

Statewatch bulletin

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UK

Police Bill: new powers to "bug and burgle"

The Police Bill which is currently before parliament will allow the Chief Constables, or their designated deputies, to authorise "bug and burgle" operations - officially termed "intrusive surveillance". The police, in short, will be able to empower themselves to enter property (at home or workplace) in order to "interfere" with property (to remove or "plant" items) or to install surveillance devices ("bug" to record conversations or "video-bugs"). (A full summary of the provisions of the Bill are set out on pages 20-23).

Section 89 of the Police Bill has been presented to parliament and the public as simply placing on a statutory basis Guidelines on surveillance operations issued in 1984 after the passing of the Police and Criminal Evidence Act (PACE).

An examination of this contention - by comparing the 1984 Guidelines with Section 89 of the Bill - shows it to be totally false and transparently misleading.

[Where the Bill differs from the 1984 Guidelines]

- 1.The 1984 Guidelines did NOT cover "interference with property" only "wireless telegraphy" (literally wire-less surveillance devices).
- 2.The 1984 Guidelines did NOT confer a power of "entry" except to effect "wireless telegraphy".
- 3.The 1984 Guidelines set much narrower criteria for "authorisation": normal methods must have been "tried and failed"; the use of intrusive surveillance "would be likely to lead to an arrest and conviction"; devices should only be used for "major organised conspiracies and other particularly serious offences, especially crimes of violence." None of these limitations are included in the Bill or in the draft Code of Practice.
- 4.The 1984 Guidelines only allowed the delegation of "authorisation" from the chief constable where there was a "degree of consent" by a member of the public - this test is absent.
- 6.The 1984 Guidelines set the time limit for "authorisation" at 1 month - not 6 months.
- 7.The 1984 Guidelines did not allow for agencies like the NCIS to have powers to conduct surveillance anywhere in the UK or on behalf of any "law enforcement agency" in the world.

Moreover, controversial powers of entry and search given under PACE were, except in emergency or for arrest, only granted with a warrant from a magistrate or a circuit judge (a judge who normally presides over the crown court).

[Self-regulation is a recipe for abuse]

If there is one lesson to be learnt from the Van Traa inquiry in the Netherlands - which involved 100 tons of drugs being recirculated with informers being allowed to keep the "profits" - it is that to allow police forces the powers of self-regulation is to invite abuse.

MI5 were empowered to "bug and burgle" under Section 3 of the Security Service Act 1989, a power extended to "serious crime" under the Security Service Act 1996. But to exercise these powers to enter and interfere with property MI5 have to obtain a warrant from the Home Secretary. Chief Constables on the other hand are to be allowed to authorise themselves. Self-regulation is a dangerous practice especially in the use of exceptional powers to clandestinely enter homes and workplaces.

The idea that the police are more "accountable" than the judiciary (in great need of reform though it is) is nonsense. A judge, before granting a warrant, would have to take into account the circumstances of the case and any legal rulings or precedents interpreting and defining the use of such warrants. It is not the job of police officers to make such judgements. It is also an argument that confuses the constitutional roles of the enforcement of the law by the police and the interpretation of the law by the judiciary as set out in statutes passed by parliament.

The appointment of a Commissioner to deal with complaints will be greeted with well-founded scepticism given the record of the current Commissioners dealing with telephone-tapping, MI5 and the intelligence agencies who have never upheld a single complaint from the public.

The government has presented the Bill as being concerned with "the increasing threat from organised crime" yet the far-reaching definition in the Bill of "serious crime" includes "conduct by a large number of people in pursuit of a common purpose" which could cover protest groups or defence campaigns. This is the same definition used in the Security Service Act 1996 which in turn was drawn from the Interception of Communications Act 1985 - but this latter law required a warrant from the Home Secretary.

There must also be a fear that MI5 will extend its well-trodden practice of posing as plainclothes police officers and by-pass the need to get warrants from the Home Secretary by simply getting the nod from a Chief Constable.

To seek to legitimise the introduction of "bug and burgle" powers on the grounds that it is just putting existing practice on a statutory basis is a bad argument, but to do so when it is patently untrue is to be "economical with the truth" in a major way.

Police Bill, 1996 ; Guidelines on the use of equipment in police surveillance operations, 19 December 1984; draft Code of Practice: Intrusive Surveillance; Home Office press releases, 1 November 1997; The Police and Criminal Evidence Act 1984.

POLICING

UK

No action on black deaths in custody

The outcome of recent inquests, covering the deaths of black men

in police custody, confirms the widely held view that even when a coroners jury blames the police they will not be held responsible. According to the advice and support group, Inquest: "Recent cases follow a pattern where officers whose conduct has led to death or serious injury have not been subject to criminal or disciplinary charges."

At the inquest into the death of Shiji Lapite, who died in east London after his arrest by two plain-clothes policemen in December 1994, a unanimous verdict of "unlawful killing" was reached (see *Statewatch* Vol. 6, no. 3, Vol. 6, no. 4). The jury's decision was effectively ignored by the Crown Prosecution Service's refusal to prosecute the officers involved in his death. Now the Police Complaints Authority have ruled that not even disciplinary charges are to be brought against the officers involved. This latest move has been condemned by Mr Lapite's family who will seek a judicial review of the decision.

