

## Statewatch bulletin

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### IMMIGRATION

#### UK

##### The Lilley-Howard package

The Social Security Secretary, Peter Lilley, and Home Secretary, Michael Howard, have put together the most extensive package of anti-immigrant and anti-refugee measures which threaten to destroy asylum rights and the immigration appeals system as well as creating untold misery among immigrants and refugees in the UK.

On 11 December during the second reading of the Asylum and Immigration Bill in the House of Commons Mr Howard announced the government's "white list" which they deem to be "safe". The countries on the list are: Bulgaria, Cyprus, Ghana, India, Pakistan, Poland and Romania. Amnesty International strongly criticised the list: "We have serious concerns about all the countries on the list", they said. This year there have been 7,980 applicants from the seven countries on the "white" list, of which only 85 have been granted refugee status or exceptional leave to remain. The change on social security regulations takes away a range of benefits currently available to asylum seekers.

A number of organisations are campaigning to stop the regulations and the bill from becoming law. Actions so far include a symbolic hunger strike and picket by asylum-seekers and anti-racists outside the Social Security Advisory Committee on 6 December, the day the minister receives its recommendations; further actions planned include a lobby of parliament on 19 December; a rally on 13 January in London and a national demonstration on 24 February.

For further information contact: the *National Network Against Detentions and Deportations*, c/o CARF, BM Box 8784, London WC1N 3XX, Tel 0171-837 1450; see feature on pages ....

#### SPAIN

##### EU funds new "Wall" in Ceuta

The European Union and the Spanish government are jointly financing the construction of a 8.5 kilometre barbed wire border "wall" to stop migrants entering the Spanish enclave of Ceuta in north Africa. The "wall", costing \$29 million, being constructed between Ceuta and Morocco will have the latest high-tec devices - 30 closed circuit television cameras, spotlights and sensory pads to detect anyone crossing the border area. It has been classified as a military project.

Roberto Franks, spokesperson for the Spanish government in Ceuta, said: "Without doubt this is the southern frontier of the Europe of Schengen. We have a whole continent to the south of us. It is increasingly evident that this wall is necessary".

This move followed major disturbances involving some of the Cueta refugees coming into conflict with the police on 11 October. 168 of them were sent to mainland Spain to face criminal charges for the "riots" or to be detained pending their repatriation (although this may prove difficult as almost all of them do not have any identity documents).

*European*, 30.11.95; *Migration Newsheet*, November 1995; see *Statewatch*, vol 5 nos 3, 4 & 5.

#### SWEDEN

##### Four expelled

Four suspected terrorists were expelled from Sweden during the period July 1994-June 1995 under the Swedish Terrorist Act (*Lag 1991:572 om sarskild utlanningskontroll*). This does not include Abdelkrim Deneche (see *Statewatch* vol 5 no 5, and below), who despite the judgement by the Supreme Court (stating that there obviously were no ground for the French government's request for expulsion) was ten days later labelled by the government a terrorist, but allowed to stay on humanitarian grounds. One of the four expelled - also an Algerian, suspected of being a member of GIA - were sent to Algeria less than twenty-four hours after a request from the Swedish security police. No hearings were held, even though the terrorist act requires this, and he was - also in contradiction to the terrorist act - sent back to Algeria even though it was obvious that his life was in danger. The man however, according to the Swedish radio, managed to escape from Algeria to a neighbouring country.

*Dagens Eko & Swedish Text TV*.

##### Police officer accused of spying on refugees

An unnamed senior police officer, chief of the Handen police district aliens department, is currently under investigation and may be prosecuted for handing information to the Russians on asylum-seekers. Between 1994 and 1995, the officer passed on confidential information about at least 10 Russian asylum-seekers and foreigners from other countries. In one case, the Russians requested confidential information about a 19-year old man who had deserted from the Russian Army and escaped to Sweden. The officer is accused of accepting bribes and free Baltic boat trips between Russia and Sweden. As chief of an alien unit, it would not have been difficult for him to access and pass on sensitive information. On several occasions the police officer travelled to St Petersburg to hand over material. Swedish counterespionage do not exclude the possibility that he may have been a Russian recruitment target. The Swedish investigation has established that the information is in the hands of the Russian Immigration Police and specialists believe the Russian Foreign Intelligence Service (SVR) probably had a hand in the matter.

Staff on Baltic Line cruise ships are suspected of acting as

liaison for the police officer. The managing director of Baltic Line has rejected the allegations as "spy mania", saying it is perfectly normal for Swedish and Russian police to exchange information concerning suspect passports. However, according to the prosecutor's investigation, the police officer did not register the documents according to regulations. Some fifty written notes, many on Baltic Line letterhead paper, have been intercepted. These secrecy offenses were uncovered by colleagues of the officer who began to suspect irregularities. The investigation has established that the police officer had severe economic problems. He was suspended, pending further investigation, but not remanded in custody. Following interrogation he claimed he was innocent and that he followed official routines intended to stop illegal immigration. The prosecutor investigating the case will decide whether to press charges for professional misconduct, breach of secrecy and pocketing bribes.

*Intelligence*, no 26, 20.11.95.

#### **Deportation order on hold**

Mr Deneche, an Algerian citizen who has been living in Sweden since 1991, and who was held in custody following a demand from the French government that he be extradited was released from at the beginning of November (see *Statewatch* vol 5 no 5).

This followed the rejection by the Swedish Supreme Court of the French application which they decided was manifestly unfounded. The court's judgement was based on the application of the Swedish law on extradition (Lag - 1957:668 - om utlämning f\_r brott). However, the Swedish security police still claimed there was a risk that he would commit a crime within Swedish jurisdiction including violence to attain a political aim. Mr Deneche was therefore not released but kept in custody under the Swedish terrorist law (Lag - 1991:572 - om särskild utlänningskontroll).

On 31 October the Swedish government took the decision that he should be deported to Algeria citing the same views as the security police. The Minister of Justice stated in an interview that: "We have done an evaluation based on information provided by the security police and the facts presented in court, but I do not want to get further into the underlying facts."

But due to the prevailing political circumstances in Algeria it was decided not to deported him while the Swedish government considered he might face persecution there. The decision not to execute the expulsion is valid for three years and during this time he has to report to the police three times a week.

*Svenska Dagbladet*, 1.11.95.

#### **NETHERLANDS**

##### **Egyptian asylum seeker disappears**

On 27 July, an Egyptian asylum seeker, Rauf Mohamed Kilani Mosilhy was brought to Schiphol airport by two Koninklijke marechaussee employees to him on his involuntary return to Egypt. Mr Mosilhy reported himself to

the Dutch authorities in mid-1994. He said he served in the Egyptian army until 1988, after which he travelled to Saudi Arabia to look for work. He was subsequently recruited by Afghan Jihad resistance fighters and went to Pakistan, from where he infiltrated several times into Afghanistan. After the war subsided, Pakistan moved to expel the militants, but Egypt refused to admit them and Mr Mosilhy travelled to Yemen instead. Once settled there, he soon feared to be deported to Egypt where he believed he would be arrested, so he decided to flee to Holland to ask for asylum. He told the Dutch authorities that he had fled from Egypt because living conditions were very poor, and that he had never been prosecuted, but feared arrest as a sympathiser of the Moslem Brotherhood. When his request was turned down he escaped from a refugee centre in November 1994, only to be arrested again near the Dutch-German border on 1 July 1995.

At Schiphol on 27 July, Mr Mosilhy tried to physically resist being expelled. The marechaussees turned to Medicare, a private company which handles requests for medical assistance at the airport. The marechaussee, their biggest customer, frequently ask for Medicare's help when "troublesome" asylum seekers are being deported. A Medicare doctor injected the Egyptian with a sedative and he was put on board the plane. On their arrival in Cairo, the two marechaussees handed him over to the Egyptian authorities, who immediately arrested him on charges of desertion and forging identification papers. In the weeks following, family members repeatedly inquired about Mr Mosilhy's whereabouts, but the Egyptian ministry of the Interior claimed Mr Mosilhy had never entered the country, and considers the case closed.

Answering questions in the Dutch parliament, the State Secretary, Mrs Schmitz, admitted that Mr Mosilhy was injected on "medical indications" against his will. According to the Medicare

doctor, he was in danger of mutilating himself and others through his violent behaviour. The Dutch Ministry of Justice says the case was handled correctly, but asylum law experts maintain the government has violated several of its own regulations, as well as the 1951 Geneva refugee treaty which forbids refoulement (ie, the returning of a refugee to a country where his life or liberty is threatened).

*NRC Handelsblad*, 18.11.95.

#### **SWITZERLAND**

##### **Swiss-German exchange of asylum seekers fingerprints**

The Swiss Minister of Justice and the German Minister of the Interior are due to sign an agreement on checking the fingerprints of asylum seekers. Under the agreement 3,000 fingerprint files will be randomly selected from those who sought asylum, between August and October 1993, held in the German Automatic fingerprints identification system (AFIS). AFIS is run by the Bundeskriminalamt (BKA, the Federal Criminal Police Office). The files, together with other personal data, will be given to the Swiss Federal Office for Refugees (BFF). The BFF will check the Swiss AFIS system

to see if any of the asylum seekers applied to Switzerland. In 10% of the cases where the application was made to Germany before Switzerland the BFF will also check in its paper files to see if the previous German application had been admitted by the asylum seeker.

According to the agreement the checks will only be used for statistical analysis and the results will have no influence on the decision taken on the applications. Switzerland made a similar agreement with Austria in 1993 and now wants to show that it can be included in the 1990 Dublin Convention procedures.

Despite criticising the automatic fingerprinting of asylum seekers the German Federal Data Protection Commissioner was given the go-ahead by the Commission of the Interior of the Bundestag on 25 October.

In 1992 the Swiss Ministry of Justice and the BFF tried to get agreement with the EU on the creation of a common European AFIS system called "Eurasyl". The EU rejected this in favour of EURODAC a similar system which would back up the Dublin Convention by identifying cases of multiple applications to different EU countries - which is expressly ruled out by the Convention. The Swiss government which wants to link up with EURODAC has to revise the Swiss asylum law in 1996 and this will now include the formalisation of the practice since 1988 of automatically fingerprinting asylum seekers and allow for the regular exchange of data with other countries.

An official of the German Ministry of the Interior said that the Franco-US company Morpho, which has already provided the French and German AFIS systems, is undertaking the feasibility study for the proposed EU's EURODAC asylum seekers fingerprint system. The official also commented that Article 15 of the Dublin Convention limited the exchange of information to individual cases and the mass exchange of information would require the Convention to be amended or a new Convention agreed.

*Absprache über den Abgleich von Fingerabdrücken von Asylbewerbern; Taz/WoZ, 3.11.95.*

## GERMANY

### Spanish extradition request denied

The Berlin Kammergericht (High Court) decided on 13 October at its first hearing that a request by Spain for the extradition of Benjamin Ramos that they required further information before deciding on the case. Ramos is charged by the Spanish authorities to be a member of the Barcelona commando of ETA which is said to have organised a bombing in 1994 which killed a person. It is also alleged that he rented cars and flats for the group.

Ramos escaped to Berlin to live with his girl friend. On 29 January 1995 he was detained there by the police following a request by the Spanish police and held in Moabit prison, Berlin. At the hearing in the Berlin High Court Ramos claimed that the charges against him were based on allegations made by Mr Espera, an alleged ETA member, made under torture. He told the court that the conditions in Spanish prisons were inhumane and that he could not be sure

that he too would not be tortured if he was extradited.

The court accepted evidence on torture cases presented by Amnesty International and other human rights groups. Despite the backing for the Spanish request by the German government the court asked for more information on the case and particularly a guarantee the allegations of Mr Espera would not be used in court against Ramos. It seems unlikely the Spanish authorities will agree to this and the Spanish Audiencia Nacional has until 10 December to respond otherwise Ramos will have to be set free,

This would be the second case since 1993 that Spain will have been turned down by judicial authorities in other EU member states. In November 1993 Belgium authorities accepted an application for asylum by two alleged ETA members.

*Kammergericht Berlin, Beschluss vom 13.10.95, Az.: (4) Ausl A 94/95 (9/95).*

### Deported Sudanese arrested?

The refugee organisation *Pro Asyl* reported mid-September that two of the seven Sudanese refugees deported from Germany to Sudan after a three-week hunger strike had been arrested. *Pro Asyl* stated that its information came from the National Democratic Alliance, a major opposition grouping in Sudan. A speaker from the NDA said that the information was from a "reliable source". *Pro Asyl* called on the German government to prove the whereabouts of the refugees and called for a parliamentary inquiry into the circumstances surrounding the deportation. The organisation also claimed that everything pointed towards Interior Minister Kanther having ignored an offer by the Eritrean government to take the refugees, as well as having ordered the deportation before the Federal Constitutional Court had reached a verdict on the case. The Federal government denied all knowledge of the arrests, describing the claim as "unfounded".

*Berlin Antiracist Information Network*, September/October 1995; see *Statewatch* vol 5 no 5.

### Immigration - new material

**Frontier law: Why Schengen isn't working for Europe's third country nationals**, JCWI/ILPA, September 1995. A recent report about the Schengen countries reveals that harmonisation appears a distant dream. The Immigration Law Practitioners' Association (ILPA) and the Joint Council for the Welfare of Immigrants (JCWI) compared the requirements of the Schengen countries for the admission of a third-country national with residence in the UK. There was no agreement among the countries as to whether a visa was required, no standard fee, the criteria for admission were vague and inconsistently applied, and there is no supra-national authority to appeal to. The Schengen agreement provisions are the model on which the EU External Frontiers Convention is based, so it is likely that the same problems will beset the EU as a whole if and when the Convention goes through.

