)
- * Protection of the Communities financial interests

There are at least six other Conventions in the pipeline:

- * Convention on the crossing of the external frontiers
- * Convention on the setting up of a European Information System
- * Convention on extradition between member states of the EU (this will cover "involuntary" extradition)
- * Agreement between member states of the EU on the enforcement of driving disqualifications
- * Convention on the scope, jurisdiction and enforcement of judgements in matrimonial matters (Brussels Convention II)
- * Convention on the service in the states of the EU of Judicial and Extrajudicial documents in civil and commercial matters

The UK may well be the first to ratify these Conventions as no parliamentary debate or vote is required under the constitution for ratifying international agreements. These are covered by the "Ponsonby rules" under which the ratification of Conventions are notified to parliament on the daily "Order Paper" of business, and its automatically ratified unless even MPs overturn the agreed legislative programme.

European Council press release, 26.7.95; Home Office press release, 26.7.95; Agence Europe, 28 & 29.6.95 & 3 & 4.7.95.

Europol underway

The Green Group in the European Parliament organised a conference on "Europol" in Brussels on 3 July. The Director of the Europol Drugs Unit, Jurgen Storbeck, told a conference that as the Europol Convention had now been agreed:

"All the plans and computer work can now get underway as we will need years to get data processing going".

The fact that on 3 July it had not been signed (it was finally signed on 26 July) was a minor point. What is extraordinary about Mr Storbeck's statement is the assumption that prior to the ratification of the Convention by the 15 national parliaments money and labour can legitimately be spent on setting up Europol. The Convention

states that it does not enter into force until three months after the last country has ratified it - which may well be two to three years.

However, in the same Article, in a clause added in November 1994, it says that:

"Once the Convention has been *signed*, Member states, acting either individually or in common, shall take all preparatory measures under their national law which are relevant to the commencement of Europol activities".

If this clause is being used to set up and spend money on Europol prior to ratification procedures being completed it further undermines the limited role of national parliaments - who are asked to agree the Convention without any amendments. It is analogous to the Cabinet of a national government agreeing to a new Bill (law) and, while its parliament is debating whether or not to pass it, creating the body the Bill is intended to authorise.

Claudia Roth MEP, the leader of the Green group in the European Parliament, told the conference:

"With their unconditional yes to Europol the Ministers are shrugging off the concerns of defenders of personal data privacy and citizens rights while not so much as providing the citizens of the EU with the protection of their basic rights. After all, democratic controls, unified legal standards, citizens' rights and data privacy would only get in the way of the smooth functioning of the security apparatus".

Customs Convention slips through

Another of the Conventions agreed at the meeting of COREPER on 26 July was that on the Customs Information System (CIS) which an explanatory note from the UK government described as follow:

"The draft CIS Convention is closely based on the relevant articles of the European Information System, which in turn is closely based on the relevant articles of the Schengen Convention.. "

In effect this is saying that the non-Schengen EU member states - Ireland, UK, Sweden, Denmark, Finland and Austria - at the time the Schengen Agreement was signed were having to agree to the terms set out there covering customs being included in the CIS Convention without amendment.

There are also a number of novel features about the CIS Convention. First, it is a "hybrid" measure. There to be *two* "separate data-based systems" dealing with customs matters both of which are going to be on a central computer system run by the European Commission. The two systems will "belong to two different legal systems". One, the "intergovernmental CIS", covered by this Convention dealing with fraud and trafficking in illicit goods "for areas outside of Community competence", the other, "the Community CIS", for areas "within" Community competence, covering import duty and agricultural levies, to be covered by a Council Regulation (under the "first pillar").

The European Court of Justice (ECJ) clause has been deleted from the Convention on the "intergovernmental CIS" - until its role is resolved in this Convention and those on Europol and financial interests. The "Community CIS" Regulation will include the ECJ to resolve disputes.

The setting up of the central computer will come out of the EC budget while only the running costs of the inter-governmental database will be paid by individual member states.

Rolling ratification and "Provisional application"

The Convention as signed allows for "provisional application" as it is officially termed. This allows for the Convention to come into operation "provisionally" three months after a majority of the 15 EU states have ratified it (Article 24). It also allows for the "provisional application" of the Convention once two or more member states have ratified it - who may then decide "by unanimous vote" to proceed. The Spanish delegation had objected to this idea arguing that it did not come within the terms of Article K.3 of the Maastricht Treaty for certain member states to proceed in advance of others (Article K.3 refers to a two-thirds majority taking implementing measures "unless otherwise provided"). But the UK and Irish governments "pointed out the practical advantages of a more flexible mechanism for allowing the treaty to come into operation".

This "rolling ratification" procedure - not included in the Dublin Convention or the Europol Convention - means that EU countries with the least conscientious parliaments or procedures (like the UK) can ratify the Convention and put it into practice placing other national parliaments who wish to examine the Convention in detail in an extremely difficult position. The Convention adopted in March this year on "Simplified extradition" was the first to adopt this approach. This method reflects the Council's (ie: EU governments) new policy of undermining national parliamentary ratification procedures which they have found so frustrating - the Dublin Convention on asylum applications signed in June 1990 still await ratification by all EU states.

Its provisions

Many of the provisions set out in the CIS Convention are familiar. Information held on individuals can include "permanent physical characteristics" (such as a person's race; *Article 4.v*). It allows for the recording and transmission of intelligence gathered by "sightings, discreet surveillance or specific checks" on people who have committed, are in the act of committing, or "will commit" offences (*Article 5*). Customs officials in one country can request another to conduct a search which, if not permitted the law of that country, "shall automatically be converted... into sighting and reporting" (*Article 6*). Like the Europol Convention it will "permit access to the Customs Information System by international or regional organisations" and be "communicated" to them (after the signing of a protocol; *Article 8.4*).

Personal data protection is to be via national laws. An application by the individual "shall be refused in any event during the period of discreet surveillance or sighting and reporting". Again like the Europol Convention the "Joint Supervisory Authority" of data protection registrars will have no powers of enforcement in case of individual complaint only the ability to "forward" a report to the national body.

Convention on the use of information technology for customs purposes, as agreed at the Council meeting on 9.3.95; report from COREPER to the Council on points outstanding, 3.3.95; *Draft agreement regarding the use of information technology in the area of customs*, Council, Restricted, JAI 24, 27.6.94; *Explanatory note from HM Customs and Excise*, 8.3.94.

"Third pillar" meetings

During 1994 there were 147 meetings of the K4 Committee, the three Steering Groups and their 20 Working Parties. Three new Working Parties were started under the German Presidency (July-December 1994), those on: Forged Documents (Steering Group I),

Police Cooperation (Interception)(Steering Group II), Fraud in Third Pillar (Steering Group III). For the first time a breakdown of the seven Working Groups under Steering Group III (judicial cooperation) is available.

The K4 Committee was set up in November 1993 under the Maastricht Treaty and is comprised of senior interior ministry officials. It considers reports coming from the three Steering Groups, each of which has a number of Working Parties. COREPER (the committee of permanent representatives of each of the 15 EU states), clears all reports from the K4 Committee before they are put on the agendas of the Council of Justice and Home Affairs Ministers.

*K4 Committee: 10 meetings (five under each of the Greek and German Presidencies)

*Steering Group I (immigration & asylum): 55 meetings

7 meetings: Steering Group I

10 meetings: Working Group on External Frontiers

9 meetings: Working Group on Visas

4 meetings: Working Group on CIREA

7 meetings: Working Group on CIREFI

8 meetings: Working Group on Asylum

6 meetings: Working Group on Migration

4 meetings: Working Group on Forged Documents (starting under the German Presidency)

plus: Migration Seminar on Expulsion (March 1994)

*Steering Group II (security, law enforcement, police and customs cooperation): 39 meetings

5 meetings: Steering Group II

12 meetings:Europol

7 meetings: Drugs and Organised Crime

5 meetings: Customs Cooperation (all under the Greek Presidency; none under the German Presidency)

4 meetings: Police Cooperation

3 meetings: Police Cooperation (Interception) (all under the German Presidency)

3 meetings: Terrorism

*Steering Group III (judicial cooperation): 43 meetings

5 meetings: Steering Group III

10 meetings: Community & National Criminal Law

7 meetings: International Organised Crime

8 meetings: Extension of Brussels Convention

7 meetings: Extradition

2 meetings: Disqualification of Driving Licences

2 meetings: Transmission of Acts (started under the German Presidency)

1 meeting: Fraud in Third Pillar (started November 1994)

1 meeting: Drugs & International Organised Crime (Ministerial)

The planned meetings programme under the Spanish Presidency shows that a new Working Group under Steering Group II has been set up on Eurodac - a planned computerised fingerprint identification system for refugees and asylum-seekers - with three

meetings before the end of the year. Another new Working Party on Forged Documents, which was started under the German Presidency in the second half of last year, is to have five meetings.

"Buffer states" in the east & south

The state of the negotiations between the EU and the countries of Central and Eastern Europe seeking to join were summarised in a report to the Cannes Summit in June. The "Association Agreements" with Hungary and Poland (1994) were followed by the entry into force of similar Agreements for Romania, Bulgaria, Czech Republic and Slovakia at the beginning of 1995. Negotiations with Slovenia are nearing completion as are those with the Baltic states of Estonia, Latvia and Lithuania.

The meeting of Justice and Home Affairs Ministers from these countries held with the EU's Council of Justice and Home Affairs Ministers on 20 June in Luxembourg was prepared by two meetings of officials on 19 January and 7 June led by the "Troika" of the K4 Committee (officials from Germany, France and Spain).

As a result of these three meetings cooperation was initiated on: 1) *immigration and asylum*: false documents, the approximation of legislation on movement, and a survey of practices concerning visas issued in third countries and readmission. Two meetings of CIREFI (the EU "Clearing House for Immigration") were held with experts from the CCEE countries. 2) *police and customs cooperation*: the implementation of the Berlin Declaration concerning police and customs cooperation to combat organised crime, and the setting up of the police academy in Budapest. A meeting of "experts" on drugs and organised crime is planned. 3) *judicial cooperation*: a "very comprehensive questionnaire has been sent" out to these countries regarding their accession or ratification of Conventions and agreements.

Euro-Mediterranean Conference

A Euro-Mediterranean Ministerial Conference is to be held in Barcelona on 27-28 November. The terms for the meeting have been set out by the EU and closely mirror those already taken in relation to central and eastern Europe - though in this case the prospect of membership of the EU is not on the agenda. The introduction states:

"An ambitious policy of cooperation to the south forms a counterpart to the policy of openness to the east and gives the European Union's external action its geopolitical coherence."

The Maghreb countries are set a series of objectives related to "human rights", "democracy" and the "rule of law". The section on "Stability, security, good-neighbourly relations" includes the "Fight against terrorism, organised crime and drugs".

Under the heading "Partnership in social and human affairs" alongside education, culture and health are detailed plans on: migration, drug trafficking, terrorism, international crime, judicial cooperation. The "partners", the EU and Maghreb countries, would agree to "increase their efforts to reduce migratory pressure" by identifying "the major causes" and goes on to talk about the promotion of the role of "migrants legally resident" in the EU in the economic development of their regions of origin through: "the use of remittances", suggesting that economic development in the Maghreb countries is financed by the wages of migrants in the EU. The eurocentric tone continues:

"The Union will ask its Mediterranean partners to acknowledge their obligations as regards the readmission of their nationals..."

Thus in the area of "illegal immigration" the "partners" would propose to establish "closer cooperation" on: "facilitation of readmission... cooperation on border controls.. exchanges of information... on illegal migrants... exploitation of the possibilities offered by recourse to bilateral joint committees".

Measures on drug trafficking, terrorism and international crime proposed mirror the concern of the EU Council of Justice and Home Affairs Ministers. Judicial cooperation "would require improvements in extradition procedures... as well as exchanges of magistrates and information".

"TREVI" II

The arrangements set out for cooperation on policing, terrorism, immigration and asylum, the report concludes, should be:

"the various activities [that] will be followed up by *ad hoc* thematic meetings of ministers, senior officials and experts... these meetings may be based on existing cooperation structures, or any other more suitable formula on which the Conference might agree." (italics added. "Experts" means police, immigration and customs officials, interior ministry officials and internal security agencies)

The opening paragraphs of the report refer to: "Cooperation in these areas could include the negotiating of conventions" and the closing paragraphs to the "dialogue... should combine the utmost practicality with the least possible formality".

The networks of "informal" meetings already underway in central and eastern Europe and now proposed for the Maghreb countries has the familiar ring of the workings of the Trevi group. *Ad hoc* arrangements with little or no accountability led by "experts" suggests the "buffer states" are set to become "Trevi" II.

Presidency conclusions: Cannes European Council, 26 and 27 June 1995, SN 211/95; see also Statewatch vol 5 no 3.

Border controls again

The Commissioner responsible for the internal market, Mario Monti, produced a new initiative on 12 July to abolish internal border controls in the EU. The proposal takes up yet again an issue which the UK government (and the Labour opposition) has consistently opposed. The Commission want to put into effect Article 7a the Single European Act 1987 and has given a legal opinion that a Declaration signed by Margaret Thatcher on maintaining border controls is overridden by the main Act. It is reported that the two UK Commissioners, Sir Leon Brittan and Neil Kinnock, voted against the measure.

The proposal says border control arrangements should come under the European Court of Justice and the European Parliament which the UK government is also opposed to. The Commission is intending to introduce three directives: 1) abolishing internal EU border controls with airlines and shipping companies exempted from carrying out the controls; 2) allowing non-EU citizens legally resident in the EU being allowed to travel for short periods using the documents authorising their first entry to the EU; 3) would amend secondary legislation on free movement.

It argues that the combination of the common EU visa (already agreed), the common list of countries requiring visa (currently being discussed), "harmonised" rules on screening asylum-seekers plus increased police and intelligence cooperation external border controls will be effective. Member states would be allowed to re-impose border controls in an "emergency" in cases of a "serious

threat to public order or public safety" for period of 30 days (renewable). The Commission has already recognised that it has no powers over controls exercised *within* each country (this could be half a mile from the point of entry).

The UK government spokesperson said they regretted: "that the Commission has chosen to make such a proposal now when they are aware of the strength of the government's view on this matter. We shall not hesitate to use our veto". All 15 EU states have to agree the measure unanimously.

Independent 13.7.95; Guardian 13.7.95; see Statewatch vol 2 nos 5 & 6; vol 3 nos 3 & 4.

SCHENGEN

France invokes let-out clause

At the meeting of the Schengen Executive Committee on 29 June France's request to extend the three month suspension on fully implementing the Schengen Agreement was turned down. France then invoked Article 2 of the Agreement to extend its non-participation until the end of the year. The French Minister for European Affairs, Michel Barnier, said they wanted to make ensure a "Schengen that works" after complaining that other members were not implementing it properly. Netherlands, he said, had refused to take back three South American migrants without visas who were detained in France on arrival from Amsterdam. Of 581 asylum-seekers from other Schengen countries detained for entering France "illegally" only 2% had been taken back by their country of origin. The other Schengen members - Belgium, Netherlands, Luxembourg, Germany, Spain and Portugal - agreed to fully implement the Agreement from 1 July. On 7 July a Luxembourg Justice Ministry official said that they had re-introduced identity checks on travellers arriving from France.