At another recent inquest into the death of a black man in police custody the jury ignored the advice of coroner Leonard Gorodkin who instructed them that the police should not be accused of "neglect" in the death of Leon Patterson. The jury - who heard how Patterson spent 20 hours naked and handcuffed on the floor of a police cell incoherent and covered in bruises - rejected his advice, concluding that police neglect was contributed to his death.

Leon Patterson's body was found in a cell at Denton police station, six days after his arrest, in November 1992. Patterson, who was a heroin addict, was visited by police doctors but received neither adequate treatment nor hospital assistance despite requests from his solicitor. The bruises and abrasions that covered his body were so severe that his twin sister was unable to recognise his body. She believes that he must have been assaulted by police officers after his arrest.

The first inquest to investigate his death was halted, in November 1993, when it was discovered that a juror was married to a local police officer. In April 1994 a second inquest returned a unequivocal verdict of "unlawful killing". This was later overturned by the High Court.

The latest hearing into Patterson's death took place in November and was monitored by Inquest, an advice and support group for the families of those who die in custody. In response to the verdict their Co-Director, Deborah Coles said: "This verdict is a damning indictment of the treatment Leon received while in the custody of the Greater Manchester police...We remain deeply concerned about the way in which this death was investigated under the supervision of the Police Complaints Authority. What this meant in reality was the Greater Manchester police investigating the Greater Manchester police."

In December an inquest into the death of Wayne Douglas heard eyewitness evidence that he screamed in agony as police beat him with long handled batons (see *Statewatch*, vol 5, no 6, vol 6, no. 1). Despite this the jury decided that he died accidentally. His solicitor, Louise Christian, said that the family would seek a judicial review of the decision. She said "There was no reason for him to die in Brixton police station. Time and time again people, particularly black people, are dying in police cells and no action is taken."

"Neglect contributed to death of Leon Patterson..." Inquest Briefing (undated); PCA announce no action against officers

responsible for death of Shiji Lapite 2.12.96. (available from Inquest, Ground Floor, Alexandra National House, 330 Seven Sisters Road, London N4 2PJ); *Guardian* 7.12.96.

Lambeth monitoring project launched

A joint initiative, launched by the Brixton Community Law Centre and the People's Empowerment Network of Lambeth and supported by the Black Quest for Justice Campaign and the Justice International Trust of Law-Related Education, was launched in Brixton, south London in October. Operation Heru's Eye (OHE) is a community based monitoring project that will network with grassroots organisations across the south London borough.

The group will have special units, who have passed through a training course, and will be equipped with camcorders, audio-recorders and cameras to "be on the look out for, and endeavour to record, seemingly unjust activities of police, immigration and other state security personnel as well as of racist and fascist thugs".

The OHE can be contacted by telephone; call Ms. Janet Rousou (0171 733 5996) or Kofi Mawuli Klu (0171 924 9033).

DENMARK

Bikers war results in sinister legislation

In recent years conflict between rival biker groups, the Hell's Angels and the Bandidos, has become increasingly violent, recalling the "war" between the Angels and the Bullshits in the 1980s. The Hell's Angels have been in Denmark since 1985, while the Bandidos arrived more recently, in 1993. There have been at least thirteen violent clashes between the groups involving sophisticated weapons, including guns, hand grenades, bombs and armour-piercing shells. Nearly 200 illegal weapons have been confiscated in police raids and four Bandidos and one member of the Hell's Angels have been killed. This has resulted in intensified police surveillance and harassment of anyone who resembled a biker and stimulated heated debate about an expansion of police powers to include the use of anonymous witnesses and civilian agents.

It has been suggested that biker organisations could be banned under Paragraph 78.1 of the Danish constitution, which states that organisations that aim to achieve their goals through violence or crime can be dissolved. This Paragraph has not been used since the German occupation in 1941 when the Danish Communist Party was prohibited. However, it has proved impossible to prove that either the Hell's Angels or the Bandidos have crime as an organisational goal as highly placed police officials, such as Chief Inspector Per Larsen, have acknowledged. Even the Justice Minister recognises that there is a problem regarding which groups should be banned, particularly since the courts have ruled that biker clubs do not have a legal status as an organisation.

The legal debate received added impetus following a serious attack on the Hell's Angels headquarters in Copenhagen in October in which two people, one Hell's Angel and a "guest", were killed. Eighteen people were also injured by an armour-piercing shell used in the attack. Five days later, on October 10, parliament passed a law - commonly known as the "Rocker-law"

- banning residence in certain buildings. It permits the police to ban people involved in armed conflict to meet in a building if it is likely to endanger a neighbour. Offenders can receive up to two years imprisonment. Within days the police began to empty the biker's clubhouses only to find most of them deserted.

Critics have pointed to problems in the "Rocker-law", not least defining who is and who is not allowed to enter a specific building. Does it only apply to members of biker groups or to any person who looks like a biker? Does the law apply only to the Hell's Angels and Bandidos or to other biker organisations? The law is poorly drafted and has raised concerns that individuals will be prohibited from entering clubs or premises on the authority of the police and without legal redress. Another repercussion of the legislation is that individual bikers have dispersed across the country thereby spreading the number of targets and increasing the likelihood of proliferation.