**Devianza e Criminalata tra gli Immigrati [immigration and criminality]**, Massimo Pastore. Published by Fondazione Cariplo per le Iniziative e lo Studio sulla Multietnietà, Foro Bonaparte, 22 - 20121 Milano, Italy, 64 pages.

**The movement of aliens in the European area.** Report translated from original prepared by *GISTI*, France, and now published by the *Immigration Law Practitioners' Association* (ILPA), May 1995, 44 pages. ILPA, The Basement, 38 Great Pulteney Street, London W1R 3DE.

**Defend Nigerian asylum-seekers**, *CARF*, no 29, December 95-January 96, p5.

**Advising at the police station: immigration detainees**, Ed Cape & Jawaid Luqmani. *Legal Action* October 1995, pp22-24. On the rights of people who have been arrested by police or immigration officers and are likely to be detained under the Immigration Act 1971.

**Control of immigration: statistics United Kingdom, first half 1995**. *Home Office Statistical Bulletin* 21/95.

**Recent developments in immigration law**, Rick Scannell, Jawaid Luqmani & Chris Randall. *Legal Action* November 1995, pp21-25. Update of developments in immigration law.

**Somali family reunion: Home Office policy and the judicial review**, Duran Seddon and Raza Husain. *Immigration and Nationality Law and Practice* Vol. 9 no. 4 1995, pp121-131. On "regrettable approach taken by the Home Office" to Somali family reunion cases.

**Home Office asylum policy: unfair and inefficient**, Richard Dunstan. *Immigration and Nationality Law and Practice* Vol. 9 no. 4 1995, pp132-135. This article criticises the "profligacy" and the "quite unjustifiable wastage of public funds" in the Home Office's unnecessary policy of detaining hundreds of asylum seekers.

**Kill this racist bill**. *CARF* 29 (December 1995-January 1996) pp3-4. This article takes a comprehensive look at the main measures in the Asylum and Immigration Bill which it describes as "the most frightening attack on refugees for many years."

### **Parliamentary debates**

Mr Kurt Frances *Commons* 20.10.95. cols. 675-682  
Asylum & Immigration *Commons* 20.11.95. cols. 335-348

## **EUROPE**

### **UK** **Europol ratification process started**

On 8 December the UK government published the Europol

Convention as a Command Paper (White Paper) and, under its constitutional arrangements, started the process of ratification. This move is bound to further exacerbate the row of the inclusion of the European Court of Justice (ECJ) in the Convention. Since June the UK has been refusing to agree to the inclusion of the ECJ in opposition to the other 14 governments. As several parliaments, Belgium, Netherlands, Luxembourg and Germany at least, will not even start to look at the Convention until this question is settled.

Most EU states have written constitutions which require full parliamentary debate on the ratification of international treaties like the one on Europol. In the UK the rules remain archaic. Under what is known as the "Ponsonby Rules" all the government now has to do, having published the Command Paper, is to put in on the "Order Paper" (listing of a day's parliamentary business) of the House of Commons and wait a minimum of 21 days before completing the ratification process. The only way there will be *any* debate is if even MPs demand a debate and manage to disturb the parliamentary timetable as agreed by the government and Labour opposition - this is most unlikely to happen. It is therefore possible that in January or February 1996 the UK will have completed the ratification process before any other parliament in the EU has ever begun to look at it - because on the UK's stand on the ECJ.

The Convention is available from HMSO, Cm 3050, for £6.10 or you can get the *Statewatch* pamphlet, "The Europol Convention" which includes the full text of the Convention, the full text of the Joint Action on the Europol Drugs Unit, Commentary, Analysis of the Provisions, Chronology and Bibliography for £5.00 from: Statewatch, PO Box 1516, London N16 0EW, UK.

### **Europol to hold data on race, sexuality and politics**

A draft Regulation on "Work files for the purposes of Analysis" being discussed by the Council of Justice and Home Affairs Ministers would allow Europol to hold information on a person's race, sexuality and political opinions. Setting out the rules to be followed, under Article 10.1 of the Europol Convention, the Regulation, Article 4.3, enables Europol to hold information on:

- 3.1 Ethnic origin
- 3.2 Political views
- 3.3 Religious views
- 3.4 Information on health
- 3.5 Information on sexuality

This interpretation under the "assurance" given in Article 10 of the Convention which refers to the Council of Europe Recommendation R (87) 15 concerning data. The draft Regulation says this data can be "collected if they are necessary for the purposes of a specific data file". The effect will enable Europol to hold this data on "suspected" criminals, associates and others.

The draft Regulations, which itself has 15 Articles, extends

the range of people, under Article 10 of the Convention, on whom data can be added, in Article 3: "as well as other persons not listed here, but whose registration might be of interest for a specific analysis". Article 4 enables the holding of "other information suitable for identification". So too does Article 5

which speaks of holding data on "accusations", "suspicion of membership of a criminal organisation", "enterprises or organisations in communication with, or used by the suspect".

The data held is to be classified - "secret, confidential or of general interest" - and graded "according to the reliability of the information" (Article 8):

- 3.1 very reliable
- 3.2 relatively reliable
- 3.3 *not very reliable* (italics added)

The rules and Regulations being agreed by the Council of Ministers are not being given to the 15 EU parliaments as part of the ratification process for the Europol Convention.

*Draft regulations regarding working databases for analysis*, EUROPOL 74, 12.9.95 (Statewatch translation from German text).

## SCHENGEN

### "Mobile frontiers" introduced

At the meeting of the Schengen Executive Committee on 24 October agreed a proposal by Germany to recognise the creation of "mobile patrols" and "mobile frontiers" under bilateral agreements between Schengen countries. France had taken the lead on the issue having already concluded 10 bilateral agreements with Belgium, Germany and Spain; Germany has signed agreements with France and Luxembourg. These agreements allow the setting up of joint patrol of police to carry out checks - not at the borders which is against the spirit of the Schengen Agreement - but at what are being called "mobile frontiers" either side of the formal borders.

The French European Affairs Minister Michel Barnier said: "In France, we can see the usefulness of such controls. The Schengen Convention does not envisage completely abolishing controls within Schengen, just at frontiers. We now have the concept of mobile controls and mobile frontiers which could be more effective than fixed controls". Early a French Foreign Ministry spokesperson, Jacques Rummelhardt, said: "We don't need less Schengen, what's needed is more and better Schengen. The problem is not access for citizens of countries who have signed the agreement but access for citizens of third countries."

The French-Spanish bilateral agreement does not however appear to be working. During the summer the French unilaterally reintroduced frontier checks on the Spanish border and the later introduction of French army patrols has led to major traffic jams. In November this led the Governor of Gerona to reintroduce checks at La Jonquera on the Spanish side. The Governor said that although there was a re-admission treaty between the two country permitting the

return of "illegal" immigrant this did not work when there had been a major growth in numbers as a result of countrywide French security checks in reaction to bombing. "If you find someone illegally on the frontier there is no problem, but if you find them 100 kilometres from the frontier there is a discussion whether they did or did not arrive from France", he said.

The same meeting of Schengen Executive it was agreed to give the go-ahead for negotiations with the countries of the Nordic Passport Union. This would allow Norway and Iceland who are not members of the EU to become "associate" members of Schengen (see *Statewatch* vol 5 no 2).

### German assessment of Schengen

In September the German government issued a report to the Bundestag on the first six months of Schengen in operation. The report says that the main function of guards at the borders of other Schengen members is dealing with individuals who are sent back to Germany. Between April-July 1995 the total was 7,556 cases and was attributed to intensive identity checks by the Dutch and French.

Around 9,000 of the 30,000 entry points to the Schengen Information System (SIS) are in Germany: 7,000 police forces of the Federal states (Landes); 1070 Federal Border Control; 700 Federal Criminal Office, 7 Federal Criminal Office (SIRENE); 2 Customs Criminal Office. In mid-summer Germany has provided 2.3 million of the 3.4 entries on the SIS and France 1 million.

The "most important part" of the SIS is identifying individuals to be refused entry. Between 26 March and 8 September 4,261 people were refused entry, to France 80%, Benelux 20%, as a result of information provided by Germany. 10% concerned asylum seekers who had obtained temporary or permanent documents.

Although a number of cross border police operations had been carried out the German government: "intends to press for harmonisation on the basis that foreign police should have unhindered ability to give chase and make arrests in neighbouring territory, unlimited by time or distance".

*Agence Europe*, 26.10.95; *European Report*, 28.10.95; *European Voice*, 26.10.95; *European*, 16.11.95; *Reuters*, 20.10.95; *Report of the views of the government on the first six months of the implementation of the Schengen Agreement*, Bundestag, September 1995; Written answer from Bernd Schmidbauer to Manfred Such (Member of the Bundestag, Green Party), 19.7.95.

## SWITZERLAND

### Refusal to move on free movement

The third "horizontal meeting" between the EU and Switzerland to set up a seven-point trade deal foundered on the Swiss refusal to change their practices on what they see as migrant labour. The EU requires that there is unconditional free movement with EU citizens having the same rights as they do in European Economic Area countries - to work if offered a job and to look for work for up to three months

without a work permit.

The Swiss government has refused to move on three restrictive measures: maintaining annual quotas, preference for indigenous workers (Swiss citizens and migrants already established), and the control of social and salary conditions of people wanting to move to Switzerland.

*European Voice*, 16.11.95; *Agence Europe*, 27.10.95.

## EUROPE

### Expansion of semi-official groups revealed

A written answer to a question in the Belgian Senate has revealed the expanding network of various semi-official and unofficial organisations which link the police forces, immigration services and intelligence and security services across Europe and beyond.

The question, put by a member of the Agalev fraction, related to unofficial and semi-official structures including why they were formed, what legal basis they had, who the membership consisted of, how often they met, what they discussed and what results they had achieved so far.

In his answer the Minister Vande Lanotte covered eight separate organisations: the Star group and the Pompidou group both dealing with drug abuse; the Vienna group and the Berlin Club which cover migration; the Bern club and the Kilowatt system, which are intelligence networks and the Cross Channel Conference and the Police Working group.

The *STAR group* is a German-inspired organisation and most of its membership consists of German national and regional police services. The USA were involved from its founding owing to the large number of US army personnel stationed in Germany. The organisations network therefore includes the Drugs Enforcement Agency and Customs Service as well as the US military police. Other nations involved with the Star group are France, Austria, Switzerland and the Benelux countries. The answer shows that Interpol has joined the group.

The *Pompidou group* also deals with drugs. Its brief however is broader, touching all aspects of drugs from the international drug trade through to health care and the impact of drugs on youth. Its membership includes all of the EU countries, the Czech Republic and Slovakia, Hungary, Switzerland, San Marino, Malta, Norway and Poland. The European Commission has observer status.

The *Vienna group* and the *Berlin group* were both formed to combat migration. Areas covered by the group include visa policy, asylum procedures and providing aid to counties who tend to be areas of high emigration. The membership of the Vienna group consists of the EU member-states, Liechtenstein, the countries of the former Eastern block, San Marino, Switzerland, Malta, Turkey, Cyprus , the Baltic States and the Vatican. The answer reveals that the membership has been expanded to include the USA whilst Australia has gained observer status. A number of international institutions are also linked in with the Vienna group. These include the Council of Europe and the European Commission, the International Labour Organisation, The International Migration Organisation, the G-24 group, The United Nations High

Commission for Refugees (UNHCR)and the Organisation for Economic Cooperation and Development (OECD).

The *Berlin group* comes out of the 1991 Berlin conference, which was organised to co-ordinate the “fight against uncontrolled migrations”. The conference led to a number of working groups being formed from European immigration services. The membership of these groups consists of countries who attended the original conference: All EU countries, the Baltic states, the countries in the former eastern block together with Switzerland, Norway and Turkey.

The *Bern Club* and the *Kilowatt group* are far more secretive organisations. Vande Lanotte refused to answer any questions on the Kilowatt group, beyond revealing that the organisation which was set up to fight against Middle-eastern terrorism is still in operation. He was more forthcoming on the Bern Club, “an informal gathering of civil servants from the European intelligence and security services”. Its aim is to “co-ordinate activity in the exchange of information relating to counter-espionage and subversive terrorism in order to head off any threat of either individuals or groups to the member states taking part”. Membership of the group is secret, although as Belgium has allocated responsibility for liaising with this group to the Ministry of Justice it can now be assumed that Belgium should be added to the list of member-countries already known to include Germany, Switzerland, Italy, France and Austria.

The Minister finally referred to the two police organisations and in particular the Cross-Channel Conference which organises the police services of Belgium, France, the Netherlands and the UK to coordinate their response to cross-channel problems. Vande Lanotte did state that one of the topics covered at the last meeting was “environmental terrorism”, along with the cross- channel trade in livestock. He denied all knowledge of the Police Working Group (which probably refers to the Police Working Group on Terrorism).

*Written answer from the Belgian Senate*, question put 8.8.95.

## EU

### The *Guardian* secrecy case decision

The European Court of Justice decided on 19 October that the European Council had been operating a systematic ban on the disclosure of documents which might reveal the position taken by EU member states in discussions. The Court annulled the Council's decision to refuse the *Guardian* access to minutes and reports from Council meetings and was a victory for openness in the workings of the Council. But the five judges of the Court of First Instance, the junior branch of the ECJ, stopped short of taking on the general argument put by the *Guardian* for a citizen's fundamental right of access to EU legislative documents (see *Statewatch*, vol 3 no 6; vol 4 nos 1, 2, 3, 4 & 5; vol 5 nos 2, 4 & 5).