France did sign an agreement to police forces of its neighbouring countries to exercise the right of pursuit and observation on French territory (this allow officers to carry firearms for use in self-defence but not to make arrests).

Following the agreement with the Nordic Union to allow Norway and Iceland to join the Schengen "acquis" (but not Schengen itself which is only open to EU member states) Sweden followed Finland in making a formal request for observer status (Denmark already has observer status).

Belgium is to continue its Presidency of Schengen until the end of 1995 so that Spain could concentrate on its Presidency of the EU. The Netherlands will succeed Belgium for the first half of 1996.

Agence Europe, 30.6.95; Guardian 30.6.95; Times 1.7.95; Independent 1.7.95; Reuters 7.7.95.

Guardian secrecy case

The *Guardian* secrecy case against the European Council finally reached the European Court of Justice in Luxembourg on 5 July. The six-person court sitting with the Irish judge-rapporteur, Judge Donai Barrington, is expected to give its decision in the autumn.

The case arose when the Council refused to supply background documents concerning the Council of Justice and Home Affairs Ministers and told *Guardian* journalist John Carvel that a set of reports he had been given on the Social Affairs Council: "should not have been sent to you.. this information was sent to you because of an administrative error".

Jill Aussant, the lawyer representing the Council refused to hand over tape recordings of meetings between Ministers or those of COREPER (the permanent committee of representatives from each EU state with ambassadorial status). The tapes, the *Guardian* argued, would show whether the Council in refusing to allow

access to reports and minutes of meetings of Councils of Ministers had reached a "balanced" decision. For the Council Ms Aussant said although the tapes - used to verify the accuracy of minutes - were stored in a "sound archive" they:

"are kept for a certain time, not in any great condition of safety. They are not sealed or signed... They are not authenticated and for that reason the Council considers that neither they nor any transcript from them have any probative value."

The Council also withheld from the court a memorandum from its Legal Service which admitted that applications for Council minutes were automatically rejected as distinct from the Council's assertion that all applications were given a "balanced consideration". Ms Aussant said it was "not appropriate" for documents from the Legal Service to be released which might wrongly be regarded as authoritative opinions of the Council.

The Council's defence rested on the notion that decisions over the secrecy of its proceedings and access to information about its decisions was a political matter and not one for the ECJ.

For the *Guardian* lawyer Onno Brouwer said:

"Only totalitarian regimes legislate in secret.. For generations citizens have been entitled to know the arguments used when legislators pass laws that citizens are expected to obey. They are entitled to the same standards when legislation is debated at a European level."

He argued that the Council was operating a blanket ban on the release of minutes and documents that might reveal disagreements among member states.

The court heard supporting arguments for the *Guardian* case from the European Parliament and the governments of Denmark and the Netherlands. Peter Biering for Denmark said:

"Access to documents of the legislative process is central to democratic control which has to be exercised by the electorate and press."

François Vainker, for the European Parliament, said:

"The Council has behaved unlawfully in failing to recognise the fundamental rights explained to you this morning." (A reference to Article F(2) of the Maastricht Treaty saying fundamental rights would be respected "as they result from constitutional traditions common to member states")

Mr Vainker went to argue that in transferring powers from national parliaments to the Council governments were under an obligation not to dilute the openness of the legislative process typical in member states. Under the "first pillar" (economic and social affairs) the European Parliament using its powers of co-decision conducted its debates on precisely the same legislation as the Council in full public view. Ms Aussant argued that the Council could not be regarded as a traditional legislature because it simultaneously performs the role as an "organ of collective diplomacy".

Guardian 6.7.95; *Irish Times*, 6.7.95; see *Statewatch*, vol 3 no 6; vol 4 nos 1, 2, 3, 4 & 5; vol 5 no 2.

SIRENE has "no problem" with passing on information

The Dutch SIRENE commission, which provides the link between the Dutch police and security forces and the Schengen Information System, has declared that there is no problem in principle in passing

on information on drug users. This was revealed in a written answer to the Belgian Parliament.

The answer in response to a question from Belgian MP, van Dienderen, in which he asked the Ministry of Internal Affairs whether SIRENE were prepared to pass on information on drug users. SIRENE responded by stating that they are prepared to pass on any information on people covered by the Schengen Treaty (which includes the smoking of cannabis amongst offences serious enough to justify being included within the system). Their only caveat to this is that they require that any information which is then used in a prosecution must have the approval of the relevant judicial authority.

Belgian parliamentary answer, 14.4.95.

ECJ rules on health privacy in employment

X applied for a temporary typing job with the Commission. He was asked to undergo a medical exam and agreed, but refused AIDS screening. Tests were performed which suggested immune deficiency and X was told that he was unsuitable for the job. The European Court of Justice held, reversing the Court of First Instance decision, that Article 8 of the European Convention on Human Rights (ECHR), which formed part of the fundamental law of the Communities, guaranteed the right to respect for private life, which included the right to keep one's state of health secret, and interference with this right must be in the general public interest and not disproportionate. Although pre-recruitment medical examination serves a legitimate interest, it does not justify medical tests against the will of the person concerned. But if, after being properly informed, the person withholds consent to a test which the medical officer deems necessary to evaluate suitability for the particular job, the institution cannot be obliged to run the risk of recruitment.

X v Commission of the European Communities: Case C-404/92P, ECR 1994, I-4737.

Study of European internal security

The Netherlands Institute of International Relations "Clingendael" on behalf of the Binnenlandse Veiligheidsdienst (BVD) security service recently completed a study on the influence of European cooperative structures upon the BVD's autonomy. It concludes that the chances of more permanent and dedicated structural arrangements developing in the field of internal security in the near future are small. The report draws attention to the fact that at present, no dedicated structure exists within the European Union which deals specifically with security and intelligence matters. However, the present practice of mainly bilateral working contacts between likeminded "sister services", independent of existing European and international fora, could be expected to develop into ad hoc "coalitions", operating jointly both in operational matters and in policy-implementing bodies such as the European Union Working Group on Terrorism.

The author of the report, Mrs J Pouw writes that at present, cooperation in the police area is the most important for security services and the best guarantee for influencing decision-making is participation in those forums. As long as there is no centralization of competencies and powers in the police and justice areas there seems, she concludes, to be no need to come to a dedicated European forum of consultation on internal security matters.

Mrs Pouw describes the intensive participation of the Dutch security service in a large number of commissions that prepare the Dutch positions in European fora such as the Schengen consultations and a wide range of other working groups on policing

matters and issues such as organized crime, terrorism, customs and narcotics matters. She discusses the possibility of forming a separate security intelligence "cell" within Europol which would allow security services to exchange sensitive information, but recognizes that major obstacles are still in the way. Security services could adopt the Europol model for their own information exchange needs, but the general fear of losing control over sensitive information is likely to prevent such a development in the coming decade, unless Europol itself turns out to be a complete success. According to Mrs Pouw, security services could opt for active participation instead of mere consultation in the Europol Working Group now that terrorism will become part of Europol's mandate.

Security services do participate fully in certain EU forums, such as the EU Working Group on Terrorism that meets several times a year, but according to the "Clingendael" report these meetings are of little practical value. Although the Trevi Secure Fax Network (TSFN), in operation since 1987, is still considered secure and reliable, it is cumbersome and a more sophisticated crypto E-mail system is under preparation. The Working Group has expressed criticism on the security of confidential information transferred through the Commission Secretariat to the various "Bureaux de Liaison" in the national security services. Within the Secretariat such documents are being xeroxed in large numbers, thus increasing the risk of leaks. Although the threat analyses produced in the Terrorism Working Group are largely based on publicly available materials, they are classified as "Secret". The apparent lack of trust in such international arrangements does little to improve the quality of information exchanged through these channels, thus undermining the whole endeavour.

The European Commission Office for Security (ECOS) also has the ambition of growing into a European Security Service. Its director Mr Pieter De Haan has repeatedly expressed his views on this and many employees of European security services, hoping for a fast track career, have taken up positions in the ECOS offices. Its present role however is limited to the securing of the European Union's bodies, mainly through vetting their employees in close cooperation with the national security services, and Mrs Pouw sees little chance of the ECOS developing into anything more substantial in the near future.

J.F.M. Pouw, *Naar een Europees binnenlands veiligheidsbeleid? Europese samenwerking en de "autonomie" van nationale veiligheidsdiensten* (Toward a "European Internal Security Policy?" European Cooperation and the "Autonomy" of National Security Services). The Hague, Instituut Clingendael, 1995, viii + 173 pp., bibl., Dfl. 25,-. The report can be ordered by contacting the Clingendael Institute at tel. +31 70 3245384, fax. +31 70 3282002, e-mail info@clingendael.nl.

Europe - in brief

New centre/right group formed: a new right of centre group of MEPs has been formed - the 56 strong Union for Europe (UFE). It is comprised of 29 Italian members of Silvio Berlusconi's Forza Europa Group, 15 French Guallists, three Portuguese and two Greek MEPs, plus 7 Irish Fianna Fail MEPs. The Irish MEPs were formerly in the European Democratic Alliance group which is subsumed in the new group. It is the third largest group in the European Parliament after the 221-member Socialist group and the 172-member European People's Party (Christian Democrat/Conservative).

EU Ombudsman elected: Javob Söderman, Finland's parliamentary ombudsman since 1989 was elected by the European Parliament - by 241 votes to 221 - to be the first EU Ombudsman.

In the vote he beat Siegbert Alber, a German MEP. The post was created under the Treaty of European Union which came into effect on 1 November 1993. *The Week*, 10-14.7.95; *International Herald Tribune*, 13.7.95.

European Court of Human Rights January - March 1995

Cases declared admissible by the plenary Commission include:

* Alison Halford v UK (20605/92): alleged interception of senior female police officer's telephone calls in connection with proceedings against her chief constable in which she claimed sex discrimination (Arts 8, 10 and 13: private life, freedom of expression, no effective remedy). The Interception of Communications Tribunal had found no violation of the Interception of Communications Act 1985 (without confirming or denying that the calls had been tapped or that authorisation had been obtained from the Home Secretary).

* Ahmed v Austria (25964/94): threatened expulsion to Somalia following revocation of asylum after criminal conviction: (Art 3: inhuman and degrading treatment)

Cases declared inadmissible include:

* Rai (Milan), Allmond (Gill) and Negotiate Now v UK (25522/94): Department of National Heritage refused applicants permission to hold rally in Trafalgar Square for their organisation, in support of peace talks for northern Ireland, on ground that since 1972 there had been a policy banning rallies on northern Ireland from Trafalgar Square. Judicial review had been refused. The Commission held the application, under Arts 9, 10 and 11 (freedom of conscience, assembly, expression) inadmissible, on the ground that the ban applied only to one high-profile location, and pursued the aim of preventing disorder and protecting the rights of others.

* Associated Newspapers v UK (24770/94): Applicants convicted of contempt of court and fined £60,000 for publication of jury room secrets after Blue Arrow trial: no breach of Art 10 (freedom of expression); the strict prohibition on disclosure of jury room deliberations necessary in a democratic society to safeguard the freedom of expression of jurors in the jury room: inadmissible. Cases recently referred to the Court by the Commission include:

* Buckley v UK (20348/92): Repeated refusal of planning permission to allow Gypsy family to station their three caravans on their own land: Commission found breach of Art 8 (family and private life).

* Wingrove v UK (17419/90): Refusal to classify video on grounds of blasphemy; Commission found breach of Art 10 (freedom of expression).

* Pullar v UK (22399/93): Presence on jury trying applicant on criminal charges of an employee of a prosecution witness: Commission found breach of Art 6(1) (fair trial by impartial tribunal).

* Boughanemi v France (22070/93): Tunisian, living in France since age eight, whole family there, French cohabitee and child, expelled after series of criminal convictions: Commission found breach of Art 8 (family life).

* Amuur v France (19776/92): detention of Somali asylum-seekers

in "international zone" of airport later declared unlawful by French constitutional court, refusal to entertain their asylum claims, refusal of entry and removal to Syria: Commission found no breach of Art 5 (right to liberty and security of person).

* *Gustafsson v Sweden* (15573/89): Boss refused to join employers' association or recognise collective agreement between it and unions; government's refusal to restrain picketing and boycott of his business: Commission found that lack of state protection violated Art 11 (freedom of association).

Judgments

The Court gave judgment in the cases of

* *Quinn v France*: Eleven-hour detention after court ordered immediate release, so that authorities could prepare extradition request, did violate Art 5(1) (right to liberty); subsequent detention for extradition did not.

* *Piermont v France* (Series A, Vol 314, 27.4.95): German MEP expelled from French Polynesia in 1986 after participating in demonstration and speaking against French nuclear tests in Pacific: no breaches of Protocol 4 Art 2 (freedom of movement), but breach of Art 10 (freedom of expression), in that a fair balance was not struck between the public interest in preventing disorder and MEP's freedom of expression as elected representative.

* *Prager and Oberschlick v Austria* (Series A, Vol 303, 26.4.95): Author and publisher of article very critical of named judges, found guilty and fined in private prosecution for defamation: no breach of Art 10 (freedom of expression): judiciary should be protected from destructive and unfounded attacks.

European Parliament

Resolutions

Racism and xenophobia, 27.10.94, *OJ* no C 323, p154-156.

Trial of Turkish members of Kurdish origin of the Turkish Grand National Assembly, 15.12.94, *OJ* no C18, pp177-179.

Progress made during 1994 in the implementation of cooperation in the fields of justice and home affairs pursuant to Title VI, 13.12.94, *OJ* no C18, pp39-42.

Schengen Agreement and political asylum, 6.4.95, *OJ* no C109, pp169-170.

Communities financial interests (proposal for Convention), 15.3.95, *OJ* no C89, pp82-83.

Racist murders in Austria, 16.2.95, *OJ* no C56, pp106-107.

Uniform format for visas, 16.1.95, *OJ* no C43, pp11-13.

Debates

Plutonium trafficking, 28.9.94, *OJ* no 4-451, pp80-89.

Racism and xenophobia, 26.10.94, *OJ* no 4-452, pp111-122.

Europe - new material

European co-operation: reconciling national impulses, Richard Latter. *Wilton Park Paper 98* (HMSO) 1995. Based on Wilton Park Anglo-French symposium on "Future European Foreign and security co-operation",

Too many cooks in Europe, Andre Bossard. *Policing* Vol 11, no

2, pp99-111, 1995. Article on bureaucracy and police co-operation in Europe by a former head of Europol.

Cautioning works, Andy Roughton, Chris Glynn, Chris Robinson & Liz Stafford. *Policing* Vol 11 no 2, pp120-130, 1995. Looks at young offenders in the West Midlands and concludes that "there is little evidence."

Interpretation of European Community law, Andrew Brown. *Legal Action* June 1995 pp10-12. Explanation of the different ways in which European law affects the UK.

Recent developments in European Convention law, John Wadham & Philip Leach. *Legal Action* July 1995, pp14-18. Summarises cases at the European Commission and Court of Human Rights which are relevant to Britain and Northern Ireland.

The shape of the Union after 1996, Werner Hoyer. *European Brief*, June 1995, pp5-8. German Minister of State in the Foreign Office argues for changes through the 1996 intergovernmental conference.