It is expected that the Justice Minister will approve additional legislation, with the support of most political parties. Tightening of existing gun laws is likely and it has already been suggested that possession of machine-guns and armour-piercing shells will result in a 4-year sentence. Sentences for illegal possession of hand guns are also expected to increase.

The Minister has also given notice of an extension in police powers such as covert searching (searching personal belongings to look for evidence) in cases relating to drugs and murder where a specific group is considered responsible. There will also be increased use of telephone-tapping even in minor cases and the confiscation of property and money from people who are convicted, for example in drug cases and financial crimes.

The use of anonymous witnesses and civilian informers is still under discussion, despite considerable opposition from legal experts, human rights organisations and leftist political parties. The Vice-Commissioner (Crime), Troels Jorgensen, who is the Danish Liaison Officer for the Europol Drugs Unit in the Hague has also gone on record against this sinister development.

Information, Politiken, Newsletter of the Scandinavian Council for Criminology 22, 1996

NETHERLANDS

Dutch police trigger-happy?

An extensive investigation led by Professor Jan Naeyé from the Amsterdam Free University which was published last October shows that Dutch police shoot more frequently than their German colleagues.

Professor Naeyé's team researched 3,360 incidents involving the use of police firearms between 1978-1995. During this period, 53 people were killed and 244 wounded, with involuntary discharges accounting for nearly 20% of the killings. Figures on shooting incidents in Nordrheinland-Westfalen, a comparable region in Germany, show that over the period 1992-1995 nearly twice as many people were injured in Holland as in Germany.

Half of the incidents involved shooting at a fleeing car in spite of clear instructions issued in 1988 not to shoot at driving cars because of the risks to bystanders. Dutch police officers shoot at cars ten times as often as in the German example.

The researchers advise improved and intensified training procedures to reduce the number of incidents: they point to the

fact that the specially-drilled "arrest teams", deployed exclusively in dangerous arrest situations, have not experienced a single involuntary discharge since 1990. Although these teams arrested some five thousand suspects, they hardly needed to fire a single shot. Also, the researchers advise against allowing police personnel to take their pistol home after duty. During the investigated period, twenty-five persons were killed or injured by police bullets while the officer involved was not on active duty and kept his weapon at home.

Naeye criticised the police unions for having been "not too precise on the truth" when pleading for the introduction of a new type of bullet with higher stopping power. His research showed that in 90% of the cases, people hit by the "Action 3" police bullets presently in use stopped their attack or flight. A police union leader reacted to the reproaches by calling it "a stupid remark".

Police Blunder: Moroccan Man Loses House

Incorrect information transferred by the Dutch police to Interpol Rabat (Morocco) described a Moroccan man who lived in Holland as a convicted drug dealer. The Moroccan authorities subsequently investigated his entire family and confiscated his house. In March 1996, the Dutch police's criminal information centre (Divisie Centrale Recherche Informatie -CRI) responded to a Moroccan request by reporting that the person concerned had two convictions for violating narcotics legislation and one for possessing an illegal firearm. In September, the man's lawyer managed to get the CRI to send a rectification to Rabat to inform the Moroccan police that in fact in all three cases, the man had been acquitted or the case had been dismissed. The lawyer claims that during their investigation the Moroccan police had tortured some suspects.

Earlier this year, the CRI made a similar mistake when it supplied information about the criminal record of a Dutch man with a very common name, which later turned out to be a case of mistaken identity. The innocent man was kept in a Czech jail for several months: even after receiving confirmation that the supplied information was erroneous, the Czech authorities refused to release him and stop the trial.

Reacting to this case Green Left MP Mr Mohammed Rabae, who took part in the Van Traa commission investigating police procedures in 1995, has questioned Dutch participation in the Interpol system. He emphasized that Interpol has no formal status and that many participating countries have severe problems with human rights, corruption and the rule of law.

GERMANY

Charges against anti-fascists dropped

After five years of investigations, the charges of conspiracy against 17 alleged members of the Autonome Antifa (M) were dropped in September. The state prosecutor of Lower Saxony faced a significant political defeat in not being able to criminalise the antifascist activities of the Autonome Antifa (M). Between 1990 and 1994, the group organised several anti-fascist demonstrations in a broad coalition with the Green Party, trade unions, autonomous groups, grassroots initiatives and parts of the

Social Democratic Party in Lower Saxony directed against the growing number of extreme right attacks and the centres of neo-fascist groups. Lower Saxony's state prosecutor regarded these demonstrations as "criminal offences by a criminal organisation". However, if the dismissal of the case constitutes a defeat for the state prosecution, one objective, the surveillance of left and anti-fascist groups in the region has been achieved: 143 people were investigated, 13,929 phone calls recorded, and 30 raids of offices and private flats carried out.

Autonome Antifa (M), press release, 30.8.96 & 20.9.96; *ibid*: 1:1 für den anti-faschistischen Widerstand, September 1996, pp50.

BELGIUM

Parliament censors Committee report

The Belgian parliament has made significant changes to the annual report of the "P" committee, a body set up by parliament to supervise police operations. Passages removed from the report criticise the police services and parliament.