John Carvel, then the *Guardian's* European Affairs Editor, applied for preparatory reports, minutes, attendance and voting records for meetings of the Council of Social Affairs Ministers, the Council of Justice and Home Affairs Ministers and the Council of Agriculture Ministers. He was sent documents on the Social Affairs Council but was later told by

the Council that the material: "should not have been sent to you.. this information was sent because of an administrative error". The *Guardian* lodged its case with the ECJ in Luxembourg in May 1994 and was joined in the action by the Danish and Netherlands governments and the European Parliament.

The judgement to annul the Council's refusal to supply the requested information rested on its failure to "genuinely balance the interests of the citizens in gaining access to its documents against any interest of its own in maintaining the confidentiality of its deliberations". The *Guardian's* argument that the Council was operating a "blanket ban" was supported by evidence from the Danish and Netherlands governments. Their evidence, the court found, showed "the manner in which the adoption of the contested decisions was discussed" and that "no specific assessment of the interests involved" was discussed.

#### The decision

The court found in effect that the Council had broken its own rules for considering requests for information. These rules are set out in three documents: 1) a Code of Conduct concerning public access to Council and Commission documents (adopted 6 December 1993); 2) the Council's Rules of Procedure by Decision (adopted 6 December 1993); and 3) the Council's Decision on public access to Council documents (adopted 20 December 1993). Under this last Decision that Council empowered itself to refuse information where: "its disclosure could undermine: the protection of the public interest (public security, international relations, monetary stability, court proceedings, inspections and investigations)" (Article 4.1).

While under Article 4.2 access was to be "refused in order to protect the confidentiality of the Council's proceedings". The Council's defence primarily rested on its argument that the positions taken by member states in "negotiations" (their perception of the Council's legislative-making process) had to remain secret if it would undermine the whole process.

#### The *Guardian's* case rested on:

"whether there is any valid reason in a community of democracies (other than self-interest by the Ministers in question) why their process of decision-making should not be subject to the scrutiny of the people whom they are representing and on whose account they are actually taking decisions".

The court side-stepped the underlying arguments and only came to a view on the refused requests.

Two weeks before the ECJ decision the Council, seeking to preempt the judgement, agreed that in future the minutes of "legislative acts" should be made available "save in exceptional cases". These "exceptions" being those in Article 4.1 referred to above. The Council has until mid-December to comply with the judgement or appeal against it to the full European Court of Justice.

#### The background

The battle over secrecy and transparency in the EU started before the Council introduced the December 1993 measures. In February 1992 the Commission proposed a Council Regulation to introduce official secrecy classifications for documents and to introduce security vetting of staff employed in sensitive areas. The proposal passed through the Commission as an uncontroversial item but was vigorously opposed by the European Parliament and the International Federation of Journalists. The campaign against the Regulation caused much embarrassment during the first Danish "No" vote on the Maastricht Treaty and was quietly withdrawn in the interests of "subsidiarity" at the Edinburgh Summit in December 1992.

But at the same time the Council agreed the three measures on public access and the Rules of Procedure in December 1993 it also tried to re-introduce the secrecy classifications and staff vetting. The draft "Council Decision on classified-information security and protected measures applicable to the General Secretariat of the Council in the implementation of Titles V and VI of the Treaty of European Union" was blocked by the Netherlands and Denmark. As unanimity is required on such a proposal it remains on the table.

The balance on the Council on the linked issues of secrecy classifications and "transparency" (public access) has shifted over the last year. The Netherlands and Denmark have been joined by Sweden and Finland in opposition and on occasion by Ireland, the UK, Austria, Greece and sometimes Spain. While a substantial minority can be mustered to oppose the introduction of secrecy measures there is not a majority for greater openness.

Writing after the judgement John Carvel described the process of media reporting on meetings of the Councils of Ministers: "The journalists usually made a reasonable attempt at piecing together several sets of half-truths into more or less accurate reports". This kind of reporting will continue until all Council measures are published well in advance so that an open democratic debate can take place before their adoption.

*Press release*, European Court of Justice, 19.10.95; *Judgement of the Court of First Instance*, case T-194/94; see *Statewatch* vol 3 no 6; vol 4 nos 1, 2, 3, 4, & 5; vol 5 nos 2, 4 & 5.

#### Recent European Court of Justice cases

R v Home Secretary ex parte Gallagher, ECJ, see Northern Ireland in this issue.

Two recent cases have shown the limits of the European Parliament's ability to influence Council decisions. In the first case, Parliament was refused a declaration that a regulation providing for technical assistance to the independent states of the former Soviet Union and Mongolia was void. Parliament argued that the consultation was a sham. It rejected the proposal after long consideration and debate, but the Council adopted it anyway five days later, with four substantial

amendments on which Parliament had not been consulted. The European Court of Justice held that the amendments did not affect the essentials of the programme, and the fact that the Council continued work on the proposal while awaiting Parliament's opinion did not amount to a failure to consult.

On the other hand, a Directive approved by Parliament and then substantially changed by the Council with no reconsultation was annulled. The Court held that the Council had infringed essential procedural requirements in changing provisions on road tax, tolls and charges. *Parliament v Council of the European Union*, C-417/93, 10.5.95, CJ Proceedings 18/95; *Parliament v Council of the European Union*, C-21/94, 5.7.95 (CJ Proceedings 20/95).

## Recent ECHR cases

Cases referred to court:

\* Chahal v UK: A, an Indian citizen living in the UK over 20 years, with two British-born children, was involved in the movement for a Sikh homeland. He was charged with criminal offences but acquitted. A decision was taken in August 1990 to deport him on national security grounds, and he has been in custody ever since. He applied for asylum, which was refused in 1991 with no right of appeal. He had no appeal against the deportation decision, but had the right to appear before an advisory panel, with no legal representation, no right to know the evidence relied on by the Home Secretary, and no right to know the panel's recommendation. The Home Secretary issued a deportation order in July 1991. Judicial review was refused. He claims violations of Article 3 (exposure to torture, inhuman or degrading treatment); Article 8 (respect for family life); Article 5 (liberty and security of person) and Article 13 (effective remedy). In June 1995 the Commission expressed the opinion that all articles were violated. (*Press release* 407, 31.8.95)

\* LG v Austria: refusal of emergency benefit to non-Austrian citizen; the applicant claimed breaches of Article 6 (access to a court); Protocol 1 Article 1 (peaceful enjoyment of possessions) in conjunction with Article 14 (non-discrimination). The Commission agreed that Protocol 1 and Article 14 had been violated. (*Press release* 437, 15.9.95)

\* Ahmed v Austria: refugee convicted of attempted robbery had asylum withdrawn and proceedings for expulsion to Somalia were underway. The Commission held that expulsion would breach Article 3 (exposure to torture, inhuman or degrading treatment) (*Press release* 467, 26.9.95)

\* Ahmut v Netherlands: refusal to allow Moroccan child to enter the Netherlands to live with his Dutch father, three years after his mother died in Morocco and six years after the marriage was dissolved. The Commission held that there was a violation of Article 8 (family life) (*Press release* 467, 26.9.95)

Judgments:

\* Vogt v Germany: a teacher was dismissed in 1987 after disciplinary proceedings begun in 1982 for "failure to comply with the duty of political loyalty", attaching to civil servants, including teachers, because of public political activities for the DKP (German Communist Party) since 1980. The Court held that the dismissal violated Articles 10 (freedom of expression) and 11 (freedom of association). (*Press release* 448, 26.9.95)

## Europe - new material

**Human rights and the "third pillar": an urgent case for reform**, Michael Spencer. *European Access*, no 5, 1995, October, 7-10. Reviews work on policing, immigration and border controls in the run up to the 1996 Intergovernmental Conference.

**The European Union and the 1996 IGC**. Series of papers on the Intergovernmental Conference, including: Institutional Affairs, Juliet Lodge, pp18; Constitutional Issues: the European Parliament and National Parliaments, David Millar, pp10; EU Enlargement to Central and Eastern Europe, Jackie Gower, pp14; Justice and Home Affairs, Juliet Lodge, pp18. Centre for European Union Studies, University of Hull, Hull.

**Resolution on the functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference: Implementation and development of the Union**, Jean-Louis Bourlanges & David Martin. *European Parliament*, PE 190.440, A4-0102/95. Resolution extract.

**Review of the Treaty of European Union, Caritas Europa**, September 1995, 50 pages. Looks at work done by the "Migrations" and "poverty-Exclusions" working groups. Caritas Europa, 4 rue De Pascale, 1040 Bruxelles, Belgium.

**NGO Network on European refugee, asylum and immigration policy: a dossier of proposals for the 1996 IGC**: compiled by Amnesty International, Caritas Europa, ECRE, CCME, Migrants Forum, Starting Line Group with help from ECAS. 20 page report on hearing by the European Parliament.

**Schengen co-operation (part 2)**, Serge A. Bonnefoi. *International Criminal Police Review* 447 (March-April) 1994, pp16-25. In this article the author discusses the principles governing police and judicial co-operation and their application.

**France: war without negotiation**. *CARF* 29 (December 1995-January 1996) p11. Examination of the "tooling-up" of the French state and the execution of the Algerian Armed Islamic Groups Khaled Kelkal who was shot dead as he lay on his back wounded.

## MILITARY

## UK

### Training for terror regime military

The Foreign Office has confirmed that it is training military personnel from Guatemala, who have carried out a policy of genocide against the indigenous Mayan inhabitants. The spokesman also confirmed that a ban of sales on military equipment has been lifted.

The training and possible supply of weapons to the regime, which is estimated to have killed over 150,000 people in the past 40 years, coincided with United Nations criticism following the unprovoked murder of 11 Mayan Indians in October. It later transpired that these soldiers had been trained by British troops to take part in a multi-national force in Haiti.

The decision follows on from an announcement in August that the Foreign Office would be supplying support for the Guatemalan police. The Foreign Office refused to specify the number of military personnel involved but added that "We are supporting the peace process."

*Independent* 13.10.95, 28.10.95;

### Lesbian and Gay Soldiers Lose Appeal

The four soldiers who were dismissed from the British armed forces because of their sexuality have failed to persuade the court of appeal to overturn the decision of the court that found against them. They had attempted to challenge the ban on homosexuality which marks out the British Armed forces from elsewhere in the EU on the grounds that it was irrational and contravened the European Convention on Human Rights.

In their judgement the appeal court re-emphasised the point made originally by the Queen's Bench that the ban was becoming unsustainable. Sir Thomas Bingham, the senior judge presiding over the appeal, noted that "very few Nato countries barred homosexuals from their armed forces", and furthermore that Australia, Canada and New Zealand had all lifted their ban on lesbians and gay men serving in the last couple of years. However he argued that because the ban had been widely supported in the past it could not be deemed irrational. The four are planning to continue their case appealing all the way to the European courts if necessary.  
*Guardian*, 7.11.95; *Times*, 10.10.95 & 10.11.95; *Independent* 10.11.95; *Pink Paper*.

### Military: new material

**Structure and Functions; European Security and Defence Identity (ESDI) and Combined Joint Task Forces.** Draft General Report AM 269 of the *North Atlantic Assembly*. November 1995

**Euro Air group set up.** *Jane's Defence Weekly* 11.11.1995. The air forces of the UK and France have inaugurated a joint crisis management centre for out-of-area operations at RAF Strike Command headquarters High Wycombe.

**WEU in the Atlantic Alliance.** WEU Document 1487 of the

Political Committee. 6.11.1995.

**Military Airlift - Prospects for Europe.** WEU Document 1484 of the Technological and Aerospace Committee. 6.11.1995.

**Germany plans special operations command.** *Jane's Defence Weekly* 4.11.1995. Germany is to establish a 1000-strong special operations command (Kommando Spezialkräfte) bringing most of its army, air force and navy special forces under one unifying command and control. The Interior Ministry's Grenzschutzgruppe 9 (GSG-9) will have an important link with the new command.

**Squaring the circle.** *International Defense Review*, 11/1995. A recent study (Training for Peace) of the Norwegian Institute for International Affairs compares how the Danish and the Polish army are preparing for the combination of war and peacekeeping operations.

**The Turkish Army.** *Raids*, November 1995. Special report about the second largest force of NATO with sections on Turkish marines and paras.

**Dutch 'Korps Commando Troepen' Company 108.** *Raids*, November 1995. Article on the newly reorganized Dutch elite commando force.

**Collective Security Revisited.** Draft Interim Report AM 296 of the Working Group on Transatlantic and European Organizations of the *North Atlantic Assembly*. October 1995.

**CIA and DIA may operate more closely.** *Jane's Defence Weekly* 28.10.1995. The CIA and the Defense Intelligence Agency (DIA) of the Pentagon are working out procedures for closer cooperation to have CIA agents able to fully participate in ongoing military operations under DIA chain of command. Similarly, military officers might participate in CIA case officer intelligence work.

**NATO Forces in first large-scale TMD exercise.** *Jane's Defence Weekly* 7.10.1995. NATO forces have held the first large scale theatre missile defence (TMD) exercise, called Cold Fire, in Central Europe.

**Die Krisenreaktionskräfte der Bundeswehr.** (The crisis intervention forces of the Bundeswehr). *Wehrtechnik* 9/1995. Backgrounder on the rapid reaction forces of the German army, air force and navy.

**Belgian ESR Units.** Warriors of the Shadows. *Raids* August 1995. Article on the Equipes Specialises de Reconnaissance (Special Reconnaissance Teams), A highly specialized special forces unit that once formed the cover for the Belgium Gladio military instructors and since been deployed in Zaire, Somalia, Bosnia and Rwanda.

**Set roles,** Norman Baxter. *Police Review* 14.9.95 pp22-24.

This piece, drawing on the experience of an RUC Inspector in northern Ireland, discusses the role of the military in public order situations.

**Season of protest against military fairs.** *Peace News* 2396 (November) 1995. On the protests that have taken place at recent military fairs in Surrey, Brussels and Budapest.