More power to parliament's elbow, Francis Jacob. *European Brief*, June 1996, pp8-10. Calls for an extension in the European Parliament's powers of co-decision.

The co-decision procedure of the European Parliament - a step towards greater transparency, Dr Karl von Wogau, MEP. *Kangaroo Group Newsletter*, March 1995, pp5-7. Argues that the new co-decision procedure in some policy areas enhances the European Parliament; it "embraces both consensus as well as checks and balances".

Democracy in Europe, Tony Samphier. *Big Issue*, no 135, 19.6.95, p8. Interview with Pauline Green MEP leader of the Socialist Group in the European Parliament.

1996 and all that, David Martin MEP. *European Labour Forum*, no 15, Summer 1995. The Vice-President of the European Parliament looks at the issues raised by the 1996 intergovernmental conference (IGC).

Parliamentary debates

Europol: ECC report *Lords* 6.6.95. cols. 1307-1339

European summit (Cannes) *Commons* 28.6.95. cols. 893-909

CIVIL LIBERTIES

TV producer wins legal action

In the High Court on 28 July lawyers for the Department of Trade and Industry withdrew "untrue" allegations made by the then President of the Board of Trade, Michael Heseltine, his ministers and civil servants made about Mr Martyn Gregory, producer of the *Trail*. They agreed to pay Mr Gregory substantial damages and his full costs of £55,000.

The programme had exposed the involvement of the UK government and British companies in exporting electro-shock weapons which could be used for torture. Mr Gregory took legal action for defamation against the Department of Trade and Industry following accusations in letters signed by the Rt Hon Michael Heseltine MP, Richard Needham MP, and Ian Taylor MP that the film was "scaremongering" and made "false" or "contrived"

allegations against British Aerospace and others. At the end of June Mr Gregory was interviewed under caution by Ministry of Defence Police alleging breach of the Firearms Act and incitement of others to do so - which carries a sentence of up to five years in prison.

Mr Gregory commented: "How can the Government justify spending thousands of pounds investigating me as the journalist who exposed the trade in electro-shock weapons, while they have yet to bring any of the traders in weapons of torture to justice?" While his solicitor, Geoffrey Bindman, said: "Mr Gregory deserves high praise for exposing a disreputable trade. For Government Ministers to hound the messenger instead of heeding the message is a disgraceful misuse of their power."

An Early Day Motion in the House of Commons supporting Mr Gregory proposed by Ann Clywd MP was signed by 187 Labour and Liberal Democrat MPs.

Omega Foundation, Manchester.

Civil liberties - in brief

UN slates UK on human rights: The UK was severely criticised for its human rights record by the UN Human Rights Committee, which declared itself "angered and disappointed" in its five-yearly review. The Committee demanded the reinstatement of the right to silence, removed in the north of Ireland in 1989 and in Britain in 1994, as a vital protection for an accused in the absence of a bill of rights. The abolition of the 300-year-old right was held by the committee to violate Article 14 of the UN covenant which guarantees the presumption of innocence and the right not to incriminate oneself. Other features of the UK's human rights record attracting the Committee's condemnation included: the detention of asylum-seekers; the lack of a credible police complaints system; the lack in Northern Ireland of a credible complaints system against the army

SPAIN: Data Protection Agency one year old: The Data protection Agency began work in Spain a year ago. Since then it has catalogued 221,486 automated files with information on citizens; 198,000 of these are in the private sector. The Agency has imposed fines of 80 million pesetas on eight companies mainly for incorrect use of the electoral role and the inclusion of data in "slow payer files" without rectification. In a separate development in July the Economic Commission of Congress made official the "black lists" (mainly relating to cars) that are exchanged between insurance companies. It is to be included in the Law on Supervision of Private Insurances which will be debated in Parliament.

US Senate approves Terrorism Bill: On 8 June the US Senate overwhelmingly approved a Republican version of the counter-terrorism Bill by 91 votes to 8. The Bill allows for the detention, deportation and exclusion of "suspected" of "alien terrorists". *International Herald Tribune*, 9.6.95; see *Statewatch*, vol 5 no 2.

Civil liberties - new material

A right to law, Stephen Sedley. *Guardian* 11.5.95. Argues that human-rights protection should be incorporated within British law.

No last rights: the denial of Justice and the promotion of myth in the aftermath of the Hillsborough disaster, Phil Scraton, Ann Jemphrey & Sheila Coleman. *Centre for Studies in Crime & Social Justice* (Edge Hill University College) 1995 pp342. This is the final report of the Hillsborough Project. The first part provides an analysis of inquest procedures in the context of disasters and considers the experiences of the Hillsborough bereaved. The

second section assesses the role of the media.

Sleaze: a guide to the scandals of the Major years. *Independent on Sunday* 23.7.95. Newspaper supplement that itemises recent political scandals that have hit the Conservative (34 cases), Labour (4 cases) and Liberal Democrat (1 case) parties.

How to defend yourself in court, Michael Randle. Civil Liberties Trust, 21 Tabard Street, London SE1 4LA. £4.99 plus 10% for p&p.

Rapport et Réponse du Gouvernement de l'Italie au rapport du Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) relatif à sa visite effectuée en Italie du 15 au 27 mars 1992. Council of Europe, Strasbourg, CPT/Inf(95) 1, 31.1.95, pp76, CPT/Inf(95) 2, 31.1.95, pp105.

Report and Response of the Government of the UK to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Northern Ireland from 20 to 29 July 1993. Council of Europe, Strasbourg, CPT/Inf(94) 17 & 18, 17.11.94, pp50 & 90.

Report and Response of the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 14 to 26 March 1993. Council of Europe, Strasbourg, CPT/Inf(94) 20 & 21, 29.11.94, pp110 & 82.

Identity cards: putting you in the picture. An information pack from the Data Protection Registrar, July 1995, 18 pages. From: Data Protection Registrar, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Identity cards: data protection implications. *Data Protection News*, issue no 22, Summer 1995, pp18-25.

Civil liberties - parliamentary debates

Geneva Conventions (Amendment) Bill *Lords* 14.6.95. cols. 1861-1886

Sexual Orientation Discrimination Bill *Lords* 14.7.95. cols. 2004-2022

LAW

Hearsay trials?

Convictions on the unchallengeable evidence of an informer or an undercover agent could become commonplace in our criminal courts if a Law Commission proposal on hearsay in criminal trials is accepted. The Law Commission proposes doing away with the hearsay rule, which prevents a witness giving evidence that "X told me he had seen Y committing the crime". The present rule, a cornerstone of criminal justice, is that all evidence must be capable of being challenged by cross-examination. The proposal is to admit hearsay evidence so long as there is a "good reason" why the second-hand witness cannot or will not attend court: death, illness, absence abroad or unwillingness to attend are given as examples.

The police and security services have tried for some time to relax the rule to protect informers, but it is from the coroners' courts in

Northern Ireland that the Commission appears to have drawn inspiration. There, army and RUC developed hearsay evidence into an art form, with the assistance of public interest immunity (pii) certificates signed by ministers, to ensure that officers did not have to come to court to give evidence and be identified. Coroner John Leckey tried to challenge the system by demanding the attendance of officers so they could be questioned, but was rapped over the knuckles by the Northern Ireland Court of Appeal. Now it seems the system designed for Northern Ireland is to be imported wholesale into the British criminal justice system.

Law Commission consultation paper 138.

Playing tag

The Home Office is insisting on going ahead with further tagging trials despite persistent equipment failures and strong criticism from probation officers and others. Trials were due to start in early July, on offenders of 16 and over in Manchester and Norfolk, after delays when electronic warnings failed to sound as Home Office officials left their "curfew" zones and went to pubs, shopping centres and on walks. Securicor Custodial said they knew what the problem was and it was solvable.

The first tagging trials in 1989 ended in disaster when most of the tagged defendants absconded or committed further offences. Tags have not been an unqualified success in the US, where they originate, either, as a fact-finding survey carried out for the Association of Chief Probation Officers showed. Schemes in the US were closing as tags had been found to be "largely ineffective, very expensive, and did not deal with high-risk offenders".

Independent 2 & 13 & 29.6.95; 3.7.95.

Racist justice

The criminal justice system makes racist assumptions and allows black people to believe they are beyond the law's protection, Lord Chief Justice Taylor told Leeds Race Issues Advisory Council in June. Having catalogued the sites of potential racism within the criminal justice system, and the "multiplier effect" which resulted in dramatic figures for black incarceration, he called for more racism awareness training for police, court staff, CPS and probation officers, despite the scepticism of critics who believe that most of those groups are well aware of how racist they are. *Guardian 1.7.95*

Lifers defeat for Howard

Home Secretary Michael Howard suffered another rebuff at the hands of the House of Lords in June when the Lords voted for murderers to be told the judge's recommended minimum sentence in open court, with a right of appeal. This would replace the current secret system where, except in a few high-profile cases, the judge tells the Home Secretary in private what his recommended minimum is.

An open system is demanded by the European Court of Human Rights, which has ruled that the current system depends too much on executive discretion, and violates prisoners' rights to liberty and security of person. Michael Howard is expected to reverse the defeat in the House of Commons, where his proposal to retain the behind-closed-doors discretion will probably go unopposed.

Independent 27.6.95

UN demands right to silence

The United Nations Human Rights Committee has demanded that the Home Office reinstate a defendant's right to remain silent which

was abolished earlier this year. It argued that it was a fundamental common law protection, particularly as Britain does not incorporate any human rights conventions into its legislation.

The Committee also urged Britain to introduce a Bill of Rights and was critical of the jailing of asylum seekers, the absence of an independent system of investigating complaints against the police (and the military in Northern Ireland) and the failure to treat domestic violence as a human rights issue.

Independent 22.7.95.

Law - new material

Judges and the law in British international relations: towards a European right to strike, Roger Welch. *Social & Legal Studies* 4(2):175-196, 1995. On the notion of uniformity in laws regulating labour relations within the EU and the British opt-out of the Protocol on Social Policy to the 1991 Maastricht Treaty.

Time intervals for criminal proceedings in Magistrates' Courts: October 1994. *Lord Chancellor's Department 1/95*, HMSO.

Access to justice, Mark Henderson. *Socialist Lawyer* 22:10-16 1995. Interview with shadow Legal Services spokesman Paul Boateng on the green paper "Access to Justice" and a response to it by the Haldane Society.

The forgotten fight, Lauryn Beer. *Guardian Gazette* 24.5.95 pp22-23. Piece on the safety of women human rights lawyers.

Doubts and burdens: DNA evidence, probability and the courts, Mike Redmayne. *Criminal Law Review* pp 464-482, June 1995. This piece reviews criticisms of DNA evidence.

The Criminal Justice and Public Order Act 1994: evidence and the right to silence, Neil O'Day. *Legal Action* July 1995, pp10-13. On the abolition of the right to silence.

Parliamentary debates

War Crimes Act 1991 *Lords* 15.5.95. cols. 290-291

Criminal Appeal Bill *Lords* 15.5.95. cols. 298-329

Criminal Appeal Bill *Lords* 8.6.95. cols. 1470-1516

Criminal Appeal Bill *Lords* 12.6.95. cols. 1591-1630

Criminal Appeal Bill *Lords* 26.6.95. cols. 530-589

Criminal Appeal Bill *Lords* 3.7.95. cols. 942-969

Criminal Justice (Scotland) Bill *Commons* 7.6.95. cols. 215-294

Criminal Justice (Scotland) Bill *Lords* 5.7.95. cols. 1153-1200

NORTHERN IRELAND

A High Court judge accused the governor of Belmarsh prison of contempt of court after hearing about new restrictions on prisoners there which include thick plastic screens preventing proper communication with legal advisers. The judge, Andrew Collins QC, heard in July how, for the past few weeks, lawyers acting for IRA prisoners were forced to shout to be heard by their clients, and prison officers could not help overhearing conversations which were supposed to be conducted in private. Security cameras oversaw the visits. The number and thoroughness of the search procedures at the prison also interfered with legal visits by reducing to under an hour, in some cases, the time available for consultation.

Conditions at Whitemoor prison were said to be even worse. Lawyers could not pass documents to their clients, but had to place

papers in a bag which was then sealed and taken round to the prisoner in a process which took up to fifteen minutes per document.

The judge condemned the restrictions at Belmarsh as probably in breach of the European prison rules, and told Home Office officials to warn the governor that he could be in contempt of court by interfering with prisoners' access to legal counsel. Conditions at Whitemoor were the subject of a separate judicial review.

Norney can challenge parole delay

Republican prisoners including Paul Norney, the longest serving Irish republican prisoner in the UK, won leave to challenge what they described as "irrational and unreasonable" parole board delays after arguing that, having completed the 20-year tariff on their discretionary life sentence imposed for retribution and deterrence, they should be entitled to immediate parole hearings. The court heard that, since the IRA ceasefire, the men could no longer be detained as a danger to the public and their rights were being violated by their continuing detention, and judge Owen agreed that they had an arguable case against the parole board.

Independent 22.7.95

Panopticon Belfast

Exactly one year after the IRA ceasefire, Belfast will have a fully-operational camera-based surveillance system. The cameras are to be mounted on 18ft poles at 15 locations around the city centre. The cost is put at £500,000 and the cameras will be monitored from Musgrave Street RUC barracks.

Northern Ireland - new material

Recent developments in Northern Ireland, Patrick Mayhew. *RUSI Journal* vol 140 no 2, pp5-10 1995. This piece is based on a presentation to the RUSI by the Secretary of State for Northern Ireland.

Ireland: new beginnings? Special issue of *Race and Class*, guest editor Bill Rolston. Articles include: Can Britain leave Ireland? The political economy of war and peace, Mike Tomlinson; Selling tourism in a country at war, Bill Rolston; Finding a place: women and the Irish peace process, Margaret Ward; Women in political conflict, Eilish Rooney; Political change and the Protestant working class, Johnston Price; The last conquest of Ireland? British academics in Irish universities, Robbie McViegh. £5.00, 124 pages. From: Institute of Race Relations, 2-6 Leake Street, London WC1X 9HS.

Northern Ireland - parliamentary debates

Northern Ireland (Emergency and Prevention of Terrorism Provisions) (Continuance) Order 1995 *Lords* 15.6.95. cols. 1954-1975

Northern Ireland Commons 12.6.95. cols. 501-546

Northern Ireland Act 1974 (Interim Period Extension) Order 1995 *Lords* 13.7.95. cols. 1914-1938

Northern Ireland Act 1974 Commons 5.7.95. cols. 469-490

IMMIGRATION & ASYLUM

UK

Refugee procedures "ineffectual"

The so-called "accelerated procedures" for returning refugees to "safe" countries of transit, condemned consistently during the two years of their operation for the injustice and hardship they create for refugees, have been revealed as hugely wasteful and ineffectual by Amnesty International. The system of screening refugees for return to the third safe country has resulted in an extra tier of interviews, necessitating more staff, an increase in the use of detention and a whole parallel system of appeals. The system is known by immigration lawyers to be near breaking point (see *Statewatch* vol 5 no 3). Amnesty says that the Home Office is having to reconsider or rescind over 90% of its decisions in "third country" cases, and claims that the system could not be more protracted and wasteful of public funds if it was deliberately designed to be. The Home Office denied Amnesty's figures, costings and conclusions, saying that the Home Office unit dealing with "third country" cases cost less than £100,000 a year. This figure does not include the costs of detention or appeals.