Censured passages include criticism of the Delathouwer/Milquet bill intended to improve police accountability. The "P" committee claim that the bill, recently introduced by a senior member of the governing coalition, "rather than attempting to provide a logical and rational restructuring with a view to creating efficient controls...has instead merely led to yet another compromise with the police." The police services are also criticised in passages removed from the report which claim that "there is open resistance to any external control from certain sections of the police services. The motivation for this may be understandable, the methods used however are not. In a period in which the internal "war of the police services" has raged in its fullest fury and policing is experiencing changes of historic proportions, democratic control on the conduct of police services should be allowed to proceed unhindered."

De Morgen, 5.10.96

Postmen as "spies" project stopped

The Belgian Postal Service has stopped the experiment to use postmen as informers for the *Gendarmerie*. It appears they were never been told about the local initiative in Louvain and they are being used in the ongoing "guerre des polices".

Initially approached by *Rijkswacht* representatives for a project to enhance their personal safety, postmen were issued with report forms to send in their observations. The motivation behind this new "Project Information Exchange" was the fact that the willingness of Belgian civilians to act as informants to the police is steadily decreasing, whereas the pressure on the *Gendarmerie* to come up with better intelligence following numerous child abuse cases has increased. In the near future, bus drivers will also be "enlisted" to be the eyes and ears of the *Gendarmerie*.

Minister of the Interior Mr Johan vande Lanotte regrets the Post Office's decision. He felt that it could be a good idea, and that the experiment should have been given a chance, so that it could be evaluated after a six-month trial period.

Policing - new material

The equality trap, Anthony Hall. *Police Review* 20.9.96. pp16-17. Unintentionally hilarious article on "the statutory enforcement of equality" in the police force that argues that "positive discrimination is now the order of the day". The author, who recently retired from the Essex police, mixes his metaphors marvellously: "While the service indulges itself in self-flagellation, the quality of policing delivered is diminished by the continuous movement of personnel under these policies."

PNC: A users' guide, Joe Thompson. *Police Review* 1.11.96., pp18-19. This is the beginning of a 10-part series on the Police National Computer. Part 1 covers "Communications breakdown"; Part 2 "Searching by name" (8.11.96.); Part 3 "Marks showing intelligence" (15.11.96.); Part 4 "Source input documents" (22.11.96.) and Part 5 "Property File" (29.11.96.).

Playing politics with the law, Graham Smith. *Legal Action* November 1996, pp8-9. Useful analysis of civil actions against the Metropolitan police between 1991-96 and, as they become more numerous, the Met increasing tendency to contest them. Smith demonstrates that these payments are not, as Sir Paul Condon and the media have suggested, isolated nor malicious but "are representative of a significant trend."

The 1996 British Crime Survey: England and Wales, Catriona Mirrlees-Black, Pat Mayhew & Andrew Pacey. *Statistical Bulletin* (Home Office) Issue 19/96 pp78. Sections on i. The extent of crime, ii. Reporting to the police, iii. Violent crime, iv. Burglary, v. Cars and theft and vi. Fear of crime.

A criminal culture? Jim Carey. *Squall* No. 14 (Autumn) 1996, pp30-35. Examines the recent history of "Travellers, city kids, raves and festivals" and the multi-tactical policing used to suppress them. *Squall* is available from PO Box 8959, London N19 5HW.

Lessons from tragedies: deaths in custody in the Metropolitan police district 1986-95: First report, Deaths in Custody Working Group. *Community-Police Consultative Group for Lambeth* (July) 1996, pp53. This report followed the deaths of Brian Douglas and Wayne Douglas after "their families, friends and many members of the public became concerned about the subject of deaths in police custody." It records 213 deaths in the Metropolitan district between 1986-1995 and includes 22 recommendations and a chapter on the suspension of police officers following a death in custody.

Constabulary watchdog, Vicky Graham. *Police Review* 11.10.96. pp22-23. Bland interview with the new Chairman of the Police Complaints Authority, Peter Moorehouse, in which he argues for a "greater use of informal resolutions" for complaints against the police. Also reveals that the PCA is prepared to compromise on freemasons in the police force.

Caught on camera, Marjorie Bulos & Chris Sarno. *Policing Today* Vol. 2, no. 4 1996, pp42-44. This article looks at the proliferation of closed circuit television (CCTV) and assesses how police officers "can more effectively harness its potential."

Europol's Databanken in Politie & Internationale Samenwerking, Paul De hert. *Vigiles: Tijdschrift voor Politie Recht*, no 3, 1996, p36-44. Paul de Hert, a researcher at the Vlaamse Universiteit Brussels, raises questions about whether Belgian privacy law allows for the provision of soft information to Europol: "specific legislation on analysis and application of soft information is lacking in Belgium."

Damages run deep when police are the villains, Heather Mills. *The Observer*, 8.12.96. Argues that punitive damages are important to curb police behaviour.

Parliamentary debates

Police Bill Lords 11.11.96. cols. 789-839

Police Bill Lords 26.11.96. cols. 123-194

Police Bill Lords 26.11.96. cols. 203-256

Police Bill Lords 2.12.96. cols. 469-528

Police Bill Lords 2.12.96. cols. 544-576

CIVIL LIBERTIES

UK

CND reveals human radiation experiments

In November the Campaign for Nuclear Disarmament (CND) published a report backed by dozens of official letters, reports and minutes from the US Department of Energy, revealing that the British government has been taking part in radiation experiments on humans for almost 40 years.