**The myth of the SAS,** John Newsinger. *Lobster* (Ramsey) 30, pp32-36 1995. This piece looks at the SAS as fancifully presented in the biography of former director Peter de la Billiere.

### Parliamentary debates

Defence estimates *Commons* 16.10.95. cols. 46-119  
Defence *Commons* 17.10.95. cols. 166-252  
Foreign affairs and defence *Commons* 16.11.95. cols. 129-229  
Chemical weapons bill *Commons* 23.11.95. cols. 810-848

## POLICING

### UK NCIS "secret" agreements

It has been revealed that a series of agreements between the National Criminal Intelligence Service (NCIS) and the six police Regional Crime Squads (RCS) have been concluded without the involvement of police authorities. After representations the Home Office has agreed that future drafts will be referred to the Standing Committee - which includes local police authorities representatives.

So far three agreements have been signed between the NCIS and the RCSs: 1) on 29 September 1994 the Crime Committee of the Association of Chief Police Officers (ACPO) approved an agreement between the RCSs and the "Operations Support Unit (OSU)" of the NCIS. The OSU processes all requests by police forces in England and Wales for warrants from the Home Secretary to tap telephone and/or to open mail under the Interception of Communications Act 1985. In March 1995 the OSU had 49 staff in post (out of a total 262 NCIS HQ staff) which gives an indication of the growth of telephone tapping as a means of police intelligence gathering; 2) on 1 December 1994 the ACPO Crime Committee approved an agreement between the RCSs and the International Projects Unit (IPU) of NCIS. The IPU is concerned with "the activities of UK criminals who are either resident abroad or who travel overseas and are actively involved in criminal enterprises affecting the UK. Predominantly the work is concerned with major drug trafficking offences" (NCIS annual report 1994/5). It has, by comparison, 9 staff.

The third agreement is the "Service level agreement" between the NCIS and the RCSs adopted on 15 March 1995. Under the agreement the NCIS undertakes to provide: "high quality intelligence packages" on "persons suspected of serious criminality"; photographic and video images and financial research; a "secure flagging service" (which alerts

those searching databases); and access to the NCIS intelligence database. For their part the RCSs provide: "mobile surveillance"; "sensitive technical surveillance equipment"; and "allow access to undercover operatives".

The agreement ends with a clause regarding:

"very often, sensitive material as defined in the "Unused Material Procedures" for disclosure of material to the defence. It is therefore likely to be subject to the concept of public interest immunity and whenever this material features in a prosecution, notification must immediately be given to an appropriate NCIS representative. No part of any such sensitive material will be disclosed to the defence without prior consultation with NCIS management" (para 8.2)

*Service level agreement between the National Criminal Intelligence Service (Regional Offices) and the Regional Crime Squads of England and Wales, 15.3.95.*

### Another black death in custody

The Police Complaints Authority (PCA) are to investigate the death of a 25-year old black man, Wayne Douglas, who was found dead in his cell at Brixton police station on December 5.

Douglas was arrested by police who claimed that he had been involved in a robbery in Brixton, south London. Eye witness reports indicate that Douglas, who was armed with a knife, was surrounded by 15 policemen who were screaming at him to "put it down, put it down." Douglas threw the knife to the ground and was then allegedly attacked by a number of officers using the recently introduced long-handled baton. The police treatment of Douglas was described as "beyond belief" by one of several people who witnessed the incident. According to a PCA press release (5.12.95.) "he was found not breathing" in his cell an hour later. Police sources initially indicated that Douglas died of a heart attack.

The Institute of Race Relations have deplored the killing pointing out that "Five young black men have died in custody in the last two months alone." They continue: "In both 1994 and 1995 at least eleven black people are known to have died in custody. Since 1991 a total of 42 black people have died there (compared with a known total of 75 for the years 1969-1990.)"

In May this year another black man, Brian Douglas, died less than 300 yards from the latest killing, after being beaten about the head by police equipped with long handled batons. This second death, within such a short space of time and in the same location, has caused genuine concern within the black community in south London.

*Institute of Race Relations* press release 6.12.95; *Police Complaints Authority* press release 5.12.95; *South London Press* 8.12.95.

## DENMARK

### Parents get damages

Benjamin Schou, 18, was arrested by three police officers on New Year's night in 1992 who allege he had thrown a bottle at them. They used handcuffs, the so-called "leg-lock" and sat on Benjamin's chest (use of the "leg-lock" has been strongly criticised by Amnesty International) (see *Statewatch*, vol 4 no 4). He was carried, lifeless and handcuffed, into the police van. At the police station a doctor was called to resuscitate him and only then did his heart start beating again. But by this time his brain had already been deprived of oxygen for too long. Benjamin suffered permanent brain damage and is in a vegetative state from which he will never recover. He is totally paralysed and cannot communicate.

Highly placed officials and the Director of Public Prosecutions, Asbjørn Jensen quickly states that the three police officers only did their duty and that the Medico-Legal Council maintained that the reasons for Benjamin's cardiac arrest could not be determined.

In June 1994 Senior doctor, Fleming Bonde-Petersen, from the European Space Research Project (ESA), and an expert in the impact of pressure on the body, concluded that Benjamin had two cardiac arrests during his arrest on the street. He said they were caused by throttling by his scarf and by excessive pressure on his chest as a result of one or more police officers weight on him.

Officials in the Ministry of Justice and the Director of Public Prosecutions rejected both Bonde-Petersen's conclusions and the Amnesty critique and refused to charge the police officers involved. The officers stated that they thought Benjamin was "faking" when he was carried lifeless to the police van.

Benjamin's parents started civil proceedings against the police demanding 1.4 million Danish kroners from the Copenhagen police force. On 17 November, Østre Landsret (High Court) decided that the arrest of Benjamin was not violent and unnecessary force was not used. The court came to this conclusion despite evidence from doctors, ambulance staff and a police instructor. They told the court that the brain damage could have been prevented and that the arrest procedure was totally out of proportion in the stated circumstances.

However, the court also concluded, that the police officers could have prevented the extent of the damage to Benjamin and found in favour of the parent's claim for restitution. The money will be used for a foundation whose purpose will be to help people in conflict with the police.

*Information*, 7 to 19.11.95.

## GERMANY

### New round on "bugging" laws

Before the 1994 general elections plans to introduce police powers to "bug" into the penal prosecution code were frustrated by disagreements between the Christian Democrats and the Liberal FDP. The FDP wanted to preserve its liberal image and refused to support the necessary change to the constitution. Now, after doing badly in elections over the last two years, the new party leadership has decided to put the question in a referendum to its party members.

Meanwhile the Land of Baden Württemberg has put forward

a motion in the second chamber of the Federal parliament, the Bundesrat (which represents the Länder governments), to introduce two constitutional amendments. The first, amending Article 13, inviolability of residence (Unverletzlichkeit der Wohnung), would limit its application to allow bugging and technical surveillance inside a flat or a house in cases involving major crimes (especially organised crime). The second to Article 14, property rights, goods and money to be forfeited if they were used in or came from a criminal act. The onus would be on the owner to prove they possessed the goods legally.

The Baden Württemberg government is a coalition of Christian Democrats and Social Democrats (SPD). If the proposal, which is based on a SPD 1994 draft, is approved by the Bundesrat it will be passed to the Bundestag. In its session of 3 November the Bundesrat approved a motion, from Bavaria and Berlin, to extend powers to use telephone tapping to cases of corruption.

*Süddeutsche Zeitung*, 4-5 & 6.11.95.

## BELGIUM

### Files on unwelcome guests

The Belgian Ministry of Internal Affairs has decided to put unwanted foreign visitors on file with the aim of preventing them from re-entering the country. This follows a series of incidents involving German "skinheads", including riots following an international football match between Germany and Belgium and the trouble surrounding the annual Diksmuide "iron Pilgrimage" (see *Statewatch*, vol 5 no 5).

The task of identifying and placing individuals on file has been given to the "vreemdelingendienst" [gloss-foreigners service]. The aim of the exercise is to prevent "trouble makers" from re-entering the country or taking part in any mass-gathering in Belgium. Any marked foreigner who still manages to enter the country will immediately be deported.

The Minister for internal affairs Johan vande Lanotte has compared the new policy to that already being practised against Belgian football hooligans: "They receive one warning and the full exclusion measures only come into effect after they have offended again only after they have offended again. The same system will be applied to foreigners. I have the impression that neighbouring countries approve of this."

The measures are said to comply with the Schengen agreement notwithstanding the right of free movement established within the treaty. Article 96 of the treaty allows anyone who is considered a threat to public order to be excluded from other signatory countries.

*De Morgen*, 8.8.95.

## Policing - new material

**Big Brother Incorporated**, Privacy International, December 1995. This 150 page report investigates the global trade in repressive surveillance technologies. It shows how technology companies in Europe and the USA provide the surveillance infrastructure for the secret police and military authorities in countries such as China, Indonesia, Nigeria, Rwanda and

Guatemala. It is available on the WWW on: <http://www.privacy.org/pi/> Or contact: Simon Davies on (00 44) 0181 402 0737.

**Europol und der Kontext der Polizeikooperation**, Heiner Busch. *Unbequem*, no 23, September 1995, pp4-7.

**Spiel ohne Grenzen**, Heiner Busch. *Die WochenZeitung WOZ*, Zurich, 20.10.95, no 42, p7.

**The policing of domestic violence**, Valerie Cromack. *Policing and Society*, vol 5 no 3, 1995, pp185-200.

**Problems and prospects for European police cooperation after Maastricht**, Alain Guyomarch. *Policing and Society*, vol 5 no 3, 1995, pp249-262. Summaries history of police cooperation but then lapses into the “global” theories of crime.

**National and international aspects of undercover policing**, Chantal Joubert. *Police Journal* Vol LXVIII no 4 1995, pp305-318. Uses the Dutch *Van Traa* parliamentary report as a base for examining the role of undercover policing in the original Schengen countries.

**Police training in Europe on ethnic relations**, Robin Oakley. *Police Journal* Vol LXVIII no 4 1995, pp325-332. Based on a survey of member states of the Council of Europe.

**All change please**, Grania Langdon-Down. *Police Review* 29.9.95 pp17-18. This piece is based on research by the University of Wales and argues that “measures such as surveillance, intelligence and informants could only make a significant contribution to crime control if the force rearranged its entire organisational structure to give officers new and distinct roles.”

**A “pagan nightmare”** Paul Cotton. **“Never again”** Sarah Gibbons. *Police Review* 6.10.95 pp16-18 & 20-21. In the first piece a former Met police officer recalls his experiences during the riot at Broadwater Farm, Tottenham in October 1985; the second presents an update. The tone of the pieces can be measured by the extraordinary claim that “our police force...had never uttered a racist remark in what was probably the largest race riot in the UK”.

**Invite to a nicking**, Simon Weigold. *Police Review* 24.11.95. pp22-23. A police sergeant from south Yorkshire gloats over “Operation Trick or Treat” where wanted individuals were lured to an address, ostensibly for a marketing launch, and arrested.

In September British Telecom engineer, Peter Thurston, from Leyton, east London, was jailed for life at the Old Bailey for arson, grievous bodily harm and the murder of Donna O'Dwyer. Donna was a 26-year old black woman who had attended a party on the thirteenth floor of a tower block in Leyton when it was firebombed by Thurston, who was dressed in paramilitary combat fatigues and armed with an imitation machine gun. The attack, which ignited the only exit, led to panic when people were unable to escape. Many were seriously injured by the fire and smoke. Donna died after falling from a window in a desperate attempt to escape the flames and reach a neighbouring flat.

Following Donna's death the Leyton Race Attacks Support Group was formed by survivors and supporters. They were convinced that the attack was motivated by racism and there is ample evidence to support their claim. Thurston was a former member of the National Front who constantly referred to black people as “niggers”; he had an extremely violent reputation and several months before the killing he had kicked his way into another flat and attacked two young black children with a baseball bat. His flat contained numerous imitation and decommissioned firearms and hundreds of books on fascism, weapons and bomb making.

Nonetheless, when Thurston's case came to court the Crown Prosecution Service ensured that this evidence was kept from the jury. Disgracefully, the racist motivation for the attack was turned upon itself as the prosecution alleged that the attack took place because of “noise rage” caused by black people holding noisy parties. Thurston was not a racist, it was suggested to the jury, and racism was not the motivation for the attack. This trivialisation received a stamp of approval from judge Michael Coombe who recommended in his summing-up that the local authorities investigate noisy parties thereby sweeping the racist motivation under the carpet.

In a separate trial in October the killer of 60-year old Asian shopkeeper, Mohan Singh Kullar, was jailed for life at Swansea Crown Court (see *Statewatch* vol 5 no 1). The court was told that Grant Watkins led the gang that launched a drunken attack on Mr Kullar's shop in Cimla, south Wales. The gang fled after the alarm sounded but later returned armed with bricks. When they came across Mr Kullar they attacked him and smashed in his skull. He never recovered consciousness and died in hospital nine days later. Two other men were jailed for manslaughter and violent disorder.

In a press release the Labour MP, Peter Hain, called on the Welsh Office to “act to tackle the problem [of racist violence] which is increasing at a frightening pace in south Wales.” He added: “All the evidence suggests that there were over 8,000 racially motivated incidents in South Wales in 1993 alone.”

Another incident highlights the problem in south Wales. Sixteen year old Craig Hughes was detained “at Her Majesty's Pleasure” after being found guilty at Cardiff Crown Court in October of stabbing to death Ian Gibbs at an Indian restaurant in Cardiff. Gibbs had intervened to prevent Hughes from screaming racist abuse at the staff of the restaurant; when Gibbs remonstrated with the racist he pulled a knife from his jacket and stabbed him to death.