DENMARK

Tamilgate: update

In September 1987 the then Danish Minister of Justice and the Danish immigration authorities put a stop on "immigration for family reunification" for Tamils. The so-called "Tamil-stop" lasted for 16 months causing serious hardships - including nervous breakdowns, attempted suicide, suicide and rape - among those waiting to be united in Denmark and Sri Lanka. According to recent articles, the "stop" even resulted in several deaths in Sri Lanka among those waiting for the Danish authorities to reach a decision concerning family reunification. The "stop" was illegal, as the Tamils had the legal right to remain in Denmark and be reunited with their families (see *Statewatch* vol 4 no 4).

In June 1993 a majority in the Danish parliament voted to impeach the former Minister of Justice, Erik Ninn-Hansen, for violating the Law for Ministerial Responsibility. The impeachment started in March 1994. A short time later the 72-year old former Justice Minister was declared "seriously ill" following a cerebral thrombosis. This led to an angry parliamentary debate over whether the proceedings should be dropped on humanitarian grounds. In August 1994 parliament decided to postpone the case indefinitely - a decision that was confirmed on three later occasions. In November the Legal Medical Council concluded that Ninn-Hansen would be incapable of participating in a court case.

Legal experts discussed, and disagreed, about the consequences of dropping the case, which had already cost the Danish state 40 million DKR. A professor in penal law, Vagn Greve f.i., argued that parliament could stop the case but that this would conflict with the principal of equality before the law. He pointed out that there are many cases where people are unable to participate in their defence that go ahead each year. Others argued that this was an impeachment and cannot be compared with an ordinary penal case.

Finally, at the end of 1994 a majority in the parliament decided that the case should go ahead as soon as Ninn-Hansen's health was stable. In April 1995 thirteen of the twenty judges in the Impeachment Court voted in favour of the case proceeding. Their decision may well have been influenced by the fact that Ninn-Hansen's health showed a marked improvement; he took frequent walking and bicycle trips and was working on an article for a journal. The official argument for proceeding asserted that Ninn-

Hansen should not receive favourable treatment compared with people in penal cases.

On June 22, six years after the beginning of the "Tamilgate" case, Ninn-Hansen was found guilty of violating Paragraph 6 of the Law for Ministerial responsibility (which carries a maximum sentence of 2 years). The decision was broadly in agreement with the conclusion reached by High Court judge, Mogens Hornslet in January 1993. Fifteen of the judges stated that Ninn-Hansen should be sentenced after being found guilty; eight of them believed that he should receive an eight month suspended sentence while the 7 argued for a fine. The five other judges argued that he should be acquitted. Ninn-Hansen was eventually given a four month suspended sentence.

Information, Copenhagen

SPAIN

More stowaways

On July 6 six stowaways from Mali, Liberia and Cameroon arrived at the Basque harbour of Pasaia. The first visit of SOS Arrazakeria-SOS Racismo and the Red Cross was denied. However, the following day the Red Cross and CEAR (Spanish Commission for Aid for Refugees) talked with the stowaways, two of whom were minors. The CEAR unsuccessfully attempted to transfer the minors to an official refuge in Gipuzkoa but were thwarted by the District Attorney who refused a medical examination to establish the age of the minors. A petition calling for the other stowaways to be given residence on humanitarian grounds was also rejected. After they attempted to escape from the ship they were detained on board. The ship then left for Aviles, Spain where the stowaways were also refused permission to leave the ship. The ship will now go to Venecia, Italy before heading for Rijeka in Croatia.

On June 19 one of four stowaways on board the Seegreco 11 died in the Bay of Algeceiras; another is missing. According to press reports they jumped into the sea while a mile from the harbour.

Kontrola Kontrolpean, Donostia, Euskadi (Spain).

26 refugees leave Cueta

Twenty six of the 270 refugees living in appalling conditions in Cueta (see *Statewatch* Vol. 5 no. 3) have been allowed to leave and enter Spain. They will have a work and residence permit for a year, which will be renewed if they get a job. For the time being the Red Cross and Caritas will organise housing. The permits were granted following protests outside the Spanish delegation in Cueta during which 11 refugees were hospitalised after police were called in.

Kontrola Kontrolpean, Donostia, Euskadi (Spain).

Council of Ministers fix new contingent

On 9 June the Spanish Council of Ministers fixed the new "cupo", the contingent of working permits for this year. There will be 25,000 authorizations to work for non-community foreigners. However, this does not mean that 25,000 immigrants may enter Spain. There are still 17,000 immigrants waiting from last year to gather the necessary requirements to have recourse to the cupo. Of the remaining 8,000 permits for new immigrants 2,500 are intended to be used for domestic servants (from Peru, Philippines and the Dominican Republic) and 5,500 for the seasonal agricultural sector (mainly Moroccan immigrants). Without the cupo there is practically no possibility to obtain a work permit. The number of cupo for each province differs due to the demands of the labour market but is ridiculously small. It reflects the frequently repeated official line: "We can't admit more immigrants than the labour

market needs".

Kontrola Kontrolpean, Donostia, Euskadi (Spain).

POLAND

Germany expels 300 Poles

On 24 June the German Border Guard (BGS) expelled 300 Polish people from Frankfurt an der Oder on charges of seeking illegal employment. Before being returned over the border they were detained in a factory hall for 12 hours without food and water.

The Poles, mostly young residents of the Polish border town of Slubice, were lured into Frankfurt an der Oder by an offer of employment distributing a German promotional paper printed in Poland, "Brandenburger Spitz". The job had been advertised on posters around Slubice offering 100 Deutschemarks per person a day. Job seekers were told to meet in a hall of the now-defunct semiconductor plant at 6 am. When they arrived the Poles were surrounded by BGS officers using sticks and unmuzzled dogs to herd them into the building where they were told to sign a document - which many did not understand - admitting to having distributed the papers. All but 10 of the detainees were transported to Slubice by the German border guards and barred from re-entering Germany for five years.

The next day about 100 Poles blocked the Slubice border crossing in protest and the government summoned the German ambassador. On 30 June officials of the Frankfurt an der Oder Office for Foreigners opened a special office in Slubice where the Poles would have the "no entry visas" on their passports cancelled.

Warsaw Voice, 2 & 9.7.95.

FINLAND

New Leadership demands permissive policy

Finland, being a country with a low acceptance of refugees has been urged by a new leadership to open up its borders. Recently journalists reported that, the president of State, Mr Martti Ahtisaari demanded a more liberal policy towards refugees. Ahtisaari, a former UN Deputy Secretary-General and a diplomat to several African countries, was elected president last year.

Following general elections in March, the new Finnish minister of the Interior, Mr Jan-Erik Enestam, has also announced more permissive guidelines on foreigners and refugees. Enestam represents the liberal SFP party, which mainly draws its support among the Swedish minority of Finland. In 1994 less than 900 refugees and asylum-seekers arrived in Finland.

AUSTRIA

Aliens and EU Association agreements

When Austria joined the EU it undertook to comply with a whole series of Association Treaties between the EU and Algeria, Morocco and Turkey. However, a government spokesperson has said that Austria needs more time to amend its Aliens Law. In an article in the magazine *Juridikum* Sepp Brugger, Adviser to the Green Party in the Austrian parliament, says it is alarming how little government ministries know about the regulations due to be enforced.

As one of the purposes of the Association Agreement with Turkey is to realise the free movement of workers the Austrian Law on the Employment of Aliens needs to be amended to allow them free access to the labour market after four years employment and for family members after five years residence. Similarly the Aliens law needs amendment to allow those with access to the labour market also to have the right of residence. The only limitation on this being

on grounds of public order, internal security or health on which the European Court of Justice has ruled. The court says that these grounds for refusal of residence are only justified when a genuine and significant serious threat to society can be proven. Nor could aliens be deported or refused residence on "preventative" grounds or for inaccuracies when filling in forms on entry to the country or applying for residence.

Juridikum, no 3, 1995, Vienna.

GERMANY

Deportation to continent of origin

The Federal Republic will in future deport refugees without identity papers to any state in their continent of origin willing to accept them. According to a report in the *Tageszeitung* newspaper (24.5.95), the Conference of Federal Interior Ministers this May created a working group specifically to investigate the logistics of this procedure. The report quotes the case of a Liberian refugee who was deported to Gambia because the Gambian Honorary Consul in Düsseldorf, Herr Becker, was prepared to issue a Gambian "emergency passport". The plans of the Interior Ministers' working group will however depend on the readiness of the states in the regions - mainly Africa and Asia - to accept refugees of uncertain nationality.

Berlin Anti-racist information network, May/June update.

German states split on deportation

In direct defiance of the Federal Government, the Interior Ministry of the state of Hessen decreed a 6-month moratorium on deportations of Kurdish refugees to Turkey on 13 June. Hessen's Social Democratic Interior Minister Gerhard Bekel said the decision was based on "human rights violations in Turkey", which represent "a considerable danger to deportees". The decision means a six-month respite for some 1600 Kurds living in Hessen.

According to the Hessen Interior Ministry, the date set by the Federal Government for the nationwide resumption of deportations only applies to those states which already had their own moratorium in force. As this was previously not the case in Hessen, that state was now in a position to exercise its right to stop deportations for six months. Other states were forced to resume deportations on 12 June.

In a further development the Supreme Administrative Court in Schleswig, northern Germany, decreed on 23 June that Kurdish refugees from the east and southeast of Turkey have a general right to asylum in the north German state. The decision applies to refugees from the ten provinces where a state of emergency is currently in force and the neighbouring 12 provinces. According to the court, refugees from this area are deemed to suffer persecution solely on the grounds of their ethnic origins and have no other safe refuge within the area of the Turkish state. This decision has immediate consequences for some five hundred refugees in Schleswig whose cases are pending, but explicitly does not apply to other Kurdish refugees from other parts of Turkey.

Berlin Anti-racist information network, May/June update.

"Repatriation for aid" agreed

The Federal Interior Ministry announced over the weekend of 3-4 June that agreement had been reached with the Vietnam government on the repatriation of 40,000 Vietnamese immigrants in Germany. A speaker for the Berlin city senate commented that deportations would begin before the official signing of the treaty.

The question of the forced deportation of the Vietnamese

immigrants in Germany came onto the political agenda when the German government revoked the residence permits of all Vietnamese contract workers to the former East Germany last year, thus transforming the entire group into "illegal immigrants". In addition the Economics Ministry has been sponsoring a long term multi-million mark poster campaign directed against the so-called "cigarette mafia", allegedly run by Vietnamese gangs, apparently as part of a campaign to connect the Vietnamese community with criminality in the public mind.

The German-Vietnamese Friendship Association "Reistrommel" (Rice-Drum) has criticized the repatriation agreement, yet apparently seems to accept deportation as a fait accompli. A spokesperson for the organisation is quoted as being primarily concerned with the reception awaiting future deportees, claiming that the Vietnamese government was planning to put some of those to be repatriated on trial for treason.

A speaker for the Berlin Senate commented that there were as yet no measures agreed on to monitor the human rights situation in Vietnam, but that this was no object to starting deportations immediately. Interior State Secretary Bese of the Berlin Senate went on to claim that the main objective of the agreement had been to act "effectively against the cigarette mafia and the associated serious criminality". Deportations prior to the formal signing of the agreement would be a "balancing act" but would be "justified by the high pressure of expectations". Secretary Bese also remarked that the deportations would also mean that "those Vietnamese living legally in Berlin won't be treated the same as their criminal compatriots". He failed to mention that the government has ensured that practically no Vietnamese citizens are able to live legally in Berlin.

The German Interior Ministry also announced that a total of DM100 million in development aid, as well as DM20 million in "immediate aid" would now be made available to the Vietnamese government in return for its acceptance of the repatriation program.

The European Parliament passed a resolution condemning the deal over Vietnamese immigrants on 6 April. By 151 votes to 99, the resolution attacked the exchange of people for money as a condition of a cooperation agreement with a Third World country.

Berlin Anti-racist information network, May/June update; *The Week*, 3-7 April 1995.

SWEDEN

Tamils refugees go into hiding

A group of 29 Tamil refugees who arrived in Sweden by boat from Lithuania in June have gone into hiding after their applications for asylum were rejected. The Swedish government does not accept that Tamils are routinely subject to oppression in their home country. When informed they would be expelled back to Sri Lanka the group went into hiding with sympathetic Swedish people.

They are the first group of 1,200 "boat people" - with others from Iran, Iraq and Pakistan - to arrive in Sweden from the Baltic states since 1992 to be told they will be deported.

As concern mounts among refugee support groups and other NGOs about the new tougher line in Swedish asylum policy, a disturbing new case has come to light. A 26-year-old Peruvian woman and her nine-month-old baby, who arrived in Sweden in 1994 with her husband, a former active member of Peru's opposition movement, are due to be sent back to the Latin American country despite the fact that the mother is not deemed capable of looking after the child.

The husband recently began a ten-year prison sentence for assaulting and subsequently killing the couple's first child. The mother, who knew of the assaults but failed to prevent them, has

had the second child taken from her and placed in foster care.

Sweden's social authorities have denounced the decision of the Invandraverket, the state immigration board, which was upheld on appeal by the Aliens Board, to deport the mother and child. Karin Rohlin, spokeswoman for the Swedish NGO Fund for Human Rights, said she did not believe Peru was a "safe destination" for someone with connections with the political opposition. "We are very concerned about the changes that are taking place (in Swedish refugee practice). We feel that Peruvians are being sent back to an uncertain future," she said.

A recent report by a cross-party parliamentary commission recommended a tightening not just of the interpretation of asylum regulations but also of a more restrictive rule framework. If adopted, the proposals seem certain to fuel the growing numbers of Swedes who take the law into their own hands, by hiding refugees in order to help them evade deportation.

Interpress, 23.6.95 & 25.7.95.

Immigration - in brief

Zairean Woman Alive: A Zairean woman, Marie-Louise Schingila, who was reported as having been killed after being deported from Belgium has now been declared alive (see *Statewatch* vol 5 no 3). Schingila, a member of the Zairean opposition party UDPS, was deported from Belgium at the end of last year after having been held in a Belgian deportation centre for over a month. Representatives of the Belgian Green party declared that she had been killed in Zaire at a press conference in May. *De Morgen*, 10.6.95

France: Africans and Romanians forcibly deported: French authorities deported two plane-loads of "illegal" immigrants in July. The first on a flight from Paris to Bucharest with 51 Romanians. The second plane-load to Zaire carrying 43 Africans including 7 passed on by Belgium, Netherlands and Germany under "Schengen" cooperation. "Some of the deportees had been taped and loaded on to a plane like merchandise," said Floribert Chebaya, a Zaire human rights official who saw the passengers disembark, "There is indignation in Kinshasa at seeing Western countries treating Zaireans like animals". *Times*, 21.7.95.

Immigration

Germany: Asylum-seekers drown: The Bundesgrenzschutz (BGS, federal border police) recorded 20 deaths of asylum-seekers trying to swim across the River Oder. Six more have died this year say the BGS who admits their figures are probably an underestimate. *Die tageszeitung*.