The Atomic Weapons Establishment (AWE), Aldermaston, and the Atomic Energy Research Establishment (AERE) at Harwell, were involved in the experiments, some of which ran alongside the American government's programme, since the late 1950s. The programme began officially during the 1960s and continued until the late 1980s, with at least one test continuing to the present day. The experiments involved radioactive substances such as barium-133, strontium-85 and plutonium-239 which were inhaled, injected, swallowed or eaten. They tests included:

1957-87 Injecting strontium-85 into a human subject

1960s Inhalation of radioactive iodine isotopes

1979-85 19 men and women inhaled niobium-92m

1986-88 Two volunteers injected with barium-133

1988-90 Eight male volunteers involved in repeat study

The evidence from the US documents disputes the testimony of Aldermaston's chief executive who, in February 1994, said that:

"No radiation tests involving human subjects are currently being conducted by AWE. Furthermore, we are not aware of any such tests or collaboration with the US on such tests since AWE (formerly AWRE) was formed in 1950. We have consulted the Ministry of Defence who are the custodian of much of our early history, and they have confirmed this."

The nuclear guinea pigs: secret human radiation experiments in Britain, Eddie Goncalves. *Campaign for Nuclear Disarmament* (November) 1996. Available from CND, 162 Holloway Road, London N7 8DQ.

NETHERLANDS

Dutch fudge on gay marriages

The Dutch government is set to announce proposals for same-sex relationships to be registered in their local communities in legally binding agreements. The only difference between these agreements and heterosexual marriage is that the same sex agreement would not entitle a couple to be allowed to be considered for adoption. According to a Justice Ministry spokesman "there is not very much difference" between the government's proposals and a heterosexual marriage. The proposed registration will guarantee inheritance, social security and pension rights. Although these arrangements go much further than any other EU country they still fall short of the full equality that gay-rights groups are demanding. They committed themselves to continue campaigning until they were granted adoption rights.

Independent 6.12.96.

Civil Liberties - new material

Counter Information. No 47 (November 1996-January 1997). Latest issue of the free broadsheet produced by an independent collective which aims "to assist in the struggle against all injustice, oppression and exploitation." Available from: Counter Information, c/o Transmission, 28 King Street, Glasgow G1 5QP, Scotland.

Tories keep their sources secret. *Labour Research* Vol 85, no 12 (December) 1996, pp16-18. The Conservative Party raised nearly £19 million in political donations during 1995, much of it from hidden sources. The Labour Research survey discloses some of the company donations, and considers why they are declining while contributions from rich individuals and private companies are increasing.

Dockers Charter, no 11 (November) 1996. This 8 page newspaper is published by the Liverpool Dock Shop Stewards Committee. The committee was formed following the sacking of 500 dockers in September 1995 and their paper contains news and updates in their struggle for reinstatement. Available from Liverpool Docks Shop Stewards Committee, c/o 19 Scorton Street, Liverpool L6 4AS.

EUROPE

Important reported decisions of the European Court of Justice include:

As Community law now stands, the Community has no competence to accede to the European Convention on Human Rights: Opinion 2/94, OJ C/80 22.6.96.

A member state must have the opportunity to comment before a final decision to reduce the European Social Fund assistance for vocational training programme, whether on the principle of reduction or the amount. Non-observance renders the decision void: *Societe v Commission* T-432-4/93, 1995 II-503.

There is no requirement of formal, express, specific legislation to transpose Community directives, provided the general legal context guarantees the full application of the directive sufficiently clearly and precisely so that individuals can ascertain the full extent of their rights and rely on them in the national courts. Only when the Member State has failed to take the implementation measures required will the court recognise the right of affected persons to rely on the directive against the defaulting Member State. *Commission v Germany*, C-433/93, 1995 I-2303.

Member States are obliged to make good the loss and damage to individuals caused by breaches of Community law for which they can be held responsible. The right to reparation is a necessary corollary of the direct effect of community provisions whose breach caused the damage. *R v Secretary of State for Transport ex parte Factortame*, C-48/93.

In civil cases, national courts are not required to set aside their own rules in favour of special rules for those involving Community law: *van Schijndel and van Keen v SPF*, C-430/93, 1995 I-4705. But national procedural rules safeguarding Community rights must not be less favourable than those governing domestic actions, or render excessively difficult the exercise of community rights, nor should the rules prevent the national court from considering whether domestic law was compatible with Community law: *Referbroeck v Belgium*, C-312/93, 1995 I-4599.

A Member State cannot expel on public policy, national security or public health grounds (except in urgent cases) before a competent authority (judicial or administrative) has given its opinion on the proposed expulsion, but the "competent authority" can be appointed by the expelling body, as long as in practice it or he is independent: *R v Secretary of State for Home Department ex parte Gallagher*, C-175/94, 1995 I-4253.

The retention of laws and regulations restricting the right to register vessels and fly the national flag to vessels at least half-owned by nationals, violates the free movement provisions of the Treaty: *Commission v France*, C-334/94.