*Time Out* 4.10.95; *Leyton Race Attacks Support Group* leaflets

## RACISM & FASCISM

### UK

#### Racist murderers jailed for life

(undated); *Peter Hain press release* 25.10.95; *Western Mail* 26.10.95.

## AUSTRIA

### More fascist letter bombs

Another wave of nazi letter bombs caused injury and damage during October. They were timed to coincide with the day that witnesses gave evidence against "Bavarian Liberation Army" members Peter Binder and Franz Radl who are accused of initiating the campaign (see *Statewatch* vol 5 no 5). Two devices exploded. One injured a Austrian-Syrian doctor when it exploded in his surgery at Stronsdorf, north of Vienna, the second letter bomb exploded at a post office in Poysdorf injuring a refugee worker. A third device, which was sent to a Chinese doctor, was defused.

*Times* 17.10.95.

## Racism & fascism - new material

**New Labour or new right?** *CARF* 28 (October/November) 1995 pp7-10. Examination of what the anti-racist movement can expect if the Labour Party wins the next election.

**Combat 18 and MI5: some background notes**, Larry O'Hara. *Lobster* (Robin Ramsey) 30, pp28-29 1995. Short piece on Combat 18 and the extent of MI5 infiltration of the far-right.

**Celtic anti-fascists: beating the fascists in Birmingham!** *Tiocfaidh Ar La* 14, 1995 pp8-9. Account of clashes between far-right supporters of Birmingham City and anti-fascist Celtic supporters at a pre-season friendly in July.

**Kaiser Edward**, Richard Norton-Taylor & Jill Jolliffe. *Guardian* 13.11.95 pp2-3. Historical piece on the role of the Duke of Windsor in collaborating with the Nazis during the Second World War.

**France: war without negotiation**, *CARF*, no 29, December 95-January 96, p11.

## CIVIL LIBERTIES

### Civil Liberties - new material

**National security: "Quis custodiet ipsos custodes?"** *Data Protection News*, no 23, Autumn 1995, pp27-31. Looks at the implications for the Data Protection Act when MI5 and GCHQ starts to operate in their "policing" roles to combat organised crime.

**ID Cards: Briefing for the parliamentary Labour Party, from Jack Straw MP, Shadow Home Secretary, June 1995**, 7 pages. "We are not opposed in principle to voluntary ID cards".

**Response by the Association of County Councils, Association of District Councils and Association of Metropolitan Authorities to the Home Office Green Paper in Identity Cards**, 7 pages. "We are opposed to such a scheme irrespective of whether it would be compulsory or voluntary."

**Identity Cards: Revisited: Justice and IPPR**, 1995, 54 pages, £4.95. Examines the government's Green Paper on ID cards. From: Justice, 59 Carter Lane, London EC4V 5AQ and IPPR, 30-32 Southampton Street, London WC2E 7RA.

**Who's who in the freemasons.** *Labour Research* Vol 84 no 11 (November) 1995, pp9-10. Examination of top freemasons based on the 1995 *Masonic Year Book*.

**Estimating the extent of domestic violence: findings from the 1992 BCS**, Catriona Mirrlees-Black. *Home Office Research and Statistics Department Research Bulletin* 37, 1995 pp1-9. The British Crime Survey estimated that one in ten women have experienced physical violence from a partner; this piece examines problems in estimating the extent of domestic violence.

**Domestic violence on a London housing estate**, Tracey Bush & John Hood-Williams. *Home Office Research and Statistics Department Research Bulletin* 37, 1995 pp11-18. Looks at "the complex processes involved in domestic violence" on a London housing estate.

**Trial News 2. McLibel Support Campaign** September 1995. Update of the High Court trial of two Greenpeace supporters involved in the longest libel case in British history after they criticised the McDonald Corporation over its nutritional, environmental and social policies.

**A case for trade union rank and file resistance: the Hackney story**. *Colin Roach Centre* 1995, pp50. This pamphlet examines the decline in the trade union movement and documents the ongoing struggles of the Hackney Trade Union Support Unit in east London. Available from: Colin Roach Centre, 56 Clarence Road, London E5 8HB.

**Criminal Justice and Public Order Act 1994: police powers to give directions**, Alan Murdie. *Legal Action* October 1995, pp19-21. Description of the provisions to control "trespass" under the Act, which has been used against people involved with raves, campers, hunt saboteurs and anti-road protesters.

**The Human rights issue.** *Socialist Lawyer* 25 (Autumn) 1995. This issue provides a forum for human rights issues focusing on discussion of a Bill of Rights.

**Criminalising diversity, criminalising dissent: a report on the use of the public order provisions of the Criminal Justice and Public Order Act 1994.** *Liberty* October 1995.

This briefing examines the wide-ranging effects of the CJPO Act, in particular as it relates to protests and assemblies (chapter 2), raves and festivals (chapter 3) and travellers (chapter 4).

**Harmonisation of justice within the European Union:** national legal systems and discrimination against “foreign” EU citizens. November 1995, £5.00 from: Fair Trials Abroad Trust, Bench House, Hamm Street, Richmond, Surrey TW10 7HR.

### Parliamentary debates

Private security industry *Commons* 1.11.95. cols. 211-233  
Mrs Brenda Price *Commons* 1.11.95. cols. 368-374

## NORTHERN IRELAND

### Northern Ireland (Remission of Sentences) Act

On Friday 17 November, 83 political prisoners were released from three of Northern Ireland's prisons (Maze, Maghaberry and Magilligan) after the passing of the Northern Ireland (Remission of Sentences) Act. The new legislation applies to prisoners with fixed term sentences only (and therefore not to life sentence prisoners) and it brings back the 50% remission of sentence taken away by the Prevention of Terrorism Act 1989 and subsequently the Northern Ireland (Emergency Provisions) Act 1991. The restoration of 50% remission has a sting in the tail, however. Clause 1(2) of the new Act states that those granted 50% remission will be released on licence, a licence which only expires at the two-thirds of sentence point. Furthermore, clause 1(3) allows the Secretary of State for Northern Ireland to re-imprison any licensees if it appears to him that “their continued liberty would present a risk to the safety of others or if they are likely to commit further offences” (Hansard, 30 Oct. 1995, col. 21).

50% remission was first introduced as a criminalisation measure in 1976 following the Labour government's implementation of the Gardiner Report (1975). Prior to 1976, prisoners convicted of “scheduled offences” (as defined by the Northern Ireland (Emergency Provisions) Act) had been designated as “special category” prisoners. As such, prisoners (loyalist and republican) were held in self-governing compounds according to organisational affiliation. The prisoners did not have to work, could wear their own clothes, cook for themselves and were free to organise their own activities. Gardiner argued that the recognition of political prisoners through the introduction of special category status had been a “serious mistake”. He made the case that the compound system should be abolished because it encouraged a commitment to terrorism. What was required, therefore, was a regime which would replace the collectivism and autonomy of the compounds with an highly rule-bound, individualised cellular system, under which prisoners would be compelled to do prison work and wear prison uniform. Prisoners would be housed in the rapidly-built H-Blocks at Long Kesh near

Belfast and at Magilligan near Derry. These H-Blocks were single-storey, low ceiling, concrete constructions housing up to 100 prisoners, 25 in each leg of the H.

In adopting the Gardiner Committee's report, the Labour government of the day decided that scheduled offences committed after 1 March 1976 would attract sentences to be served in the new H-Blocks and in order to entice conformity with this policy, 50% remission was introduced (with no licence provisions). Enforcement of the Gardiner policy and resistance to criminalisation, finally escalated into the hunger strikes of 1980 and 1981.

Remission policy for fixed sentences remained unchanged until 1989. In the summer of 1988, the government conducted a security review following two IRA attacks on British soldiers. In June of that year, six soldiers were killed in a bomb attack on a “fun run” in Lisburn, the home of the British Army's headquarters. Another eight soldiers lost their lives in a bomb attack on a coach travelling from Belfast International Airport at Aldergrove in August. In a package of measures which included the introduction of the “broadcasting ban” in October, remission was reduced to one third for those given sentences of five years or more for scheduled offences.

The new legislation took only four hours to get through Westminster. During the debate on the Bill, potential Unionist and backbench Conservative opposition was nullified by the Secretary of State's (Sir Patrick Mayhew) presentation of the measures as bringing Northern Ireland into line with remission rules elsewhere within the United Kingdom P as one backbencher put it, “I like to think that the Bill will help to protect and enhance the Union, and that it has nothing at all to do with appeasing murderers, terrorists and bombers”. As Opposition MPs pointed out, however, N. Ireland has no Parole Board and recall to prison will be at the whim of the Secretary of State, presumably on the advice of the RUC, MI5 and the military, without an offence necessarily being committed. Unionist MP John Taylor, while principally concerned with the potential loss of jobs from the NI Prison Service, drew attention to the difference which will still remain between political and non-political prisoners because the latter will continue to be on 50% automatic remission with no licence requirement.

According to Mayhew, the new legislation applies to 471 fixed term prisoners, 340 of whom will be released by the year 2000. It will take until 2005 for all of these prisoners to be released, more than ten years after the ceasefires of autumn 1994. Another seven prisoners will be released under the new remission rules before Christmas and 88 will be released in 1996. The campaign group Saoirse attacked the new legislation as “derisory”, “window dressing” and being concerned only with “creating the illusion of movement on the peace process”. Of the 83 releases, 29 were republicans including three women. One of these had just one month extra remission of sentence. Saoirse has suggested that only an additional 40 republican prisoners will benefit from the measure before 2000.

Perhaps the most remarkable feature of the prisoner releases is that they have been brought about under new legislation. This appears to be wholly unnecessary since article 22(5) of

the Prevention of Terrorism Act (1989) allows the Secretary of State to vary remission for prisoners held for scheduled offences by order through a statutory instrument.

### Appetite for Punishment

Scepticism of the government's move is further reinforced by the treatment of IRA prisoners in Britain and other events. Presenting evidence to the Forum for Peace and Reconciliation in Dublin in November, solicitor Gareth Peirce referred to "the endless appetite for punishment" which seems to characterise British penal policy. She contrasted the treatment by the courts of Irish defendants, Palestinians and animal rights activists. For comparable offences, she stated, the Irish get 25 to 30 years, Palestinians 15 to 25 years, while animal rights activists might receive a suspended sentence but no more than 8 years. She drew attention to the treatment of Patrick Kelly who has cancer and, along with Michael O'Brien, has been on a no-wash protest in Whitemoor Special Secure Unit. Peirce said that Kelly's treatment demonstrates "a degree of cruelty that is extraordinary". Kelly and O'Brien were moved out of the SSU on 13 November just two days before the deadline set by the High Court for the Home Office to submit explanations for its refusal to transfer the prisoners to Ireland and to re-categorise them.

Earlier in November, it was revealed that three prisoners recently transferred (temporarily) from England to the North's Maghaberry prison P Magee, Quigley and Kavanagh P have been told that they must serve 50 years on the recommendation of the Secretary of State at the time of their trial, Sir Douglas Hurd (the trial judge had recommended 35 years). As Dennis Canavan MP argued in the debate on the new remission law, such revelations placed alongside the treatment of convicted murderer and British army soldier Lee Clegg, leave the government open to accusations of double standards. Clegg was released in July by Mayhew after serving three years of a life sentence for murdering a "joyrider" (see *Statewatch* vol 3 no 3). The release caused a wave of vehicle hi-jacking and firebombing which reportedly cost £10 million. Clegg was promoted to Corporal early in November.

*An Phoblacht/Republican News*, 16.11.95 & 23.11.95; Collins, M. "Move on Prisoners too late", *Irish Post*, 4.11.95; *Gardiner Report (1975) Report of a Committee to Consider, in the Context of Civil Liberties and Human Rights, Measures to deal with Terrorism in Northern Ireland*, London: HMSO. Cmnd 5847; *Hansard Debates*, 30.10.95; *Irish Times*, 18.11.95; Tomlinson, M. (1995) "Imprisoned Ireland", in Ryan, M. and Sim, J. (eds) *Western European Prison Systems: a Critical Anatomy*, London: Sage, pp. 194-227.

### ECJ rules against Britain

In a judgment delivered on 30 November, the European Court of Justice ruled that the way the British Home Secretary exercises exclusion order powers under the Prevention of Terrorism Act contravenes the 1964 EEC Directive on freedom of movement. Article 9(1) of this directive covers

special measures concerning the movement and residence of foreign nationals. The Court ruled that Article 9(1) means that an administrative authority, in this case the British Home Secretary, must not expel someone before a "competent authority" has given its opinion.

The Court's judgment was over the exclusion of John Gallagher, an Irish national, from Britain in September 1991. The Home Secretary was satisfied that Gallagher was "concerned in the commission, preparation or instigation of acts of terrorism connected with the affairs of Northern Ireland". After his forcible removal to Dublin, Gallagher made written representations to the British Home Secretary. He was interviewed about these at the British Embassy in Dublin in December 1991. The person conducting the interview refused to say who he was and failed to provide any substantive information about the grounds for exclusion.

The ruling says that it is wrong for the Home Secretary to exclude people before consulting a "competent authority". But the Home Secretary may appoint such an authority "provided that the competent authority can perform its duties in absolute independence and is not subject to any control by the authority empowered to take the measures provided for in the directive".