Immigration - new material

Review: Still resisting after all these years: A century of international struggles against immigration controls, 1895-1995. Steve Cohen, Greater Manchester Immigration Aid Unit, 400 Cheetham Hill Road, Manchester M8 9LE, £2.50. This new pamphlet continues the excellent occasional series from GMIAU on aspects of immigration, refugee and nationality law in an informative and inspiring historical sketch. Readers are taken through the organisational resistance to racist immigration controls, from the Jews fighting proposals for refugee controls in the 1890s to current actions against deportation - and in the US, from the campaigns among industrial and agricultural workers to the recent central American and Haitian refugee movements. Packed with information, a valuable resource.

Campsfield Monitor Issues 6 & 7 (March-June) 1995. Includes articles on the new Immigration Bill and the Tumim Report.

International migration in the EU member states - 1992. *Statistics in Focus* 3, 1995. Deals with international migration flows in 1992 for the member states of the EU.

Asylum statistics United Kingdom 1994. *Home Office statistical Bulletin* 15/95

Recent developments in immigration law, Rick Scannell, Jawaid Luqmani & Chris Randall. *Legal Action* July 1995, pp19-23. Latest update of developments in immigration law.

Strained relations, Kevin Ovenden. *Socialist Review* June 1995, pp 18-19. Interview with Claude Moraes of the Joint Council for the Welfare of Immigrants.

Parliamentary debates

Asylum seekers *Lords* 4.7.95. cols. 1065-1082

Immigration service (Hackney council) *Commons* 12.7.95. cols. 1062-1070

MILITARY

Secret radiation experiments

A Channel 4 television programme, "True Stories: Deadly Experiments", which was screened in July, reported that radiation experiments were carried out on pregnant women in London, Liverpool and Aberdeen during the 1950s and 1960s. The tests involved monthly injections of radioactive iodine into thyroid glands and placentas.

The British Medical Council has claimed that the levels of radiation used in the experiments was harmless - a view that has been questioned by other independent authorities. In follow-up programmes to similar tests in the United States a four fold increase in cancer among exposed children was noted.

The programme also documented tests which used the bones of dead children to research the effects of nuclear fallout.

MEADS: teaming up across the ocean against SCUD

In October the governments of France, Germany and Italy will sign a memorandum of understanding with the USA to launch a transatlantic air defence system (MEADS) to protect their mobile forces against attacks from tactical ballistic missiles and Cruise missiles from the Middle East and North Africa. The total cost of the first phase (project definition and validation - to be completed by 1998) is estimated to be about 2 billion dollars, which will be evenly funded by Europe and the US. A second phase (design and development) will begin in 1999 with service entry planned for 2005. A consortium including France's Aerospatiale and Thompson CSF, Germany's DASA and Siemens and Alenia of Italy will form a joint industrial entity called EuroMEADS.

Jane's Defence Weekly 24.6.95.

European space satellite launched

On July 7 the first European spy satellite, the French built Helios 1A was launched from the French base at Kourou, Guyana. The optical satellite, with a ground resolution of 1 meter, will take two

months to become fully operational. It was financed by France (79%), Italy and Spain. The successful launch decreases dependency on US military intelligence. However, Helios 1A, and a second spy satellite to be launched in a year, can only operate in daylight and clear weather. A follow-on satellite, Helios 2, which will be launched around the year 2000 will be able to take pictures at night.

The WEU satellite centre in Torrejon, Spain, a permanent centre for analysis of space intelligence, will only have limited access to the data of Helios. As the French ask 200,000 FF for one image the WEU centre will only be able to purchase eight Helios pictures a year on its current budget.

Defence News 22.5.95; *Jane's Defence Weekly* 15.7.95

Military - new material

Britain's role in human nuclear experiments: what's been did and what's been hid, Armen Victorian. *Lobster* 29:2 1995. Following on from the disclosure of the US Atomic Energy Department's human experiments, the author makes inquiries of the Atomic Weapons Establishment at Aldermaston.

The new NATO, General George A Joulwan. *The RUSI Journal* 140(2):1-4 1995. Assessment of Europe and NATO's place in European security by the Supreme Allied Commander Europe.

NATO's military in the age of crisis management, Edward Foster. *RUSI* 1995 pp73 £6.95. On the future of NATO.

NATO in the New Europe, Richard Latter. *Wilton Park Paper* 99 (May) 1995.

NATO Review. Volume 45, no. 3 1995. This edition looks at NATO's expansion into central Europe.

The Labour Party's defence and security policy, David Clark. *RUSI Journal* 140(2):11-14 1995. The shadow Secretary for Defence argues for a Defence Review.

WEA: Neu Truppen, unklare Aufgaben (WEU: New troops, ill-defined tasks). *Antimilitarismus Information* 6-7, 1995. WEU Ministers of Defence and Foreign Affairs met in Lisbon in May to discuss further expansion of the European infrastructure, new intervention scenarios and relations between the WEU, NATO and the EU.

Special solutions for Special Forces. *International Defence Review* 5, 1995. Details on the equipment of several western Special Forces units.

Assessing the fangs of COBRA. *Jane's Defence Weekly* 10.6.95. Article about the assessment of the western Theatre Missile Defence concept (SCUD-hunting) that was tested in the air operations exercise "Roving Sands" in New Mexico.

Les Transfers d'Armes de la France 1991-1995 (The Arms Transfers of France 1991-1995), Bruno Barillot and Belkacim Elomari, Lyon. March, 1995, pp125. Available from: Observatoire des transferts d'armements, BP 4034 - Villeurbanne, Cedex, France. French arms trade policy after the Gulf War. Sections on trade with the Middle East, Asia, Africa, America and Europe.

SIPRI Yearbook 1995 - armaments, disarmament and international security. June 1995, 925 pages, £60.00 from Oxford

University Press.

Parliamentary debates

Armed Forces: exclusion of homosexuals *Lords* 23.5.95. cols. 913-915

Army, Air Force and Naval discipline Acts (continuation) Order 1995 *Lords* 26.6.95 cols. 590-598

Defence estimates *Lords* 14.7.95. cols. 1943-2003

Military Training (Dartmoor) *Commons* 5.7.95. cols. 339-346

PRISONS

Electronic tagging "fiasco"

A pilot scheme to test the practicality of electronic tags on offenders began in Manchester and Norfolk at the beginning of July. It took another month before a suitable offender was found to initiate the "house arrest" experiment. The project was originally scheduled to start in early June but was delayed when equipment failed. The latest scheme follows on from tests in Nottingham, Newcastle and London in 1989 when the courts agreed to tag just 49 people. Most of the people tested then simply tore off their tags and ran away. The National Council of the Association of Chief Officers of Probation observed trials in Sweden and the USA and concluded that the tags were "largely ineffective, very expensive, and did not deal with high risk offenders." They have described the current round of tests as a fiasco.

Independent 2.6.95, 16.7.95.

Prisons - new material

A crisis in custody: findings from a survey of juveniles in prison awaiting trial. *Assoc. of Chief Officers of Probation/NACRO* pp35, 1995. This report contains the findings of a survey of juveniles remanded to prisons in England and Wales between October 1983 and September 1994; it notes an increase of 86% in the number of juveniles awaiting trial.

The imprisonment of fine defaulters. *Penal Affairs Consortium* July 1995, 8pp. Report details a one-third increase in imprisonment of fine defaulters since 1990; for women the increase is 68%.

Prison Watch press release no. 123. *Prison Watch* 17.6.95. On the death of Paul Shaw who was found hanging in his cell on 16.6.95 at HMP Liverpool. Shaw's death is the twenty third recorded by Prison Watch in 1995.

Parliamentary debates:

Prisons (return to custody) Bill *Lords* 16.5.95. cols. 488-94

Prison (amendment) rules 1995 *Lords* 23.5.95. cols. 1019-1032

SECURITY & INTELLIGENCE

SPAIN

CESID scandal

The Spanish vice-President and former Minister of Defence, Narcis Serra, and the Minister of Defence, Julian Garcia Vargas, have resigned from their posts after accepting responsibility for the illegal telephone tapping scandal in which the CESID (Secret

Service) eavesdropped on well-known personalities. Their resignations were accepted and Gustavo Suarez Pertierra - a former associate of Serra - was named Minister of Defence.

The new Defence Minister accepted the resignation of the CESID director, General Emilio Alonso Manglano, and announced a new statute for the Secret Services: an assistant director will check the decisions taken by the general director. The new director general has been named as Major General Felix Miranda Robledo; he is 61 and it is likely that he will resign soon. Jesus del Olmo, a close collaborator of Garcia Vargas who was recently promoted to Brigadier General, was named as Assistant Director. It seems that a number of generals, formerly linked to the Security Services, declined to take charge of CESID.

As a result of accusations, which Manglano made against Colonel Juan Alberto Perote, former head of Secret Service Special Operations, that alleged that he was responsible for leaking the illegally recorded telephone conversations the latter was detained and imprisoned on June 21. However, three weeks later a military judge exonerated Perote of one of the two charges and modified the order to imprison him to house arrest. He also accused Manglano of the investigated crimes.

The GAL case

The legal proceedings that are investigating responsibility for the creation of the Antiterrorist Liberation Group (GAL), who were responsible for 22 murders, have seen spectacular developments recently. Since the end of last year former police agents Amedo and Dominguez, who were jailed for 6 years for their involvement in the GAL, have begun to disclose their contacts and connections. Orders for imprisonment have extended to the former Secretary of State, Raphael Vera, who was freed on bail in July after the PSOE had paid 200 million pesetas.

Following on from this jailed senior policemen have presented themselves to Judge Garzon offering to disclose the working structure of the GAL. Among them is the Bilbao Chief of Police, Miguel Plancheulo, the former chief of the Single Command of the Counter-Terrorist unit, Francisco Alvarez, and the former civil governor of Bizkaia and ex-director of the Security of State, Julian Sancristobal. Their statements directly implicate Vera as well as a number of other ex-ministers, particularly former Minister of Interior Barrionuevo, in establishing, leading and coordinating the GAL. The consequences, not only for the PSOE government but also for Felipe Gonzalez, appear to be far-reaching.

NETHERLANDS

New head of security service

Vice-Admiral N Buis, present commander of the Dutch naval forces, is to become the new head of the Binnenlandse Veiligheidsdienst (BVD) security service. He succeeds Mr A Docters van Leeuwen, who was made Attorney-General on 1 January 1995. In his Navy career, vice-Admiral Buis has been involved with counterintelligence work. It is unprecedented for a military officer to become head of the civil security service. Also it has taken an exceptionally long time to find a successor who is acceptable to all parties involved both within the BVD and in departmental circles. The Vice-Admiral is an outsider with no partisan allegiances and extensive international experience.

GERMANY

Kinkel's intelligence role

German intelligence specialist Mr Erich Schmidt-Eenboom recently

brought out a book on German Foreign Minister Dr Klaus Kinkel, focusing on the period of his presidency of the Bundesnachrichtendienst (BND) foreign intelligence service from 1979-1982. The author describes Dr Kinkel's role in a number of questionable BND operations such as the supplying of personal data on refugees and migrants from Turkey, Iraq and Palestine to the governments that they escaped from, and the support granted to the Libyan and other Arab regimes. The book concedes that the Libyan-controlled firm Telemit has provided Dr Kinkel's FDP party with millions of Deutschmarks to win the elections. Furthermore, Dr Kinkel's BND is criticized for being unproductive on Eastern Europe and other issues, while playing an important covert role in the Yugoslav quagmire which Mr Kinkel as foreign minister is believed to continue to the present day. The book ends with an extensive listing of BND "residence" abroad in 1982, including the names of the BND functionaries responsible for them. Throughout the book, dozens of other BND functionaries are identified as well.

Der Schattenkrieger - Klaus Kinkel und der BND (The Shadow Warrior), Erich Schmidt-Eenboom, Dusseldorf: ECON Verlag, 1995: 320 pp, index, bibl, ISBN 3-430-18014-7.

Security & intelligence: new material

Will they get off Scott free?, Paul Foot. *Socialist Review* pp4-5, May 1995. This piece looks at the inquiry, by Lord Justice Scott, into the export of defence related equipment to Iraq.

A leak and the big fix, Robin Cook. *Guardian* 7.6.95. Article on the leaking of extracts from the draft Scott report written by the shadow Foreign Secretary.

How apartheid conned the west, Philip van Niekerk. *Observer* 16.7.95. On the International Freedom Foundation, which was created by South African Military Intelligence, and was supported by Conservative MPs Sir George Gardiner and Andrew Hunter.

Body of Evidence, Paul Foot & John Ashton. *Guardian* 29.7.95. pp22-27. Article on the bombing of Pan Am 103 over Lockerbie in Scotland that questions whether the authorities received a warning.

RACISM & FASCISM

UK

BNP headquarters decision

Environment Secretary, John Gummer, has upheld Bexley Council's enforcement notice refusing the British National Party permission to use their premises, in Upper Wickham Lane, Welling, as their headquarters. The decision: "refuses to grant planning permission for the mixed use of the premises as the BNPs main office, a mail order business and for residential purposes".

The BNP originally obtained permission, from the then Conservative run council, to use the premises as a book shop. Once they had moved in the public was refused access and they transformed it into a fortified bunker. It became their organisational headquarters, coordinating their "rights for whites" campaign in south and east London. The Bexley report emphasized "that the use of the premises for the BNP's current purpose is contrary to local plan policies..."

The decision means that "the BNP is required to cease the mixed use of the premises within three months...and to remove the 'fortification' to the building itself within six months." It is unclear

whether the BNP will move from the Welling office, but given the enmity that their presence has created in the area, it is questionable whether the BNP premises could function as an ordinary shop.

Bexley Council press release 19.7.95.

National Front name change

In July the fascist National Front (NF) announced that they had changed their name to the National Democratic Party. The decision follows a collapse in membership and support since the party split in 1986. Following the split the party, under the low-key leadership of Ian Anderson, saw a steady flow of defections to the British National Party and, more recently, Combat 18.

Announcing the decision, press officer Martin Wingfield, said that the decision came about because people had been "put off because of our name...which has skinhead associations". In a postal vote 72% voted in favour of the change and 28% were against. There is believed to have been strong resistance to the change among NF supporters in the Midlands stronghold where members threatened to defect to the British National Party.

Anti-fascists have pointed out that the nowadays the NF can hardly be considered a national party and expressed surprise that the word "democratic" was part of their vocabulary.

NETHERLANDS

Catalogue of racist attacks

In 1994 dozens of incidents involving life-threatening racist violence were reported in Holland, according to a recent overview produced by the Centrale Recherche Informatiedienst (CRI, national criminal intelligence service). Asylum seekers have been shot at by racist gunmen, their homes were set afire and drivers have deliberately run them over, arguing that "they claim our houses". Many directors of asylum seekers centres report receiving piles of threat letters containing bullets and other explicit dead threats to "friends of asylum seekers". Registered racist incidents number over a thousand annually, with the police estimating that only one in six incidents ever gets reported.

DENMARK

US nazi to be extradited?

American nazi Gary Lauk, who runs the German National Socialist Workers' Party from Nebraska, was arrested in Denmark on 20 March. He was detained, at the request of the German government, while visiting a Danish nazi organiser, Jonni Hansen, in Copenhagen.

In Germany Lauk faces outstanding charges for i) spreading race hate material that is likely to disturb the peace by scandalising or defaming sections of the population; ii) the importation of nazi propaganda material; iii) the importation of nazi paraphernalia and iv) being a member of an illegal organisation.