The Treaty's free movement provisions prevent sporting associations from laying down rules limiting the number of foreign professional football players in a team: *Union Royale Belge des Societes de Football Association v Bosman*, C-415/93.

An application by the Netherlands, supported by the European Parliament, for annulment of a Council decision of 1993 on public access to Council documents, was dismissed. *Kingdom of Netherlands v Council*, C-58/94, 30.4.96.

SCHENGEN

Schengen puts strain on Austrian-Hungarian relations

Within the next year Austria has to upgrade its security and control systems along its eastern border and at airports in order to meet the criteria of the Schengen Agreement - planned to come into force in October 1997. In order to be connected to the Schengen Information System (SIS) a central computer system has to be established in Vienna that will be connected to the SIS office in Strasbourg as well as to all the border crossing points and airports in Austria. Increased external border controls will particularly affect Austria's east European neighbour states. An experiment on 12 March 1996 along the Austrian-Hungarian border to mimic Schengen conditions not only led to waiting times for up to 9 hours at the checkpoints but also to the personal intervention by the Hungarian Prime Minister to his Austrian counterpart. Working commissions have been established to discuss solutions including joint personnel training and EU aid. Hungary demands special conditions because the Schengen Agreement invalidates five recently signed bilateral agreements to facilitate border traffic. Furthermore, Hungary fears that the Schengen Agreement will lead to big economic losses through the collapse of holiday and shopping tourism. Assurances by the Hungarian government that its eastern borders are tightly controlled are countered by Austrian officials who claim an alarming increase of "illegal" immigration via Hungary over the last 3 months.

Weltwoche, 7.11.96.

NETHERLANDS

Press campaign against Greens "intelligence-inspired"

A campaign, led by the Netherlands' highest circulation newspaper, against environmentalists has been linked to a right-wing security firm specialising in spying on activist groups. The Dutch secret service, the Binnenlands Veiligheids Dienst (BVD), is also suspected of participating in a systematic campaign to smear one of the Netherlands' leading Green groups.

During the weeks leading up to a demonstration outside Schiphol airport the *Telegraaf* newspaper fed its readers a series of "exclusive" stories claiming that Wijnand Duyvendak, the campaigns organiser of the environmental group "Milieudéfensie", was an ex-member of RaRa (Revolutionaire Anti-Racistische Actie), an organisation best known for carrying out a militant campaign against companies investing in apartheid South Africa (see *Statewatch*, vol 3 no 4).

Duyvendak is, in fact, well-known in Dutch activist circles for his belief in non-violent action, a fact he pointed out to the *Telegraaf* while they were interviewing him. In response the journalist produced a file containing a series of internal memos from organisations Duyvendak had worked for as well as other documents. He originally believed that the only possible explanation for the *Telegraaf* possessing these documents was that they had a source within the BVD.

However the alternative information centre Jansen & Janssens, who specialise in intelligence activities, suggested the private security firm ABC as more likely to be involved. They have, in the past, have been accused of rummaging through community

and activist groups' rubbish bins in search of information, and worked with the *Telegraaf* in concocting a story linking RaRa with the German Rote Armee Fraktion.

The possibility that ABC are providing information supporting the campaign against Wijnand Duyvendak is backed up by the fact that the director of ABC, Piet Siebert, has been quoted in the *Telegraaf* as an "international expert in the field of activist groups". Duyvendak now believes the theory put forward by Jansen & Janssens to be "extremely plausible". He goes on to say that "this would explain the arbitrary nature of the documents presented to me".

However he still suspects some state involvement in the campaign against him. The *Telegraaf* had also quoted an anonymous source from the Politieke Inlichtingen Dienst (LPID, Political Intelligence Service). There is also a history of state sources attempting to smear critical voices with the RaRa tag (the Opstand case in particular, where journalists working for the leftwing Opstand collective were accused of being RaRa supporters. No charges were ever pursued against them. (See *Statewatch*, vol 4 no 5 & 6). Duyvendak is now contemplating legal action in order to discover if the mysterious PID source actually exists.

Ravage 1.11.96

Europe - in brief

UN Human Rights Commission: Gaps in Germany's human rights record: According to the UN Human Rights Commission, there are "gaps" in the application of human rights in Germany after unification following the German government's submission of its first report after the unification of the two states. During its consultation on the 60 page report, the Commission criticised the non-employment of East German teachers after unification and police arrest behaviour. The Commission states that there is a clear racist practice. The vast majority of those maltreated have been asylum seekers and other foreigners. The Commission is composed of 18 human rights experts who examine the implementation of the International Pact on Civil and Political Rights of 1966. *Sueddeutsche Zeitung*, 7.11.96.

Romania: Two different views: The US State Department report on the activities of the Romanian security services reads: "However, police frequently used excessive force during arrest and beat detainees. The military prosecutor's office is charged with legal oversight of the police, an arrangement that human rights organisations believe inhibits prosecution or discipline of police misconduct." The UK Home Office view is: "however, the police were accused of excessive force during arrest and beating detainees. While such activities may occur, they are not commonplace and do not go without punishment." Could this be anything to do with returning refugees to "safe" countries? *Times*, 3.11.96.