*Case C-175/94, Court of Justice of the European Communities, Judgment of the Court (Sixth Chamber), 30.11.95.*

### International Body on Arms Decommissioning

For a year, political progress over the future of the North of Ireland has been stalled over the issue of arms decommissioning. The IRA ceasefire which began 1 September 1994 was declared on the assumption that this would allow all party talks to begin, talks which would include Sinn Fein. The initial response of the British government was to demand assurances that the ceasefire was "permanent". In January 1995, this hardened when, during exploratory talks, British officials presented a Sinn Fein delegation with a paper on arms decommissioning. For the British, this is a matter of how to get the IRA to hand over illegal weapons and in particular semtex explosives. Sinn Fein's position is that the end of war requires a political settlement and de-militarisation on all sides, and that it cannot speak for the IRA which in any event will not give up its arms. By the time of Clinton's Washington conference on investment in Ireland, the British had developed the demand that Sinn Fein cannot be allowed to enter political talks until the IRA hands over some weapons, or as ex-security Minister for Northern Ireland Michael Mates puts it, a "substantial" amount of weapons. This condition became known as "Washington Three".

The establishment of an international body to examine how decommissioning might be accomplished appears to have been the idea of Unionist MP Ken Maginnis. Whether this is the case or not, both Irish and British governments began to focus on the notion of a "twin track" approach, involving political talks on the one hand and the decommissioning of weapons on the other. What they could not agree on - even if

their disagreement was held in abeyance for Clinton's visit to Belfast at the end of November - was whether and how Washington Three should feature in the twin track approach. The Irish government , the SDLP and Sinn Fein agree that it is wrong to insist on the handing in of (some) weapons before talks take place, a position quietly supported by the Clinton administration, notwithstanding statements issued by the US Embassy in London. The British government and the Unionists are sticking to Washington Three, and the British sometimes hint that even this will not be enough to win the confidence of the Unionists sufficiently to bring them to round table talks P the latest joint communique can even be interpreted as giving the Unionists a veto over the entry of Sinn Fein to talks. As Robert Fisk put it in the Independent, "Ministers in the present-day Irish government have been both infuriated and fearful of John Major's repeated insistence on "decommissioning" as the price for all-party talks that included Sinn Fein - not just because of the terrible and unpublicised warnings of attacks into the Republic which the Protestant paramilitaries promised the Irish cabinet if the Belfast ceasefire broke down, but because, historically, the men and women of Ireland do not hand over their guns".

Although this basic issue has not been resolved, the British and Irish governments have agreed that an international body on arms decommissioning should report its findings by mid-January. They have agreed further to continue preliminary talks with a view to getting all party talks moving by the end of February.

Three people have been appointed to the International Body on Decommissioning. It will be led by a former US Senator, George Mitchell. Another member is the former prime minister of Finland, Harri Holkeri, and the third member is the soon to retire Canadian Chief of Defence Staff, General John de Chastelain. The latter is regarded as a controversial choice for two reasons.

Firstly, he has been strongly criticised for not resigning over a number of incidents involving Canadian troops, including the beating to death of a sixteen year old youth in Somalia. Secondly, de Chastelain has close personal ties to MI6 and the Irish government was opposed to his appointment. His father was a key operative for British Intelligence and the Special Operations Executive during the second world war in Romania. His mother is reported to have worked for William Stephenson, the controller of SOE, MI5 and MI6 during the war, who operated from a base in New York.

*Irish Times; Sunday Tribune 10.12.95; Independent, 30.11.95, 3.12.95; Sunday Business Post, 10.12.95.*

## Northern Ireland - new material

**Human rights and the peace process in northern Ireland,** Paul Mageean & Kieran McEvoy. *Just News* Vol 10 no 9 (September) 1995, pp4-5. Argues that the peace process should be based on rights and not on fraught political deals hammered out in smoke- filled rooms.

**The final court of justice,** Paul Mageean. *Just News* Vol. 10 no. 10 1995, pp1-2. Discussion of the European Court of

Human Rights decision that the British government had violated the right to life of the three unarmed IRA volunteers who were shot dead by the SAS in Gibraltar in 1988.

## Parliamentary debates

Northern Ireland (Remission of Sentences) Bill *Commons* 30.10.95. cols. 21-73

Northern Ireland (Remission of sentences) Bill *Lords* 2.11.95. cols. 1507-1524

## PRISONS

### Black prisoner dies in bodybelt

A black prisoner, Dennis Stevens, died in Dartmoor jail after being forced to spend 24 hours in a bodybelt that has been banned by the police. Stevens was found dead in the punishment block on October 18.

A Prison Office spokeswoman initially suggested that Stevens had committed suicide, but later her statement was amended to say that the actual cause of his death was unconfirmed. His widow alleged that his face showed signs of recent violent injury, including a large dent in one side of his head.

The Prison Office spokeswoman also stated that Stevens had been placed in the bodybelt after committing assaults on staff. It was, she said, an exceptional measure that had been approved by the Prison Governor and overseen by a doctor. However, evidence suggests that Stevens was a model prisoner, who was near the end of his sentence; he had been granted special privileges because of good behaviour.

The claim that bodybelts are only used in prison in exceptional cases is also open to question. A report published by the Howard League for Penal Reform, in November, reported 96 incidents when bodybelts were used in 1994. The report questions whether they are only used as a measure of "last resort" and accuses the prison authorities of using them on a routine basis. Police forces banned the use of the restraints in 1993 following the death of Joy Gardiner.

"Use of Mechanical restraints by prisons", *Howard League* 1995; *Observer* 29.10.95; *Voice* 31.10.95.

## Prisons - new material

**Prison Watch press releases no 143, 146 & 149.** *Prison Watch* November 1995. These press releases cover the inquests of David Garment, Thomas Inglis, Paul Egan and immigration detainee Mutaval Massanthan. No. 146 covers the Chief Inspectors report on HMP Stafford.

**Locked into conflict,** Stephen Shaw. *Guardian* 25.10.95. Piece on the conflict between the former director-general of the Prison Service, Derek Lewis, and Home Secretary, Michael Howard.

**Political prisoners,** David Rose. *Observer* 22.10.95. On the sacking of the director-general of the Prison Service, Derek

Lewis.

**Mentally disturbed prisoners.** *NACRO Policy Paper 4* and **The resettlement of mentally disturbed prisoners.** *NACRO Policy Paper 5* £2 each + 50p post. These reports are critical of recent changes in housing benefit rules and restrictions on home leave from prison and argues that the Probation Service is failing in its duty to provide thorough care to prisoners and those on remand.

**Bail: some current issues.** *Penal Affairs Consortium* 1995, pp12. This report argues that the government's decision to restrict bail, under the Criminal Justice Act 1993, has led to an alarming increase in remand prisoners.

*Conviction Newsletter* 14, 1995. This issue covers the trial of Dave Bowen, the entrapment of Mohammed Riaz, the case of Terry Thornton and a section on "Advice to framed prisoners".

### Parliamentary debates

Prison security: Learmont report *Lords* 16.10.95. cols. 600-614

Prison service *Commons* 16.10.95. cols. 30-43

Home Secretary (Prison Service) *Commons* 19.10.95 cols. 502-551

### UK

#### MI5: new head, new powers

Mr Stephen Lander, currently the Director of Corporate Affairs, is to become the Director General of the Security Service, MI5 from Easter 1996. He will take over the £90,000 a year job from Stella Rimmington.

Mr Lander joined MI5 in 1975. For two years he was seconded to "the Foreign and Commonwealth Office working in the Near East and North Africa", in other words he worked for MI6 (the Secret Service). Between 1989 and 1994 he headed MI5's counter-terrorism T Branch (covering "Irish terrorism" and "non-Irish terrorism").

His appointment comes as the government is preparing new legislation, announced in the Queen's Speech, to allow MI5 to operate alongside the National Criminal Intelligence Service (NCIS) in combatting organised crime (see *Statewatch*, vol 5 no 5).

A report from the parliamentary Committee on the Intelligence and Security Services, chaired by Tom King, is understood to have suggested that the new legislation should "harmonise" the powers of MI5 and the police to "bug and burgle". At present MI5 have to obtain a warrant - to enter a home or offices to place "bugs" (listening devices) and hidden cameras - from the Home Secretary under Section 3 of the 1989 Security Service Act, while the police simply act on the authority of a Chief Constable. Instead of introducing warrants for the police to exercise these powers it is thought the Home Secretary will "lower" the level of authorisation for

MI5 so that they can also act on the authority of a Chief Constable. Warrants would still be needed, by both the police and MI5, to tap telephones and to open mail.

The sequence of government announcements giving MI5 a new "policing" role was: 1) The Prime Minister and Home Secretary at the Conservative Party Annual Conference in mid-October; 2) David Maclean, Home Office Minister, tells a meeting of London Police Federation members in the last week of October: "Security service staff will be seconded to NCIS immediately.. " 3) Legislation announced in the Queen's Speech on 15 November to allow MI5 to work on organised crime and to have powers to "bug and burgle" and to extend the role of the NCIS from intelligence gathering to having operational powers. The Bill is not expected until the New Year.

*10 Downing Street*, press notice, 23.11.95; *Sunday Telegraph*, 3.12.95; *Police Review*, 3.11.95.

#### Agee let back after 18 years

Philip Agee, author of the world-wide best-selling *Inside the Company: CIA Diary*, was finally allowed to return to the UK after being deported in 1977 as a threat to "national security". Agee served as a CIA operative in Latin America but resigned after the 1968 Mexico Olympics. He decided to write a book about the CIA's subversion of democracy in Latin America and its support for military dictatorships and repressive regimes.

Agee completed the book in the UK and it was published by Penguin in 1975. He then worked with investigative journalists in the UK to expose the CIA's operations in Europe and the UK's involvement. High-level US pressure, including a clandestine visit by Henry Kissinger, US Secretary of State, coincided with a visit by Agee to Jamaica (in the UK's "sphere of influence") where he accused the "CIA of trying to subvert the progressive government of Michael Manley". In June 1977 he was deported after the Labour government Home Secretary issued a deportation order on the grounds that he had been "involved in disseminating information harmful to the security of the United Kingdom". Unable to return to the US for fear of prosecution and with his US passport revoked in 1979 he was refused entry to the Netherlands, Germany, France and Italy. He subsequently was allowed to remain in Germany where he now teaches at the University of Hamburg on the CIA and the resurgence of fascism and racism.

He went back to the US in 1987 but repeated attempts by his lawyer Larry Grant to have the deportation order from the UK lifted failed. In March this year a request to the Home Office to allow him to come to the UK for 72 hours was not answered until August when he was told, out of the blue, that the order had been lifted.

At a press conference on 2 November Agee said it was ironic that he had been let into the UK, when the US was closing doors everywhere, under the Heath Conservative government. Then he was deported by a Labour government, and let in again by a Conservative one.

During the campaign against Agee deportation two *Time Out* journalists, Crispin Aubrey and Duncan Campbell, were

arrested under the Official Secrets Act, together with John Berry who had served, many years before, in a branch of the UK's eavesdropping organisation GCHQ. After 21 months the ABC three walked free with the mildest of sentences.

*Press conference*, House of Commons, 2.11.95; *Tribune*, 27.10.95; for the background to the deportation and the subsequent ABC Official Secrets case see, *Who's watching you?*, Crispin Aubrey, Penguin, 1981 and *State Research bulletin*, 1977-1981.

## BELGIUM

### Government admits spying on activists

The Belgian Government has admitted spying on the peace and green movement. In an answer given in the Senate the Belgian Minister of Defence Poncelet admitted they spied on activists who he claimed were targeting military installations. The minister also confirmed that intelligence units were still active within Germany. He did however deny other allegations claiming that Belgium was operating an eavesdropping centre.

The article in *De Morgen* makes three allegations. It claims that an illegal secret GCHQ-style eavesdropping centre operates in Peutie barracks under responsibility of the Belgian military intelligence service SGR. The paper also says that the NVD has maintained and even increased its targeting of activists within Belgium, focusing particularly on the peace and green movements. There are also allegations that the Belgian state maintains a fully operational counter-intelligence unit in Germany five years after the cold war came to an end.

When asked about these allegations minister Poncelet claimed that the article "mixed correct information with untruths". He admitted that there was a military installation at Peutie but denied that it was an intelligence-gathering centre. He also agreed that intelligence operatives were active in Germany but claimed that they were there primarily to look after the interests of the Belgian troops that remained in Germany. He did however concede that the NVD had been targeting activists within the green and peace movements, stating that this was necessary to protect military sites from actions carried out by activists.

The Dutch intelligence historian, F Kluiters, disclosed in a new book that the post and telephone service, PTT, intercepted since the end of the Second World War until the begin of the eighties thousands of telegrams each day. The Bijzondere Radiodienst (BRD, special radio service) of the PTT ran an interception station in Burum (later Zoutkamp) for the navy. The under PTT-cover received material (telegrams, telephone and satellite communication) was relayed to a navy intelligence listening post. The processed intelligence was than distributed to other intelligence services and government departments. There was no legal basis for this operation.

*De Morgen*, 27.10.95; *Utrechts Nieuwsblad*, 13.11.95; *VeeDee AMOK*, no 4, 1995; *Parliamentary question*, 12.10.95.

### The Lilley-Howard package

The most extensive package of anti-immigrant and anti-refugee measures ever have been proposed by Home Secretary Michael Howard and social security secretary Peter Lilley. It threatens to destroy asylum rights and the immigration appeals system as well as creating untold misery among immigrants and refugees in Britain and leading to a spiral of popular racism.

### The Bill

The Asylum and Immigration Bill was finally published on 29 November, after a long summer of hints and pronouncements from Michael Howard. Its main provisions are:

- \* a "white list" of designated countries of origin of asylum-seekers deemed safe. Asylum claimants from these countries will have to meet a legal presumption of safety; on 11 December Howard announced the list of countries: Bulgaria, Cyprus, Ghana, India, Pakistan, Poland and Romania. Amnesty commented: "We have serious concerns about all the countries on the list."
- \* the extension of "fast-track" appeals, currently used for asylum-seekers who have travelled through "safe" countries, to a raft of other claims deemed "manifestly unfounded";
- \* the abolition of an in-country or suspensive right of appeal in asylum claims involving "safe" countries of transit;
- \* criminal sanctions for employers who hire people who are here illegally or whose conditions of stay give them no right to work for the particular employer (subject to the statutory defence that the employer has seen documents to be specified by the minister);
- \* up to seven years' imprisonment for anyone who helps an asylum-seeker to get in to the country (except those acting "otherwise than for gain" or who work for a bona fide refugee assistance organisation);
- \* no local authority housing for immigrants "of a class to be specified" by the minister;
- \* no child benefit for immigrants (including permanent residents).