The final decision on Lauk's extradition rests with the Danish Minister of Justice, B Westh. He argued that while Lauk's activities are not illegal in Denmark nor the US his extradition would prevent Denmark being used as a base for nazi propaganda activities.

On 23 June a high court ruled that Lauk could be extradited to face a possible five-year prison term in Germany. The court supported an earlier ruling that his anti-Semitic views infringed Danish anti-racism laws and that he could therefore face extradition proceedings. Lauk's lawyers are to appeal to Denmark's Supreme Court.

Information, Denmark.

FINLAND

Judicial System Racist on Custody Issues?

Two leading legal experts, Paavo Nikula, a Green MP, and university professor Martin Scheinin, allege the Finnish judicial system to be racist on parents' custody issues.

They criticised a case where a Finnish citizen of Iranian descent was deprived of his rights to see his child after divorcing a woman, born in Finland. The court's decision came after strongly anti-Islamic allegations against the father of the child had been tolerated in the court-room.

"There are reasons to be worried about the impartiality of the Finnish courts in cases where a foreigner and a Finn meet in court over the custody of children", says Mr. Scheinin, who teaches human rights and constitutional law at the University of Helsinki.

Hufvudstadsbladet 2.7.95.

PORTUGAL

Anti-racists march

Over 10,000 people marched through Lisbon in June in Portugal's largest protest against racist attacks. The protest followed the killing of 27-year old Alcindo Monteiro, who was beaten to death by a racist skinhead gang who went on a two hour rampage, attacking every black person they came across. Demonstrators expressed anger at the slow response of the police. Alcindo's death was the eighth racist murder in Portugal in the last five years.

The chair of Portugal's SOS-Racismo, Jose Falcoa, commented: "Look how close the police station is. The place is stiff with cops, but they did nothing for two hours while 12 blacks were being beaten up".

Independent, 16.7.95; see Stewatch, vol 5 no 3.

GERMANY

Nazi leader jailed

A leading figure in the German Alternative Movement, Arnulf Priem, has been jailed for three and a half years in Berlin. Priem was arrested last August when police raided a neo-nazi meeting at his apartment. Firebombs, guns and ammunition were found during the raid.

International Herald Tribune 24.5.95.

CZECH REPUBLIC

Racist groups on the rise

On 13 May in the town of Zdar nad Sazavou a 43 year old Romani man, Tibor Berky was murdered by skinheads with a baseball in front of his wife and five children. Four youths smashed their way into the home of Berky, a bakery worker, and repeatedly hit him on the head with the bat until he was dead. A 21-year old man has been charged with the murder and two 17-year olds with assaulting Berky. They told the police they supported a racist skinhead movement. The three had come to the town, which has 120 Romanis out of a population of 26,000, for a festival and had been drinking most of the day. Their alleged intent to "scare a few Romanis" is reminiscent of SS youth said Libuse Silhanova, vice chairwoman of the Czech Helsinki Committee.

The Prime Minister Vaclav Klaus said the murder was "the last straw" and Justice Minister Jifi Novak said he would propose life sentences for racially motivated murders - from the present 15 years - and an increase in the penalty for racist attacks from three to five years.

In June the Interior Minister Jan Ruml published a report on racist

and extremist groups saying they were more numerous and well-organised than ever and placed their membership at around 7,000. Of these 4,000 belong to various "patriotic" organisations, 1,500 are members of neo-Nazi groups and 1,500 are involved in skinhead groups. The report said racist attacks were mostly carried out by skinheads. Commentators said the numbers in skinhead groups were nearer 3,000. In 1994 the Czech police recorded 160 racist attacks with the number of people charged - mainly skinheads - rising from 27 to 155 over the last years.

Prague Post, 24.5.95 & 12.7.95.

SLOVAKIA

Romani set fire by skinheads dies

Mário Goral, a Romani, died on 31 July ten days after he had been attacked by a group of skinheads with steel bars who then poured flammable liquid over him and set him on fire. He had been in critical condition in hospital with third-degree burns on 60% of his body including the top part of his breathing passage. Two suspects have been charged with attempted murder. On the night of the attack between 30 and 60 skinheads armed with bars, sticks and petrol bombs rampaged through the Romani district of the town of Ziar nad Hronom yelling fascist slogans. Several Romanis on the streets were beaten up and an explosive device was thrown through a window landing on a small child, the father managed to hurl it back out of the window before it exploded.

Five days later hundreds of angry Romanis held a meeting to protest at the attacks and lack of protection. Emil Sarkezi, leader of the Romani National Party, said it was the 38th series of attacks over the past two years. Other speakers recalled a 1993 attack when skinheads enter a Romani home and threw a four-year-old child against a wall. In court they said they thought the child was a dog and were set free with a warning.

Prague Post, 2 & 9.8.95.

Racism & fascism new material

The 1986 National Front split, part 1. Larry O'Hara. *Lobster* 29, pp3-9 1995. This piece summarises the split in the National Front, between the "political soldiers" and the "Flag group", that took place in 1986.

European Race Audit, *Institute of Race Relations* nos 13 & 14 (April & June) 1995.

Far right fall out, Larry O'Hara. *Labour Briefing* July 1995, p6. On the far right May council election results and recent splits and defections.

True Lies. *Red Action* no 71 (Summer) 1995 pp1-3. This piece takes a critical look at the interconnections between MI5, Searchlight and Combat 18.

POLICING

UK

Police complaints

The annual report of the Police Complaints Authority (PCA) shows that a record 48 people died while in police custody over the last 12 months compared with 27 in the previous year. Out of a total of 19,103 complaints completed in the year no action was taken in 17,824 complaints - for 7,917 complaints the PCA gave the police a

dispensation "from the need to investigate", and 9,907 complaints were withdrawn due to "insufficient or conflicting evidence" (that is, between the complainant and the police officer).

Of the 362 complaints of "Racially discriminatory behaviour" disciplinary charges were made in 1 complaint, in 5 "advice" was given to the police officer, 162 dispensation were made and in the remaining 194 complaints there was insufficient or "conflicting evidence".

The number of complaints in "fully investigated cases", 11,191, which excludes the 7,917 complaints where a dispensation was given by the PCA resulting in any action being taken was 11% in 1994. The report says this total figure of 1,228 resulted "in disciplinary action" which is quite incorrect - in 908 cases "advice" was given to the officer with disciplinary charges in only 288 complaints (2.5% of the total).

Looked at another way - for example from the view of the complainant - only 6.4% of complaints resulted in any action, and only 1.5% resulted in disciplinary charges. Of the 51 complaints of serious assault 44 were dealt with by either dispensations or "insufficient or conflicting evidence", while of the 6,318 cases of complaints for assault 6,127 were dealt with in the same manner.

The PCA looked into 16 deaths caused by police vehicles - 2 involved "some type of pursuit" and "four were the result of collisions between police cars and pedestrians".

Annual Report of the Police Complaints Authority 1994-1995, HMSO, £10.40; *Police Complaints Authority - the First Ten Years*, HMSO, £4.95; see also *Stewatch* vol 1 no 3.

Protest at Met Commissioner's letter

A storm of protest followed a letter written by the Metropolitan Commissioner Sir Paul Condon to "prominent" black individuals and organisations in which he claimed that 80 per cent of all street robberies in London were carried out by black men. The letter caused serious offence in the black community and culminated in many black people and organisations boycotting a meeting called by Condon to discuss a campaign against street crime planned to start on 3 August.

In the letter, which was written to prepare the black community for a clampdown on street "muggings" mainly targeted at young black males, Condon claimed that "it is a fact that very many of the perpetrators are very young black people who have been excluded from school and/or are unemployed." He goes on to state "I do not need to spell out the sensitivity in dealing with this problem".

The statistics upon which Condon based his letter were based on surveys of victims in Stoke Newington, Lambeth and Harlesden. All three areas are inner-city areas in which a high proportion of the population are black. Critics argue it would not be surprising to find that a high proportion of street crime would be carried out by black youths in the areas selected. *The Voice* quotes one critic who points out that for instance the figures for street crime in Newcastle suggest that 99.9 per cent of muggings there are committed by white youths.

Furthermore the emphasis on street crime, which is a fairly minor part of overall crime statistics, representing only 2 per cent of all crimes in the London area, has also been criticised. Other forms of crime such as burglary and violent assault are much more important statistically. These crimes are overwhelmingly committed by white people.

There has been a long history in Britain of linking street crime with race. In the seventies similar statistics were used to justify the infamous "Sus" laws, which gave police powers to stop and search people on grounds of suspicion alone. The explicitly racial bias attributed to the crime was spelt out by Enoch Powell in speech to

the Police Federation in 1976 in which he said: "...to use a crude but effective word it (ie: mugging) is racial". Later London Commissioner Sir Kenneth Newman used similar arguments to justify the Swamp 81 operations which led to the Brixton uprisings of 1981.

A meeting in Brixton organised by the "Civil Rights" group passed a resolution finding Condon guilty of incitement to racial hatred. The group joined the National Assembly against Racism and the Joy Gardener Memorial Campaign in a 100 strong picket of a meeting called by the Metropolitan police on 28 July. This date had already attracted criticism because it was the second anniversary of the death of Joy Gardener during a raid carried out by police and immigration officials.

see Feature: "Policing the streets: the use and abuse of police powers" in this issue.

Injury postpones CS gas tests

Police trials of CS gas sprays have been postponed after a Metropolitan police inspector suffered burns to his eyes during tests in Northampton in May. The officer needed hospital treatment. Country-wide street trials, planned for July, have been put back while an investigation is carried out into the incident. While the Home Office has insisted that CS gas is "tried and tested" the injury has thrown into question the suitability of the sprays as a police weapon. The Home Office gave the go-ahead for street trials of CS gas sprays after health problems were identified with the use of pepper sprays (See *Statewatch* vol 5, no 2); *Police Review* 16.6.95.

Shiji Lapite - no charges

The Crown Prosecution Service (CPS) has announced that they will not be bringing charges against the police officers who killed Shiji Lapite last December. Mr Lapite died after being arrested by two plain-clothes policemen from the notorious Stoke Newington police station (see *Statewatch* vol 5, no 1).

A post-mortem examination, carried out on behalf of the family, found extensive bruising and cuts to Mr Lapite's head and face, although the actual cause of death was asphyxia. The cause of death was consistent with the use of a violent neck-lock that crushed his windpipe. The evidence from two other post-mortems has not been released.

In a press-release the CPS said that "there was insufficient evidence to support a realistic prospect of convicting any police officer". There will now be a public inquest.

Police Complaints Authority press release 18.7.95.

Bookshop raided

The co-operative Frontline Bookshop, in Manchester, was raided by police at the end of June. Detectives from Hampshire and Manchester arrived shortly after the shop opened with a search warrant and inspected anything connected with direct action movements. After perusing the anarchist books section, looking at books on the Angry Brigade and Red Army Faction, they confiscated copies of the *Green Anarchist* magazine. They also took details of people who had responded to a Green Anarchist box number. The Manchester raid follows police raids on bookshops in Oxford in March which were also connected with the Green Anarchist group. Four members of the group have been arrested and are on bail for conspiracy to incite arson.

Guardian 30.6.95; *Observer* 9.7.95.

SWITZERLAND

Police surveillance powers

Police powers under the new law on the protection of internal security passed by the Swiss parliament, introduced by Arnold Koller, Minister of Justice, were extended by the States Council to bring in extensive surveillance powers.

The draft Bill already abolished the right of data subjects to see the files held on them and made it mandatory for cantonal authorities to pass information to Federal state security. Data subjects "won" the right to see their files in the aftermath of the "secret files scandal" six years ago when it was revealed that state agencies maintained files on nearly one million people. The States Council voted 32 to 2 against a proposal to abolish the political police and then removed the "right" to see the files. Catherine Weber, from the "Komitee Schluss mit dem Schnüffelstaat" (Committee Against the Prying State) commented:

"Over 30,000 people have seen their files. This new law stops this completely. You will never know if a file is being held on you."

The States Council, by 21 to 1, effectively added to the new law by removing the restriction on "bugging" - phone taps, mail-opening and planting "bugs" in homes and offices. The Director of the proposed "Federal Office of internal security" will be empowered to authorise surveillance, without a court order, if there is a "serious threat to the internal security of Switzerland". Paul Rechsteiner, a Social Democrat MP, said the law is a threat to privacy: "Anyone standing up for Kurdish refugees, or dealing - or merely presumed to be dealing with - members of the PKK (Kurdish Workers Party) must assume that they are subject to electronic surveillance".

The government followed up these measures with the publication on 7 July by the Federal Department of Justice and Police of a new draft bill on undercover agents. The bill would give cantonal police as well as Federal police the power to infiltrate agents to combat organised crime (drug trafficking, smuggling of nuclear material, arms sales and espionage). Critics says this will legitimate police practices. The bill does not provide for infiltrating agents into political groups but as "organised crime" is also covered by the law on the protection of internal security the possibility remains open.

Komitee Schluss mit dem Schnüffelstaat, Bern, Switzerland.

NETHERLANDS

Van Traa enquiry

The whole affair resulted in the parliamentary Van Traa investigation. Van Traa are currently drawing up a framework of legislative guidelines under which the police will have to conduct their covert work; its final report is expected by the end of 1995.

The same Criminal Intelligence Department of the Haarlem police which ran the IRT (Interregional Recherche Team; Interregional Detective Team) informant now appears to have continued in the same manner. One of their informants, probably the same one as in the IRT affair, was handed over to the Rotterdam police where he was put to work infiltrating a major criminal organization by again working as a drug transport organizer. According to sources in the police and the public prosecutor's office, public prosecutor Mr R. de Groot who was responsible for the covert operation duly informed his superior, then-Attorney General in The Hague and current Minister of Justice Mrs W Sorgdrager of the operation in early 1994. However, after several days of silence following the first newspaper reports Mrs Sorgdrager on 20 April denied having had knowledge of the controversial operation at the time.

A reconstruction by the Amsterdam newspaper *Het Parool*

concluded that the Amsterdam Attorney General Mr R J C Graaf (count) van Randwijck in a meeting on 10 December, 1993 had insisted that the infiltration operation be continued, in spite of the formal dismantling of the IRT which was decided by the Amsterdam "Triangle" (the burgomaster, the police chief and the chief public prosecutor) only three days earlier. The idea behind Van Randwijck's position was that a sudden discontinuation of the infiltration operation would endanger the life of the informant/infiltrator. Instead of a gradual reduction of his role however, another 20,000 kilos of cannabis would be allowed to find its way through the informant's pipeline on to the criminal market in 1994. Also, in spite of formal arrangements to hand over the profits, about 5 million guilders are still unaccounted for.

Following the recent disclosures Mr Arthur Docters van Leeuwen, who was until January this year the head of the BVD security service and who is now the formal head of the five Attorneys General, has ordered a full investigation.