Europe - new material

On the trail of Palme's assassins. *Searchlight* No. 257 (November) 1996, pp3-10. Investigation into the 1986 assassination of Swedish prime minister Olaf Palme that

implicates the South African apartheid regime.

Bilderberg and the origins of the EU, Mike Peters. *Lobster*, 32, December 1996, pp2-9. Traces the links between the Bilderberg Group, named after a hotel near Arnhem, Netherlands, and the founding of the European Community. The Group comprised of the world's "ruling classes" nurtured the "Treaty of Rome which brought the Common Market into being."

Parliamentary democracy. Wilton Park paper 120. HMSO, 1996, 34 pages, £5.00. The Conclusions of this closed seminar on the Third World and "liberal democracy" include the following insight: "Democracy must not be confused with capitalism. The former is a political system while the latter is an economic system. Although many capitalist countries are democracies, capitalism can exist without democracy."

La collaboration policière internationale en Europe, G Renault, J Vanderborgh, L van Outrive. *Déviance et Société*, 1996, vol 20 no 2, pp173-192. Review of the material on police cooperation in the EU.

Quel prix pour la sécurité? (Europol - brave new police?) Green Group in the European Parliament, 1996, 56 pages. Proceedings of conference on Europol. This French language version follows the German one, and will be followed in turn by the English version later.

The Protection of Human Rights in Europe: the role of the European Convention on Human Rights, Simon Bagshaw. European Dossier Series no 31, 1994, 36 pages, £5.00. European Documentation Centre, University of North London, 236-250 Holloway Road, London N7 6PP.

Democracy and the European Union, Richard Kuper. European Dossier Series no 38, 1996, 32 pages, £5.00. European Documentation Centre, University of North London, 236-250 Holloway Road, London N7 6PP.

IMMIGRATION

NETHERLANDS

"Asylum seekers suffer in refugee centres"

The care of asylum seekers in Holland does not meet the minimum standards for security, dignity and independence. This is the message which the Refugee Work Netherlands foundation, the main Dutch organization dealing with refugee affairs, put to the cabinet and parliament in an attempt to end what it calls "the human dramas in the asylum seekers centres".

Asylum seekers still have to spend prolonged periods in large refugee centres before learning whether they will be given a formal refugee status. Frustration, enforced passivity and anxiety have resulted in eleven suicides in the last two years. Tension is rising: following a suicide by an Iranian at the Middelburg refugee centre in early December, the director was chased off the premises by an angry crowd.

Refugee organizations have repeatedly sounded the alarm bell over extremely long waiting periods in the past years. While the government has announced earlier this year that soon most of the problems will be over, there are few indications that this will actually be the case. This summer, over 10,000 people in the centres had spent over 18 months there. In total, about 28,000 asylum seekers are currently held.

POLAND

xxxxxx

Investigations by a Polish NGO showed that there are presently around 500 people held in detention centres in Poland. About 400 people arrested during police raids in September and 100 persons have been deported by the German border police in accordance with the German-Polish readmission agreement. The German-based organisation Forschungsgesellschaft *Flucht und Migration* (FFM) visited three detention centres (Konin, Pila and Elblag) in Poland in October. They interviewed all 122 detainees, all men from South-East Asian countries (Bangladesh, Afghanistan, India, Sri Lanka, except for one man from Liberia).

According to the Polish police authorities, only 6 out of the 122 detainees have applied for political asylum. However, all the men believed that they had applied for asylum during the 10-15 minutes long investigations by the state prosecutor after their arrests. The interpreters present at the investigations explained to the refugees that the document - written in Polish - they were asked to sign is an asylum application. In fact, they signed the order to place them in remand pending deportation. All the men signed this document which means that they will be deported to their countries of origin or neighbouring third countries within 90 days of their arrest. As all the detainees in the three deportation centres gave similar detailed statements it looks as if the refugees have been deceived by the state authorities. None of the detainees was aware of the fact that they were on remand pending deportation. Nobody had informed them about their rights and they have had no contact with support organisations.

Two weeks after the September raids, the Interior Ministers of Poland and the Ukraine signed an agreement on cross border cooperation (4.10.96) which has been presented to the Polish public as an anti-migration convention. The Ukraine has not signed the Geneva Refugee Convention nor is the country recognized as a "safe third country". Some of the refugees arrested in the raids have been deported to the Ukraine where they can no longer be traced. It is believed that they are Iraqi Kurds.

Besides the state prosecutor, the competent authority for the refugee's situation is the Refugee and Migration Office in Warsaw. This office decides on asylum applications and organises deportations. Until the visit of FFM, no representative of the Refugee and Migration Office had contacted the detainees. The director of the office announced on 7 November that due to the seriousness of the accusations an inquiry has been launched but refused to give any further information. Nor had the office of the UNHCR in Warsaw contacted the refugees in the detention centres. Most of the letters from the refugees to the UNHCR in Warsaw have been returned because of an incomplete address. As a first reaction to the visit to the detention centres by FFM, the

Polish authorities suspended all visits to the refugees. Neither the UNHCR nor human rights organisations can now interview the refugees in order to assess their situation. According to the UNHCR, it has not received one letter from detention centres through the normal postal delivery service (7.11.96). Further research in Poland during recent months has shown that the Polish authorities seem to treat refugees differently according to colour and origin. If people from south-eastern Europe are registered as "illegally resident", they get "only" a request to leave the country stamped into their passport or in the case of a deportation from Germany they may be sentenced to several months imprisonment (see *Statewatch*, vol 6 no 4). People from south-east Asia are taken straight into detention centres when registered as illegally resident.