### Lilley's regulations

The main provisions of the Social Security (Miscellaneous Amendment) Regulations are:

- \* removal of all benefits from asylum-seekers immediately their claim is rejected by the Home Office (they are currently entitled to Urgent Cases Payments, which is 90% of Income Support, and to Housing Benefit

- and Council Tax Benefit, which continue during appeals);
- \* denial of entitlement to all benefits from anyone who claims asylum after coming to the UK in other capacity, eg visitor (currently 70% of asylum-seekers);
- \* denial of benefits to any immigrant who has been refused further leave to remain in any capacity, or told to leave the country (currently, benefits continue while appeals are pending);
- \* denial of all benefits to “sponsored immigrants” (eg, children and elderly parents of people settled here), even when they themselves are granted permanent residence, unless sponsor dies.

#### The justification

Howard justified this package by crying “bogus refugees”, pointing to the very low recognition rate for refugees in the UK (4%). This is a sleight of hand which adds insult to the injuries perpetrated on asylum-seekers over the past decade: the visa requirements, the carrier sanctions, the reception conditions and the dramatic slashing of the proportion recognised as requiring asylum (either by refugee status or by the grant of exceptional leave) from around 4/5 of claimants to 1/5 in the past two years. The dramatic reduction in the proportion of asylum-seekers allowed to stay was in part due to a policy decision all but abolishing exceptional leave to remain or “humanitarian” status for victims of war or civil war in countries such as Somalia, Sri Lanka and Lebanon. In part it was the removal, after the 1993 Act came in, of a number of procedural safeguards which the Home Office had been forced to concede to compensate for the lack of an in-country appeal right. These included a “minded to refuse” stage which allowed the asylum-seeker to address Home Office objections and present further evidence or argument before a definite refusal. Once the 1993 Act was in force, asylum-seekers wishing to respond to inaccuracies or distortions in the refusal letter were told to “save it for the adjudicator”.

But if, as Howard claims, only 4% of appeals against Home Office decisions succeed, this raises questions about the independence and competence of immigration adjudicators in asylum cases. Many are recent recruits, very inexperienced and given very little training, or, if more experienced, case-hardened and fully immersed in the “culture of disbelief” permeating the Home Office. Many adjudicators reject Amnesty International reports as too “contentious”, preferring the blander, more diplomatic US State Department country reports. They often rely on confidential country assessments produced by the Home Office, which give a totally distorted picture of conditions in refugee-producing countries. (For example, the Home Office assessment of Nigeria was described as “fundamentally flawed”, and containing “major distortions about the reality of human rights abuses against pro-democracy and human rights activists”, by a recent

Refugee Council report, “Beyond Belief”). In this situation it is not surprising that a very high proportion of adjudicator decisions (probably over a third) are later overturned and have to be re-determined, although no-one knows how many are ultimately successful. Howard doesn’t mention this.

Everyone working with refugees knows that the 80% rejection rate conceals treatment of asylum-seekers which for bureaucratic cruelty and callousness is hard to match; a situation where medical evidence of torture is denied or marginalised, where accounts of imprisonment and flight are rejected out of hand as “implausible”, or dismissed for want of documentary evidence, and where documentary evidence, if produced, is dismissed as “probably unauthentic” or “self-serving”.

And this treatment is producing more and more casualties. In August, a rejected Tamil asylum-seeker killed himself in prison in Norwich. In October, a young Ethiopian whose claim was rejected and who was told to report to the airport walked in to a petrol station in west London, doused himself with petrol and set fire to himself. He died of his burns. Also in October, an Algerian on hunger strike for 44 days and on the point of death was removed to Algeria by air ambulance. The Medical Foundation for the Care of Victims of Torture commented that the Home Office action in removing the man appeared to be motivated by a desire to avoid embarrassment for Home Office ministers as they reiterate their bogus claims about asylum-seekers as economic migrants.

#### The effects

The Bill's effects hardly need stating. More refugees will get short shrift from the Home Office and the appellate authorities; they will be rushed through the fast-track procedure if the Home Office says that their country of origin is safe, or that it has got safer since they left, or that their journey to Britain took them through a safe country; or that they should have claimed asylum before rather than wait until they were about to be deported; or if the Home Office finds their claim unbelievable; or if they fear death at the hands of a Mafia or an armed political group rather than at the hands of their government. In other words, they will be rushed through the fast-track procedure on the Home Office say-so. A system of appeal rights which depends on executive whim cannot be just.

The Bill's employer sanctions will effectively deter most small employers - except the most unscrupulous ones - from employing black or foreign labour. They will not want the bother of checking passports and national insurance numbers; safer just to say “no blacks”. There will be no work. And there will be no public housing, no child benefit - not even for the children of “immigrants” who have been living, working and paying taxes and national insurance in Britain for over twenty years.

The regulations take effect automatically in January 1996 unless voted out in parliament by a negative resolution. Under them, “sponsored immigrants”, the dependent children or elderly parents of people settled here, can receive no benefits ever, at all, until the sponsor dies. The dependants of a

sponsor who becomes unemployed or suffers a long debilitating illness will be destitute (no income support) and homeless (no housing benefit, no homeless persons accommodation).

For asylum-seekers who apply after arriving as visitors, there will be no benefits at all, regardless of the merits of the claim or the reasons for failure to claim asylum on arrival. In the text accompanying the regulations there is recognition that visitors may claim asylum "because of a genuine change in their circumstances, eg: information that they would personally be at risk if they returned". There is no recognition of this in the regulations themselves; people in this category remain ineligible for any benefit. The price of temporary safety will be destitution.

For rejected asylum-seekers who have nowhere to run and so no choice but to stay and appeal, and for those facing deportation and separation from families in Britain, starvation, beggary or prison will be added to the desperation induced by the decision itself. There will be no incentives for appeals procedures to be prompt; the opposite is true. The incentive for the Home Office will be to string appeals out for as long as possible in an obscene war of attrition against the new generation of pavement-dwelling asylum and immigration appellants.

The measures are bound to result, not only in more poor black people living on the streets, a sight which will be seized on by race-card politicians of all political colours to whip up yet more popular racism, but also in yet more suicides, as the means of life are taken from those with nothing.

For further information contact: the *National Network Against Detentions and Deportations*, c/o CARF, BM Box 8784, London WC1N 3XX, Tel 0171-837 1450; *Social Security (Persons from Abroad) Miscellaneous Amendment Regulations 1995; Asylum and Immigration Bill*, London, HMSO, 1995.

## FEATURE

### Council of Justice and Home Affairs Ministers, Brussels, 23 November 1995

The meeting of the Justice and Home Affairs Minister on 23 November yet again failed to agree on:

- 1.the role of the European Court of Justice in the Europol Convention - with the UK continuing standing out against the other 14 EU governments.
- 2.a Joint Action on Racism, with the UK opposed.

The Council did adopt a number of measures:

- 1.Harmonised application of the definition of refugee status in Article 1 of the Geneva Convention.
- 2.A Joint Position on airport transit arrangements.
- 3.Declaration on extradition.

### UK at odds with EU partners

Michael Howard, the UK Home Secretary, came under attack on a number of issues at the Council. He opposed the adopted of a draft Joint Action on Racism saying "a great deal remains to be decided" and complained of being "lectured" by other EU Ministers on the need to combat racism during a heated exchange of views. Mr Howard, it was said, "did not wish to sign up for anything which might damage British race relations", an argument which was incomprehensible to the German and Dutch Ministers. The Presidency had hoped agreement of the Joint Action would counter balance the new restrictive measures on immigration and refugees (see below).

The main provisions in the Joint Action are: undertakings to break up racist groups, to ban the printing, distribution and marketing of racist material and to give anti-racist organisations an "active role" in bringing legal actions against racism. The Joint Action would also establish cooperation in the confiscation of racist publications, the control of the international dissemination of racist material and information exchange to assist criminal prosecutions.

Mr Belloch, the Spanish Presidency spokesperson and Interior and Justice Minister, said that discussion of the issue of the definition of a refugee left one country, the UK, "standing alone". Mr Howard wanted the measure to be a Recommendation not a Joint Position which is binding but he had to give way on this. To save face COREPER (the committee of permanent government representatives) agreed an amendment, the day before the Council meeting, saying that "The Joint Position.. shall not bind the legal authorities or affect decisions of the legal authorities of the Member States".

Another tussle took place over the proposed Joint Action on airport transit arrangements. This sets out that airline travellers from an agreed list of countries will have to obtain a transit visa to they land at an EU airport when they are intending to change planes for another destination (that is, they never leave the airport). It is intended to stop passengers entering a EU states without a visa and then trying to make an asylum application. The countries on the list are: Afghanistan, Eritrea, Ethiopia, Ghana, Iraq, Iran, Nigeria, Somalia, Sri Lanka and Zaire. Germany had signalled a Reservation over the inclusion of Zaire on the list of countries and the UK a Reservation on the inclusion of Bangla Desh and Pakistan. Germany withdrew its Reservation at the meeting but the UK did not so the Joint Action was agreed without these two countries. 13 EU Ministers then immediately signed a joint declaration saying they intend to include Bangla Desh and Pakistan on the list - with the UK and Ireland (tied to the UK by a common travel area) left out (the UK transit visa list, updated on 23 October, does not include Eritrea, Ethiopia or Ghana but does include China, Turkey and Uganda; in the UK the 1987 Carriers Liability Act applies to airlines bringing in passengers without transit visas). The Joint Action was agreed but formal adoption await another Council meeting.

For the Spanish Presidency Mr Belloch expressed outright frustration at the UK's opposition to the inclusion of the European Court of Justice in the Europol Convention which has to be resolved by June 1996. "We cannot allow this to drag on any longer", he said. When asked the direct question:

"Has the UK agreed to let the other 14 countries go ahead even though they do not agree?" Mr Belloch answered curtly: "Not even that" and ended the press conference.

Mr Howard's most positive contribution to the meeting was to propose that "European Centres of Excellence on Terrorism" should be created - the idea was referred to the Working Group on Terrorism. Asked what the UK could contribute to these "Centres of Excellence" he said knowledge of "weapons" and "dismantling explosives" were two areas.

### Defining "refugees"

A new, restrictive definition of refugee which will exclude large numbers from protection was adopted with the full support of the UK.

The Geneva Convention of 1951, which all EU states are signatories, defines a refugee as someone outside his or her own country and unable or unwilling to return owing to a well-founded fear of persecution on grounds of race, religion, nationality, membership of a particular social group or political opinion. The Handbook of the UN High Commissioner for Refugees has for many years served as a guide to the meaning of the phrases in this definition. There is thus no need for harmonised criteria. So when the EU Council's draft guidelines for a new, harmonised definition of a refugee were published in 1994, there were fears that the design was to reduce protection by redefining refugees according to the most restrictive criteria. These fears were realised when the amended "common position" was agreed on 23 November.

The final text significantly dilutes the right to individual determination of asylum claims, to take account of the "safe country lists" adopted by a number of member states, including Germany and proposed for the UK. Thus, in cases where whole groups are deemed not to require the protection of the Convention, there will be individual assessment of claims only when an individual raises arguments which mark him or her out from the group as a whole.

Where the Handbook shares the burden of establishing the facts between the asylum-seeker and the examiner, the harmonised criteria place the burden squarely on the asylum-seeker to establish all the facts in support of the claim.

The draft guidelines followed the refugee Handbook in saying that persecution by third parties could qualify the victim for protection if the state was unable to offer adequate protection. This was in line with the opinions of leading international and human rights lawyers. The final text, however, demands state encouragement or authorisation of persecution for the victim to be eligible for refugee status. Those fleeing an armed terror group which the state is simply unable to control will not qualify as refugees. This cuts out victims of non-state violence in Sri Lanka, Algeria and Somalia, since in none of these countries is the violence of the non-state armed groups encouraged or authorised by the state. (In Somalia, there is no state.)

This change was the most controversial, and Sweden and Denmark made declarations retaining the more generous provisions of their national laws.

### Other immigration and asylum issues

**The Convention on the crossing of external borders:** There has been little progress on this, seen by many as a necessary pre-requisite to the opening of the internal borders. The main problems preventing agreement relate to the status of Gibraltar - in dispute between Spain and the UK - and the competence of the European Court of Justice to resolve legal issues arising out of the common visa and information exchange regime. The Council passed the thorny problems of the Convention on to the Italian presidency. Meanwhile, the Council is under pressure from the Commission, which has put forward a proposal for a Directive to abolish immigration controls at internal frontiers (although it allows member states to re-impose controls for periods of up to 30 days, renewable, in the event of a serious threat to public policy or public security. The proposal bravely declares that it "is to be implemented no later than 31 December 1996", and even contains a monitoring programme to inform the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions of implementation.

**The proposal for a common position of long-resident third-country nationals:** This was adopted four years behind schedule, to give some protection to long-settled non-EEA nationals in terms of residence rights. The document provides for ten-year renewable residence permits, equal treatment with nationals in the fields of work, trade union rights, accommodation, social security and schooling, and gives settled residents protection against deportation, which should only be carried out if proportionate to the danger or harm to the public interest. The rights and protection would lapse if the person is expelled or leaves the country for over six months. The UK Home Office commented on the draft of the common position that those granted settlement in the UK had access to social benefits on an equal footing to British citizens, an observation which could well be out-of-date or positively misleading if the proposed amendments to social security regulations go through.