Uncontrolled deliveries galore

The Dutch quality newspaper *NRC Handelsblad* reported on 26 May that a confidential Rijksrecherche (state police, charged with investigating corruption and answerable only to the Attorney-General) investigation into wrongdoings at the Haarlem Criminal Intelligence Service (CID) has led to the discovery of at least fifty incidents of suspicious containers being allowed to pass through customs unchecked in the Rotterdam and Amsterdam harbours. Tens of thousands of kilos of cannabis and hundreds of kilos of hard drugs from Colombia, Pakistan and Nigeria have thus been distributed throughout the Netherlands and beyond. CID officers involved in these operations have told *NRC Handelsblad* that over the last five years it has been standing policy in Haarlem to allow criminals to transport large shipments of drugs with the intention of infiltrating the highest levels of criminal networks.

The extent of the operations could be reconstructed because customs officials have logged all cases in which they were requested to refrain from checking suspected cargoes. Even tips from the US Drugs Enforcement Agency (DEA) about incoming drug shipments were ignored. When in June 1992 such a DEA lead was followed through in spite of yet another CID "passe partout", two suitcases, together containing one hundred kilos of cocaine were confiscated. According to sources in the public prosecutor's office, the CID chief subsequently complained to customs because they had frustrated an ongoing investigation.

Het Parool; NRC Handelsblad 26.5.95.

Policing - in brief

SPAIN: Mucha policia: In the southern Basque country (Autonomous Basque Community and Navarre) there is one policeman for every 148 people, which is the highest ratio in Europe (the European average is 1 per 247 people). In the Autonomous Community there are 3,137 Civil Guards, 2,088 Spanish National policemen, 6,963 Ertzaintas (Basque police force) and 2,614 municipal policemen. In Navarre there are 1,728 Civil Guards, 542 National policemen, 305 Navarre Foral police and 568 municipal policemen. The relation between police forces and inhabitants generally in Spain is 1:215. *Kontrola Kontrolpean, Donostia, Euskadi.*

UK: ROBOCOP - Automatic Police Station: To reduce costs but still furnish a minimum of necessary services, such as protection for threatened individuals, the British police in Byfleet, Surrey, opened last month the first unmanned, automated police station. A video

link to the main station in Woking permits the police to watch the outside and inside of the Byfleet office and activate the security system to let someone enter. Once inside, the person can explain their case in video-conferencing with the Woking police station. The lights, heat and tea pot are turned on for the visitor when they enter.

Intelligence, no 269 July 1995.

UK: "Roots of disorder still flourishing in inner London": Mr Tony Speed, the Assistant Commissioner of the Metropolitan Police told a public order training course in Hounslow that the underlying causes of "disorder", urban deprivation, still existed: "The conditions that prevailed in the early 80s, which were generally blamed for the widespread urban disorder remain". He went on to say that extreme right-wing politics and environmental activists were potential causes of public disorder. Bramshill Police College training centre has been running new courses for senior officers to deal with public order. These include "scenarios" such as protest marches about "contentious issues" and a course of dealing with "spontaneous disorder" and "flashpoint street disturbances". *Police Review, 7.7.95.*

UK: Greater use of informants: In 1993 the Audit Commission's report, "Help with Enquiries", recommended the greater use of proactive techniques to target known or suspected criminals by the more co-ordinated use of informants. The report urged this new initiative largely on the ground of "cost-effective" policing when resources are short. An article in *Police Review*, "Nods and winks" says that: "Informants have the capacity to penetrate criminal networks to a much greater extent than other methods of surveillance". It goes so far to say that this is a relatively inexpensive way of gathering intelligence: "Rewards include cash payments, favourable representations on bail and sentencing decisions and non-enforcement of minor criminal actions". *Police Review, 4.8.95.*

Neckholds: unacceptable "risk": The Home Office Minister David Maclean told the House of Commons that following the number of deaths in custody: "The expert opinion was that a neckhold exerts any pressure on the carotid artery - the artery that carries oxygenated blood and nutrients to the head - or any hold that compresses the airway, involves, except in extreme circumstances, an unacceptably high element of risk". Despite this admission about present practices by police officers Mr Maclean could contend that: "given the number of people who pass through police hands each year, it is an actuarial inevitability that some will die while they are in police custody". He was responding to a debate called by Harry Cohen MP concerning the number of black people who dying in custody: "There should be a ban on neckholds and an inquiry into medical care arrangements in prisons, police stations and psychiatric institutions".

CARF no 27; Inquest.

Poland: new surveillance powers: the Polish parliament, the Sejm, is considering amendments which will give the police, the State Protection Office (UOP) and the Border Guard new powers of surveillance. The new powers would allow infiltration of agents, agent-provocateurs, monitoring of the mail and the use of hidden cameras in relation to suspected serious crime, drug trafficking, arms trade, money-laundering, and nuclear material - mirroring the roles of the Europol Drugs Unit (see *Stewatch* vol 4 no 6). *Warsaw Voice, 18.6.95.*

Policing - new material

Dirty Harry Myth, Colin Greenwood. *Police Review*, pp28-29 26.5.95. On the danger of a police "armed elite".

"Force with force" Sarah Gibbons. *Police Review*, pp16-19 16.6.95. On the disturbances in Toxteth at the end of May.

Operation of certain police powers under PACE: England and Wales 1994. *Home Office Statistical Bulletin* 16/95. In 1994 police made 576,000 stops and searches resulting in 70,300 arrests (see Feature article in this issues).

Police complaints and discipline: England and Wales 1994. *Home Office Statistical Bulletin* 13/95. Police received 25,000 complaint cases of which 793 complaints were substantiated; disciplinary charges were proved against 390 officers resulting in 94 dismissals or resignation.

When police have a stranglehold on truth, Heather Mills. *Independent* 3.7.95. On the police killing of Shiji Lapite (see above) and his widow's attempt to discover how and why he died.

The Untouchable, Helen Shaw. *Labour Briefing* pp6-67, June 1995. On the death of Brian Douglas, and other black Londoners, in police custody.

Corruption and corporate crime is the theme of the *European Journal on Criminal Policy and Research*, vol 3 no 2. Articles include: "Western Europe and public corruption: expert views on attention, extent and strategies", "Beyond criminal law in devising anti-corruption policies: lessons from the Italian experience"; "(g.b.h) Grievous business harm: exploring corporate violence".

Bradford riots. *Runnymede Bulletin*, June, 1995, pp5-6. Examines the origins of the June confrontations.

What sparked the "riots"? *CARF* magazine, no 27 August/September 1995, pp3-5. June and July saw confrontations between the police and young people in Bradford, Luton, Nuneaton, Liverpool and Leeds. "Policing is still the vital ingredient that sparks "riots" ".

Parliamentary debates

Bradford (community relations) *Commons* 21.6.95. cols. 281-301

Black people (deaths in custody) *Commons* 4.7.95. cols. 286-294

Policing the Streets: the use and abuse of police powers

Introduction

In 1981 the Royal Commission on Criminal Procedure made a number of recommendations to expand police powers and to provide various safeguards against the abuse of the new powers. The recommendations were enacted in the Police and Criminal Evidence Act (PACE), 1984. Most of the powers came into force on the 1 January 1986. In 1993 the Royal Commission on Criminal Justice recommended further radical changes in police powers and these were implemented in the Criminal Justice and Public Order Act, 1994 which came into force on 1 January, 1995. Before these

latest changes begin to have an impact, it is an opportune moment to examine the use of the expanded police powers which were recommended by the first Royal Commission.

It is an opportune time for another reason. On 7 July Sir Paul Condon, the Commissioner of the Metropolitan Police, announced a new campaign against street robbers and, in a letter inviting community leaders to a meeting to explain his plans, he made the highly controversial statement that:

"It is a fact that very many of the perpetrators of muggings are very young black people who have been excluded from school and/or are unemployed".

This initiative was fully supported by the Home Secretary who said: "Every section of the community - black and white - suffers from street robberies. Political correctness is the great discriminator. It is the enemy of the victims of crime, and its supporters are the friends of the criminal." The Home Secretary, however, failed to look at the official statistics, which his own department publish annually. They suggest the police force for which he is responsible - The Metropolitan Police - is already discriminating against one section of the community and will do so with greater intensity as a result of Condon's new campaign, called Operation Eagle Eye.

Statistical information on the use of police street powers is far from comprehensive. Chief Officers are statutorily required to collect and publish statistics on the use of certain of their powers, but not others. They are required to monitor the use of stops and searches of persons or vehicles and road checks, detention of persons and intimate searches of the persons. Statistics on these aspects are published annually in the Home Office Statistical Bulletins. However, they do not collect and publish figures for 1) people stop but not searched; 2) people who are "voluntarily" searched; or 3) for searches carried out under other legislation.

The police, however, are not required to keep systematic statistics on their most important power - the power of arrest. Despite the legal rhetoric that everyone has the right to go about their lawful business without being deprived of their liberty and taken into custody, except under very clearly defined circumstances, neither of two Royal Commissions recommended that the police publish statistics on the total number of arrests. Nor did they recommend that the police record the outcome of each arrest. This is crucial information if arrests powers are to be monitored systematically.

Although there has never been of any legal requirement, police forces in England and Wales collect statistics on the total number of arrests for all offences in their area, except for the Metropolitan Police, who collect statistics on the arrests for notifiable offences only. These figures were collated by Her Majesty's Chief Inspector of Constabulary and published in his annual reports until 1986. For subsequent years, the Home Secretary has supplied the data in a series of Parliamentary Written Answers.

Arrests in England and Wales

Figure 1 shows the total number of arrests for each year. It shows a very steady increase in the number of arrests over the period. In 1986 there were 1.31 million arrests and by 1994 this figure had increased to a staggering 1.75 million - an increase of nearly half a million people or over one third. This means that at least three people are now arrested every minute in England and Wales. If the current trend continues it is predicted that over 2 million people will be arrested annually by the end of the century.

In 1993 205,500 people were formally cautioned for indictable offences and another 479,000 were proceeded against in the Magistrates Courts. Thus 688,000 people had some formal action

taken against them for indictable offences. This figure is unlikely to be more than 700,000 in 1994. If it is assumed that arrests are mainly used for the more serious or indictable offences, the difference between the two sets of figures suggests that some 1,000,000 people were either arrested for minor offences or were released without any further action. This is obviously a crude estimate but nevertheless suggests an enormous gap between the number of people who are arrested and those that are formally processed. At best it indicates a misuse of police powers and, at worst, an abuse of power on a very wide scale.

Road checks in England and Wales

In 1994 there were 3,003 road checks - a decline of 16 per cent compared with 1993. They involved stopping 25,000 vehicles and the obstruction of 5,710 roads. These figures, however, are unrepresentative of the general trend since 1986. In 1993 there was a substantial increase in the number of road checks compared with 1992, with 3200 being recorded in the City of London following the Bishopsgate bomb. If the number of road checks recorded in the City of London for 1993 and 1994 are left out of the total, then the use of road checks declined to 1990 and then showed an increase only to decline again as can be seen in Figure 2.

Two further points stand out from the road checks statistics. First, there continues to be a wide variation in the use of the Road Check powers between different police forces. Nine police forces did not use the power in 1994, 20 police forces used it on fewer than 5 occasions and 8 police forces used it on more than 5 occasions, with three outliers - Suffolk Police (50), Metropolitan Police (112) and the City of London Police (2742). Second, the vast majority of road checks did not lead to any arrests. In 1994 the 3003 road checks led to only 17 arrests connected with the reason for the road check and another 518 arrests which were unconnected. The 2741 road checks set up in the City of London to ascertain whether a vehicle was carrying a person who was intending to commit a serious arrestable offence did not lead to anyone being arrested for such an offence.

Stop and search in England and Wales.

In 1994 the police recorded 576,000 stops and searches under the PACE - a staggering 133,200 more than in 1993 or an increase of nearly one third. This means that a person or a vehicle is stopped and searched every minute. The police have to provide the reason for a stop and search. The largest proportion were for stolen property (38.2%), followed by drugs (31.1%). Although stop and searches for firearms make up only 1.3 per cent of the total, the number more than doubled between 1993 and 1994.

The police are required to provide information on the number of arrests which arise from stop and searches. It should not be assumed that if a stop and search leads to an arrest this supports that the initial decision to detain the person or vehicle. On the contrary the police may dispose of the arrest by taking no further action and in these cases not only is the initial stop and search but also the arrest probably an abuse of police powers.

In 1994 the police arrested 70,300 people as a result of the 576,000 stops and searches - just over 12 per cent of the total. In other words over half a million people were detained in 1994 while going about their business only to be allowed to go on their way after they or their vehicle had been searched. In 1986 the equivalent figure was under 100,000. There has therefore been a five-fold increase in the number of people subject to police search powers where nothing illegal was found. The rapid increase in the number of "unproductive" searches is shown in Figure 3.

Stop and Searches in London

In 1994 the Metropolitan Police stopped and searched 291,895 people or their vehicles, an increase of over one quarter of a million since 1986. This means that over half of all stops and searches in England and Wales are now carried out in London. The stop and searches led to some 33,278 arrests, over one third of which were for drugs. The number of stops and searches which failed to lead to an arrest have been steadily increasing, as can be seen from Figure 4. In 1986 the police took no further action in 30,000 stops and searches. By 1994 the number of "unproductive" searches had risen to 258,617, an eightfold increase. Put in terms of a time clock, it means that a person or their vehicle is stopped every 2 minutes in London and then allowed to go on their way without anything illegal being found. No section of the population in the UK outside of Northern Ireland would appear to be subject to such regular, systematic harassment.

Race, stop and search in London

There is no statutory requirement on the police to collect information on the age, sex or ethnicity of the person who is stopped and searched. However, the Metropolitan police appear to have been making assessments of the ethnicity of those stopped and searched for some time. In January Bernie Grant, M.P. obtained from Sir Paul Condon, the stop and search figures for London broken down by area and by ethnicity for January to September, 1994. Ethnicity was not based on some official categorisation, such as that used under section 95 of the Criminal Justice Act, 1991 which places a duty on people in the criminal justice system to avoid discriminating against any person on the ground of race or sex or any other improper ground. Nor was it based on the categorisation used in the 1991 Census. On the contrary, it was based on what many consider a crude racist categorisation made up of the following types:

- 1 White skinned European types
- 2 Dark skinned European types
- 3 Negroid types
- 4 Indian and Pakistani types
- 5 Chinese and Japanese types
- 6 Identity unknown

Two important features stand out from the figures. First, they show a very wide variation in the use of stop and searches in different areas. For example, there were under 1,200 stop and searches in Hampstead and Golders Green compared with over 7,000 in Stoke Newington and Lewisham.

Second, they show that a disproportionate number of black people are stopped and searched in comparison with any other ethnic group. The 10 police areas with the highest proportions of stop and search of black people is shown in Figure 5. As can be seen in three areas - Brixton, Kilburn and Battersea - more than half of all the people stopped and searched were black. In the 1991 Census the highest concentration of black people (22 per cent) was in the London Borough of Hackney. In Southwark and Lewisham it was 11.7 per cent and 16.3 per cent respectively. These Census figures therefore suggest that in some police districts of London at least double the proportion of black people in the population are being stopped and searched. As Bernie Grant put it in a memorandum, which he sent to all London M.P's drawing attention to the stop and search figures:

"In some areas the proportion of blacks being stopped and searched, as opposed to any other ethnic group, is at an unacceptable level. These figures confirm what black people have known for some time i.e. that they are being targeted by the Police. There is a concern that we are seeing the return of the old "sus laws" which were repealed in the early eighties, and which led to the very serious distrust between the Police and the black community. This concern is the greater because of the enhanced Stop and Search Powers contained in the Criminal Justice Act".