**The state of ratification of the Dublin Convention:** signed in 1990 by the then 12 member states, it has still been ratified by only ten of them. The Irish minister indicated that ratification could be achieved in the next few months, while the Dutch want the European Court of Justice to have jurisdiction and have prepared a protocol to that effect, which is undergoing examination by the working group.

**Readmission clauses in association agreements:** the Council agreed (with a parliamentary reserve by one delegation) on a readmission clause to be inserted in agreements between the European Community and its member states and third countries on a case-by-case basis during negotiations for the agreements. The object is cooperation among member states in the prevention and control of illegal immigration.

**Decision on an alert and emergency procedure for burden-sharing with regard to the admission and residence of displaced persons on a temporary basis:** This Decision (under Article K.3.2) effected the report adopted at the last Council meeting on 25 September 1995 which equated the numbers of refugees to be taken by each EU country with the military "aid" provided by them (more military aid, less refugees) (see *Statewatch*, vol 5 no 5).

**Recommendation of relating local consular cooperation regarding visas:** adopted under Article K.1.3. It says that Member States when issuing visas shall "take account of the interests of other Member States, in particular the protection of national security, public order and the prevention of clandestine immigration" and that consular services shall "maintain local cooperation" to this end (Point 1). They are also to cooperate to "establish the existence of simultaneous visa applications or a series of applications, and, if need be, to ascertain any earlier visa refusal by a Member State". The consular services are also to "exchange information" to "determine the good faith of the visa applicants and their reputation".

**EURODAC:** a report, completed in October, on the proposed automatic fingerprinting of refugees said that it was technically feasible to establish. It was now for the Member States to decide what kind of system they wanted; most favoured a new central agency with a high level of expertise based on data sent into by each member states (on the lines of Europol).

### Organised crime and drugs

The Council agreed a "Resolution on the protection of witnesses in the fight against international organised crime" and received a report on "Organised crime in the European Union in 1994".

The Resolution sets out measures for the protection of witnesses and, if necessary, their families and changes of identity. It also introduces the giving of evidence by video transmissions from one EU state to a court in another EU state (point A.8).

The report on organised crime in the EU contains few surprises but does demonstrate the difficulty for police forces using the term "organised crime". It seems to bear out the criticism that, in most cases, what is simply happening is the reallocation of recorded crime to this category. The exception is Italy which obviously has well defined statistics. The German police are strong on numbers with 9,256 "suspects identified as integrated into organised crime" and the Netherlands on identifying 72 active criminal organisations. But Ireland, Luxembourg, UK, Sweden, Portugal, Denmark and Greece provide no figures or have no legal basis on which to collect them. Suspected criminals are referred to as "delinquents" or "delinquent groups". Perhaps the most striking feature is effort that has clearly gone into defining suspects according to nationality and race, seeking to race (ie: foreigners and non-Europeans) as a key indicator of the threat

posed to the stability of the EU's "financial, political and social institutions".

The report on drug trafficking (ENFOPOL 79) draws particular attention to the different legal approaches to money-laundering. In some states the difficulty is: "in prosecuting those responsible for laundering money is that any prosecution is dependent upon another initial offence being proven". The report also calls for increased checks at "air, sea and land frontiers".

*Press release, Brussels, 23.11.95; Proposal for a common position on long resident third country nationals, ASIM 210, 8629/95; Home Office explanatory paper, 13.10.95; Commission proposal for a directive on the elimination of controls on persons crossing internal frontiers, 95/C 289/10 COM(95) final, OJ 289/16, 31.10.95; Projet de position commune definie par le Conseil sur la base de l'Article K.3 du Traite sur l'Union Europeene sur l'application harmonisee de la definition du terme "refugie" au sens de l'Article 1a de la Convention de Geneva du 28 juillet 1951 relative au statut des refugies, adopted in Brussels, 23 November 1995; Project de position commune du Conseil sur l'application harmonisee de la defintion due terme "réfugié au sens de l'article 1er de la Convention de Genève, ref: 11786/95, ASIM 317 COR 1, Restricted, 21.11.95; Project de position commune du Conseil sur l'application harmonisée de la défintion due terme réfugié au sens de l'article 1er de la Convention de Genève, ref: 11786/95, ASIM 317 ADD 1, Restricted, 22.11.95; Project de position commune du Conseil sur l'application harmonisée de la défintion due terme "réfugié" au sens de l'article 1er de la Convention de Genève, Presidency proposal, COREPER II point 34, ASIM 209 REV 6, 9.11.95; Draft joint action adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning action to combat racism and xenophobia, 9301/95, Rapport due Comite K.4 au Comite des Representants Permanents, ref: 11337/95, JUSTPEN 152, Restricted, 8.11.95; Organised crime in the European Union in 1994, Working Group on Drugs and Organised Crime, ENFOPOL 108, REV 1; Note on the informal meeting on Justice and Home Affairs, La Gomera, 14-15 October 1995; Note from Danish Ministry of Justice, Police Department, 9.11.95; Explanatory report: Draft report on the combatting of drug trafficking - Third Pillar contribution, Working Party on Drugs and Organised Crime, ref: 8941/4/95, ENFOPOL 79, REV 4, Restricted, 8.11.95; Resolution on the protection of witnesses in the fight against international organised crime, adopted 23.11.95; Ministry of Labour, Sweden, on the refugee definition, 23.11.95; Joint Action on airport transit arrangements, adopted 23.11.95; Decision on an alert and emergency procedure for burden-sharing with regard to the admission and residence of displaced persons on a temporary basis, adopted 23.11.95; Council Recommendation relating to local consular cooperation regarding visas, adopted 23.11.95.*

### Bloody Sunday documents missing

Human rights lawyer, Jane Winter, has discovered that many of the documents which should be in the Bloody Sunday file in the Public Records Office at Kew are missing. Thirteen of the 35 listed documents are “closed”, ten of these for 75 years. Relatives of the fourteen people killed by paratroopers in the Bogside area of Derry during a civil rights protest in 1972, believe that some of the closed documents provide evidence of meetings in Downing Street during which a decision was taken “to give the Bogside a bloody nose”. Even the evidence heard by the Tribunal of Inquiry into the affair has not been archived at Kew. Jane Winter, however, did discover the minutes of a meeting which took place between Prime Minister Edward Heath, Lord Chief Justice Widgery and the Lord Chancellor, Lord Hailsham just two days after the killings. The Prime Minister's private secretary, Robert Armstrong (later secretary to the Cabinet and famous for his remark about being “economical with the truth” during the Peter Wright “spycatcher” trial) was also present. The meeting discussed the terms of the inquiry into the killings which was to be carried out by Widgery.

Prime Minister Heath begins the meeting by saying “this was not the sort of subject into which Tribunals of Inquiry had been asked to inquire on previous occasions; nor perhaps was it the sort of subject that those who designed the 1921 Act originally had in mind. It followed that the recommendations on procedure made by Lord Salmon might not necessarily be relevant in this case.” The reference to Lord Salmon here is to the Royal Commission on Tribunals of Inquiry chaired by Salmon in 1966. Salmon had recommended that tribunals of inquiry should only be appointed in cases of vital public importance and not, therefore, to serve as flags of convenience for governments. He did not favour the introduction of preliminary proceedings or rights of appeal. He argued that private hearings were to be discouraged and that the Attorney-General as a member of the government should not act as counsel to a tribunal. The use of the judiciary for the extra-judicial purpose of a tribunal of inquiry was regarded as especially controversial in the Bloody Sunday case because Widgery conducted the inquiry alone and because his findings so obviously suited the government.

The Downing Street minutes show considerable confusion on the procedural issues behind the Bloody Sunday tribunal. They clearly indicate that the government wanted to keep a tight grip on the proceedings while seeking to present the inquiry as impartial. Heath felt it right to draw a number of matters to Widgery's attention. Firstly, the matter should be dealt with while memories were fresh; secondly, “great emphasis had been placed during the discussions in the House of Commons that afternoon, on the importance of a speedy outcome”. Heath continued, as the minutes record, “the Inquiry would be operating in a military situation, with Troops coming and going and required for operational duties”. He thought it was necessary, “to bear in mind the possible risk to the armed forces”, who were to give evidence to the inquiry. “It would be necessary to consider whether and how witnesses could be protected, and whether and how access to the Tribunal's proceedings could be limited.” Heath's next point was that, “It had to be remembered that we were in

Northern Ireland fighting not only a military war but a propaganda war.”

Widgery replied that although his job was a fact-finding exercise, he was concerned to narrow the scope of the inquiry to “what actually happened in these few minutes when men were shot and killed; this would enable the Tribunal to confine evidence to eyewitnesses.” Heath reminded him that some of these would have to have their identities concealed. Hailsham agreed with this narrow focus and stated that the main issue for the inquiry was “whether troops shot indiscriminately into a crowd or deliberately at particular targets in self-defence”.

Heath asked Widgery if he wanted two other people on the Tribunal but Widgery replied that he “would prefer to do it on his own”. The meeting then discussed the need to pass resolutions establishing the Tribunal at Westminster and the Northern Ireland parliament at Stormont (which was stood down little over a month later in March). Seemingly, this was to prevent a possible legal move to invalidate the Inquiry given that constitutionally “law and order” was a devolved responsibility. Heath then raised the issue of the location for the Tribunal: “It probably ought to be somewhere near Londonderry; but the Guildhall, which was the obvious place, might be thought to be on the wrong side [ie the Catholic side] of the River Foyle. One possibility would be to find a suitable meeting place a little distance away from Londonderry.” Widgery felt that the Inquiry would have to be held in Derry: it was eventually held in Coleraine.

The next problem was the staffing of the Inquiry. The Tribunal required a counsel and a secretariat. The discussion went as follows: “The Prime Minister said that it was for question whether the Attorney General should appear as counsel for the Tribunal. The Lord Chancellor (Hailsham) doubted whether the Attorney General should appear as counsel for the Tribunal though he might need to appear as counsel for the Army. It was agreed that the Northern Ireland Attorney General should not be invited to serve as counsel for the Tribunal.”

In terms of closeness to government and conflict of interest, Hailsham then made the important proposal that “the Treasury Solicitor and the Cabinet Office should provide the secretariat for the Tribunal.” Under constitutional law, however, the role of the Treasury Solicitor is to brief counsel for the Tribunal and yet Hailsham goes on to say that “the Treasury Solicitor would need to brief counsel for the Army”.

There was clearly some concern at the meeting as to whether the Tribunal would appear balanced: “The Lord Chief Justice said that one difficulty would be to find who would be prepared to speak and give evidence on the “other side” of the case from the Army. He hoped that it would in the event be possible for there to be some coordination of the presentation of the case on that side”. Widgery at this stage was uncertain about whether the Inquiry should be held in public or not but Hailsham argued this was really a matter of the safety of Army witnesses: “The Lord Chief Justice would need to bear in mind that the IRA would certainly be wishing to take vengeance for the 13 men who had been killed, and might be interested in trying to identify at the Tribunal soldiers who

were involved in the shootings. Perhaps the right course would be for the Lord Chief Justice to wait and see what the Army proposed in this regard; they would no doubt put forward requests by counsel at the preliminary meeting of the Tribunal to consider procedure". The meeting then reminded itself that "the "other side" would have to be given an opportunity to make representations to the Tribunal about procedure". Finally, there was discussion of where Widgery would stay while the Tribunal was sitting: "One possibility which attracted the Lord Chief Justice was that he should stay with the Governor of Northern Ireland and should be flown to Londonderry by (British Army) helicopter for the sessions of the Tribunal." On the first morning of the preliminary hearing on procedure, Widgery did indeed arrive by Army helicopter, accompanied by two lawyers acting for the Army, Gibbens and Underhill.

Widgery's findings were widely regarded as a "whitewash" by local people. Forensic tests were applied to the dead men to see if they had been carrying weapons or handling explosives, but this did not supply Widgery with decisive evidence. He concluded that seven of the dead had definitely not fired weapons, that four could possibly have done so and that tests on the other two were inconclusive. He concluded nonetheless that "None of the deceased or wounded is proved to have been shot whilst handling a firearm or bomb. Some are wholly acquitted of complicity in such action; but there is strong suspicion that some others had been firing weapons or handling bombs in the course of the afternoon and that yet others had been closely supporting them." Contrary to the accounts of eyewitnesses in the crowd, he accepted, without question, Army evidence that the soldiers had shot at identifiable targets: "Soldiers who identified armed gunmen fired upon them in accordance with the standing orders in the Yellow Card's." The Coroner, Hubert O'Neill, who conducted the inquest into the killings begged to differ: "It strikes me that the Army ran amok that day and they shot without thinking of what they were doing. They were shooting innocent people. These people may have been taking part in a parade that was banned - but I don't think this justifies the firing of live rounds indiscriminately. I say it without reservation - it was sheer unadulterated murder."

For all the concern about the "other side", the Downing Street minutes were copied to John Graham, Private Secretary at the Foreign Office; David Owen, Private Secretary to the Lord Chancellor; Robert Andrew, Private Secretary to the Minister for Defence; Leonard Davies, Private Secretary at the Privy Council Office; the Attorney General Tony Hetherington; and Burke Trend, the Secretary to the Cabinet.

McCann, Eamonn, *Bloody Sunday in Derry: What really happened*, Dingle: Brandon Books. 1992; *Minutes of Meeting held at 10 Downing Street, 1 February 1972*; Bradley, A. W. and Wade, E. C. S., Constitutional and administrative law London : Longman, 1993.