It is against this background that Sir Paul Condon's decision to target the black community even further must be placed. In his letter to community leaders, he provided no systematic statistics on muggings; he used vague phrases such as "very many" and "very young". The media, however, reported, presumably from a press release from the Metropolitan Police, that in some areas 80 per cent of mugging victims said that their assailants were black males. It is, however, impossible to obtain accurate information on this type of incident. To begin with, there is no criminal offence called mugging. What is popularly described as a mugging can either be defined as a robbery, which involves the use or threat of force, or a larceny. There is considerable discretion in the way an incident on the street is defined and the claim by the Metropolitan Police that muggings have increased from 19,000 in 1993 to 22,000 in 1994 may reflect a change in the definition of similar incidents. Secondly, there is no reason why this type of crime should receive specific attention when robberies and larcenies on the street form only a small proportion of all crime in London. Thirdly, the vague language of his letter left the impression that a high proportion of young black men are involved in street crime. Herman Ouseley, Chairman of the Commission for Racial Equality, pointed out that "The risk is that all black people could feel targeted as potential criminals as a result of the response to the initiative taken by the Commissioner". Many will already feel this way as a result of the way they have been targeted under the existing powers. As we have shown, there has been an eightfold increase in "unproductive" stop and search powers and they have been used disproportionately against black people. In responding to the furore which his letter caused, Condon said that Operation Eagle Eye would be carried out "sensitively and sensibly". It would be based on enhanced intelligence, closed circuit television and other surveillance techniques. However, the current unproductive use of police powers does not inspire confidence in this respect.

Summary

This analysis of the available statistics on the use of selected police powers has shown the following

- *The number of arrests are up by half a million in England and Wales in the period 1986 to 1994, an increase of one third.
- *The number of stops and searches in England and Wales in the same period are up by 133,000, or one third.
- *Half a million people or vehicles in 1994 were stopped and searched in England and Wales without anything illegal being found.
- *Unproductive stops and searches have increased fivefold over the period.
- *Half of all stops and searches in 1994 were carried out in London.
- *Unproductive stops and searches in London increased eightfold in the period.
- *In some areas in London double the proportion of black people in the population are being stopped and searched.

When some of these trends are represented by a time clock, it means that:

- *Three people are arrested in England and Wales every minute
- *One person or their vehicle is stopped and searched every minute without anything being illegal being found
- *One person or their vehicle is stopped and searched every two minutes in London

Conclusions

The analysis shows that the use of these powers are increasing every year, yet an increasing proportion are apparently "unproductive". In short, there is ample evidence to suggest that the powers are being widely abused. At the same time the statistics suggest that the powers are being used in a discriminatory way to police the black community. The predictions of many civil libertarians that the changes recommended by the Royal Commission on Criminal Procedure and enacted in PACE would lead to a substantial erosion of civil liberties, particularly for sections of the ethnic minority community, are strongly supported by these official figures. Police harassment, discrimination and coercion has increased substantially over the period.

EU

"Combating illegal immigration": EU & UK in concert

The June meeting of the Council of Justice and Home Affairs Ministers adopted, without a vote, a controversial Recommendation on "combating illegal immigration" (see "Policing immigration: UK & Europe", *Statewatch* vol 5 no 2). There were a number of significant changes between the first draft of December 1994 and the final version agreed.

The proposal was changed from a "Joint Action" (under Article K.3.2.b of the Maastricht Treaty) to a "Recommendation" between April and June. Prior to this the only "Joint Action" adopted by the Council was one on travel facilities for school pupils from third countries resident in a member state (December 1994; in March 1995 another "Joint Action" was agreed to the Europol Drugs Unit).

There has been some confusion as to the distinction between these two forms of decision-making under Title VI of the Maastricht Treaty. A "Joint Action" may either be a policy position to be followed by EU member states or may be legally binding in international law depending on the *intention* of the Council as expressed in the *actual text*. "Recommendations" are *political acts* rather than legally binding instruments intended to be pursued in each member state by changes to practice and to domestic legislation if necessary. As a French Presidency Note attached to the first draft stated the measures depend on "the Twelve implementing measures which, if not identical, are at least consistent".

Following the first draft in December 1994 the Home Secretary, Michael Howard, made known in February the elements it was intended to introduce in the UK - including fines for companies employing "illegal" immigrants. He also stated in a memorandum that the government wanted to change the proposal from a "Joint Action" to a "Recommendation". With the publication of the second draft in April the House of Lords Select Committee on the European Communities (Law and Institutions) decided to conduct an inquiry and evidence was invited on 28 April. By the time of the Council of Ministers meeting on 20 June the French Presidency's proposal had undergone further amendment and by 16 June had been changed to a "Recommendation" thus removing objections by

the UK (and Irish) governments. The Council agreed the measure without debate but subject to a scrutiny reserve by the UK (this led to some confusion as to whether or not the Recommendation was adopted as it was not listed in the Council press release). This was because the House of Lords inquiry was still underway and they had not been informed that the measure was to go through. The UK scrutiny reserve was lifted by the House of Lords just after the Council meeting and their inquiry was ended.

Measures finally agreed

The Recommendation finally adopted says that member states are:

"faced with an increase in illegal immigration, have already adopted specific measures to ensure better control of population flows and to avoid the continued unlawful presence in their territories of foreign nationals who have entered or are residing illegally.. recommend.. the following guidelines."

The main provisions are:

1. Where "a person appears to be residing in the country unlawfully, his [sic] residence situation should be verified" in particular there should be "identity checks" a) where a person is being investigated for a criminal offence; b) "to ward off threats to public order or security"; c) "to combat illegal entry or residence" for example at border controls points - ports, airports and railway stations. (para.2)
2. Third-country nationals should have to present to "competent authorities.. their authority to reside within the territory of the member state where they are". (para.3)
3. To qualify for benefits - health, retirement, family or work - the status of foreign nationals should be verified. "Such verifications are carried out by the services providing the benefits, with assistance, if necessary, of the authorities responsible for issuing residence or work permits". The "central or local authorities responsible for dispensing benefits to foreign nationals" should be informed "of the importance of combating illegal immigration in order to encourage them to report to the competent authorities.. such cases of breaches of the residence rules as they may detect in the course of their work." (para.4)
4. "Employers wishing to recruit foreign nationals should be encouraged to verify that their residence or employment situations are in order by requiring them to present the document(s).." Further member states "could stipulate" that employers may check with the responsible authorities before offering employment (the UK and Ireland reserved their position in regard to the application of this point). (para.5)
5. Employers have foreign nationals on their workforce who are not authorised "should be subject to appropriate penalties". (para.6)
6. The competent authorities should be empowered to ensure that those refused authority to reside in a country "have left that territory of their own accord". (para.7)
7. "Each member state should consider setting up a central file of foreign nationals containing information [on their status]

including any refusal of authorisation to reside and any expulsion measures." (para.8)

8. "Member states should take every measure to reinforce and improve means of identifying foreign nationals who are not in a lawful position.. ". Where a foreign national has been, "or is likely to be detained" the necessary travel documents necessary "for expelling foreign nationals who have no documents" should be obtained.

"Foreign nationals who have deliberately brought about their illegal position, particularly by refusing to supply travel documents, should be subject to penalties. In appropriate cases, such penalties may fall under criminal law". (para.10)

9. The Recommendation says members states "will review the follow up to Chapter III.2" of a Recommendation on expulsion adopted until the UK Presidency in November 1992. On examination this refers to "the introduction of laws to allow fingerprinting of those to be expelled, to assist identification". (para.10)

10. The Council of Justice and Home Affairs Ministers is to review, at least once a year, "the progress made on harmonisation in the fields covered by this Recommendation." (para.10)

What was changed

A number of changes were made to the first version (December 1994) of what was then a "Joint Action". Where the final version just refers to "public order" the original suggested "preventive identity checks to ward of threats to public order" for examples at "demonstrations, sporting events, open air concerts" and "in specific places (sensitive neighbourhood, the Underground)".

More tellingly the first draft said that "identity checks" should be:

"carried out in a non-discriminatory manner. Assessment of who constitutes a foreign national shall be based solely on objective criteria which comply with non-racist and non-xenophobic principles."

This was deleted from the second and the final draft.

UK proposals

On October 1993 the Home Secretary, Michael Howard, launched a study to track down "illegal" immigrants following a decision in June of that year by a meeting of Immigration Ministers in Copenhagen to start national measures for their expulsion throughout the EU (see *Statewatch* vol 3 no 5).

On 18 July this year Mr Howard announced a "clampdown on abuse of social security benefits, students awards, health and social housing by illegal immigrants and temporary visitors" who are "milking the system". The main proposals are:

1. stopping benefits including social security, housing, free NHS treatment and student awards "to people who are here unlawfully or as temporary visitors";
2. the training of staff "who provide benefits to identify claimants who are ineligible because of their immigration status";
3. to make quick and effective arrangements for staff of "benefit

providers to pass information on immigration offenders to immigration authorities";

The four government departments involved will be working on an multi-agency basis with the police and immigration service. Measures they will be taking include: 1) Department of Social Security is to further review benefits; "ineligible people from abroad are [already] excluded from income support, housing benefit and council tax benefit". 2) the Department of Education and Employment is to consider "tightening access to student awards" and is considering "whether it would be feasible to issue guidance for school admission authorities". 3) the Department of the Environment is to introduce legislation "to take away from people from abroad the right to social housing". The government has already put forward "proposals for fairer [sic] access to social housing, under which persons from abroad temporarily in this country will not be able to obtain assistance under the homelessness legislation". To this is now added a new proposal to stop "such people" getting social housing tenancies from local authorities. 4) the Department of Health is to find better ways to stop "such people" from getting access to free medical treatment.

In line further with the EU Recommendation Mr Howard said that "officials in central government will pass to the immigration authorities information about suspected illegal entrants and overstayers with whom they come into contact in the course of their normal duties" and "the Immigration and Nationality Department will be able to give details of an applicant's status under the immigration laws when this is relevant to his eligibility for state benefit or service".

Jack Straw, the Labour opposition Shadow Home Secretary commented on the proposals that he would: "judge Mr Howard's package on its merits, including whether the proposals were effective and fair". He thought that: "criminal agents usually working overseas take large sums of money in return for promises of safe passage to the UK" were at the root of much of the illegal immigration, fraud and abuse. An editorial in the *Guardian* criticised of Mr Howard's proposals noting the comment of immigration officers that they would be a "licence for racism and a recipe for disaster" and concluded that "Labour's response yesterday was pathetic".

The effect of these proposals will be to introduce passport checks by social security staff, local authority education and housing officers, teachers, doctors, dentists and NHS hospital staff. Mr Howard's assurance that: "Lawful residents in Britain will not be affected and have nothing to fear, no matter what their ethnic background" will cut little ice with black and migrant groups.

These proposals go hand in hand with new measures to identify "illegal" migrants. The Home Office said in July that a computerised database now "holds details of suspect persons who should be identified before being granted entry" and links were installed in 23 main locations with portable units in use on board Eurostar trains. 173 new beds "to enhance detention accommodation" are under construction.

Proposal for a joint action on harmonising means of combatting illegal immigration and illegal employment and improving relevant means of control, Note from Future French Presidency to the Migration Working Party (Expulsion), ASIM 242, Restricted, ref: 12336/94, dated: 22.12.94; version dated: 11.4.95, ASIM 30 Rev 2, Limited; final version: *Recommendation on harmonising means of combatting illegal immigration and illegal employment and improving the relevant means of control*, ASIM 188, dated: 16.6.94, Limited; *French Presidency Note*, 24.12.94; *Explanatory memorandum from the Home Office*, 28.2.95; *Recommendation regarding practices followed by member states on expulsion*,

30.11.92; *Liberty* memorandum of evidence to the House of Lords Select Committee on the European Communities on a proposal for Joint Action by member states relating to illegal immigration and employment, June and July 1995; *Guardian*, 19.7.95; *Home Office press release*, 18.7.95; *Commons written answer*, 18.7.95; *Home Office press release*, 19.7.95; see also *Statewatch*, vol 3 no 5 and vol 5 no 2.

Books received

Power in struggle: feminism, sexuality and the state, Davina Cooper. *Open University Press* (Buckingham) 1995, pp182 £10.99 pk. This book draws on post-structuralist and Marxist theory to conceptualise the state, power and sexuality.

Gender and crime, Dobash, Dobash & Noaks (eds). *University of Wales Press* (Cardiff) 1995, pp438 £13.99 pk. Contains analyses of the diverse experiences of women and men as offenders and victims by criminologists from several countries.

Let him have justice: the true story of Derek Bentley, hanged for a crime he did not commit, Iris Bentley (with Penelope Denning). *Sidgwick & Jackson* (London) 1995, pp356 £16.99 hb. This is a biography of Derek Bentley by his sister.

Contemporary issues in Criminology, Noaks, Levi & Maguire (eds). *University of Wales Press* (Cardiff) 1995, pp436 £14.95 pk. This volume is divided into 4 sections: international perspectives on criminology and criminal justice; policing and persecution; criminal justice issues and crime, justice and the underclass.

Social currents in Eastern Europe, Sabrina Petra Ramet. *Duke University Press* (Durham & London) 1995, pp598 £22.95 pk. This book looks at eight eastern European countries: East Germany, Poland, Czechoslovakia, Hungary, Yugoslavia, Romania, Bulgaria and Albania.

My five Cambridge friends, Yuri Modin. *Headline* (London) 1994 pp346 £6.99 pk. Account of the Cambridge spy ring by the man who ran them.

Sellout: Aldrich Ames, the spy who broke the CIA, James Adams. *Michael Joseph* (London) 1995 pp322, £16.99. On the CIA double-agent.

Disarming Patriarchy: feminism and political action at Greenham, Sasha Roseneil. *Open University Press* (Buckingham) 1995 £12.99 pk.

Shifting responsibility: Carriers' liability in the member states of the European Union and North America, Antonio Cruz. *Trentham Books* (Stoke on Trent) 1995, pp122 £9.95. Examines the incompatibilities of carrier's liability with human rights obligations and international instruments of refugee protection.

The frontier of national sovereignty: history and theory 1945-1992, Alan S Milwood et al. *Routledge* 1993, pp234. The authors' consider the process of European integration and its future drawing on research into the national archives of the member states of the EU and the USA.

Blackstone's guide to the Criminal Justice & Public Order Act, Martin Wasik & Richard Taylor. *Blackstone Press* (London) 1995, pp349, £19.95 pk.

Free to hate: the rise of the right in post communist eastern Europe, Paul Hockenos. *Routledge* 1994 pp330. Surveys the far Right in Germany, Hungary, Romania, Czech Republic and Poland.

Immigration and nationality law handbook. *Joint Council for the Welfare of Immigrants* 1995 pp340, £12.99 pk. Revised and updated edition of the 1992 edition that covers changes in immigration and refugee law since then.

Pressing problems in the law Volume 1. Criminal justice and human rights. PBH Birks (ed) *Oxford University Press* 1995 pp155, £25 pk. This volume contains 13 essays on reshaping the criminal justice system, fraud and the criminal law and freedom of expression.