A group of 21 refugees, arrested by the German border police near Frankfurt/Oder reported that the police officers behaved in a very aggressive way. The refugees were asked several times to sign papers they could not read, and when they refused to do so, they were threatened with violence by the border police. Several refugees declared that the border police had taken money for its expenses from them. According to the refugees, the border police had no evidence of illegal entry via Poland but they were deported to Poland. The German border police have so far not responded to the accusations.

[Background to the Polish refugee policy]

Poland's adjustment to the Schengen system over the last few years has been a complicated process despite the readmission agreements with Schengen and Germany and its rapprochement with the European Union which has provided financial aid for its quick implementation. An immigration or foreigner's law including the relevant authorities according to the west European model does not exist.

A system of raids, detention centres and expulsions has been developed by three states authorities. The headquarters is the Refugee and Migration Office in Warsaw plus 49 regional administrations (*Wojwoden*) and the regional state prosecutors. Together they make up a tightly interwoven police-judicial-administrative complex with a strong informal character responsible for asylum, detention, and deportation.

The Polish government has been under pressure for some time to demonstrate an effective refugee policy to western European states, especially to Germany. Following the meeting between Polish and EU Interior Ministers in Warsaw in the summer of 1996 it has been noticeable that the Polish press has presented threatening scenarios of "streams of refugees". The arrest of Romanian Roma and the burning of their huts in the centre of Warsaw in July 1996 was a precursor to the newly emerging policy. *FFM, press release*, 11.11.96.

Immigration and asylum - in brief

Switzerland denounced for detention of "foreigners": The Swiss Human Rights League has submitted a report to the UN Human Rights Commission denouncing the "administrative detention" of foreigners. The report criticises particularly the following conditions which are contravening the International

Covenant on Civil and Political Rights (ICCPR): a foreigner can be detained for up to 12 months without having committed a crime awaiting a decision on their deportation; the procedure applied to foreigners in "administrative detention" is inferior to those applied to people arrested under the penal code; the detention conditions often do not respect the rights of detainees as defined in the ICCPR. *La Lettre de la FIDH*, no 663-664, 31.10/7.11.96.

Asylum down, deportations up: Home Office statistics for the first half of 1996 reveal that asylum claims for the second quarter (March-June) plummeted by half to 5,600 from 11,000 per quarter in 1995. At the same time, almost 18,000 people were served with deportation or removal notices, and 5,000 of them actually left the UK. *Home Office Statistical Bulletin*, 23/96, 24 October 1996.

Somalis stranded: The CRE obtained an injunction against Sudan Airways after it unlawfully instructed staff to refuse to carry any Somali passengers, in case they carried forged documents, making the airline liable to pay fines. The injunction has no effect outside Britain, however, and so will only apply to those buying tickets in the UK for relatives. *Migration News Sheet* December 1996.

Immigration - new material

REVIEW

The testimony of Kani Yilmaz: Kurdish political prisoner

This pamphlet, published to mark the second anniversary of Kani Yilmaz' arrest on 26 October 1994, contains his own testimony in the form of the affidavit submitted by him in the habeas corpus proceedings to challenge his detention and extradition, together with pieces by John Austin Walker, the MP who invited him to Britain, and by solicitor Gareth Peirce.

In his affidavit, Yilmaz describes his involvement in Kurdish self-determination issues which resulted in the formation of the Kurdish Workers' Party (PKK) in 1978 as a political organisation and his own arrest, torture and imprisonment for advocating separatism. He served over 9 years of a 21-year sentence (with another eight years added on for running a political defence at his trial) before his release on licence. He escaped Turkey for Germany in 1993 to avoid re-arrest. He was recognised as a Convention refugee very quickly, and became a high-profile spokesman for PKK/ERNK (the political wing of the PKK after the former adopted a military struggle in 1985). His visit to Britain in October 1994 was the fourth in a peace-seeking process; he brought with him the PKK's latest cease-fire proposals and hoped to persuade MPs to put pressure on the Turkish government to respond positively. He was briefly interviewed at Heathrow before being admitted. The Home Office justified his arrest at Westminster three days later by claiming his admission was a "mistake". Held for deportation on national security grounds, within days he was the subject of a German extradition request relating to incidents 11 and 16 months old, for which others had already been tried in Germany.

Yilmaz makes a convincing case in support of his assertion that

his detention, the deportation decision and the attempted extradition are a show of bad faith by both Germany and Britain, pressured by the Turkish government whose displeasure was to be avoided because of the huge privatisation programme underway in which large contracts in posts, telecommunications, bridge-building etc stood to be won. He reveals evidence of Turkish pressure on the British government after his admission to the UK, and an attempt at direct extradition to Turkey (impossible because of his refugee status). He demonstrates that the only evidence the German authorities can present in support of his extradition is his political activism, and describes the criminalisation of those involved in the Kurdish struggle.

In their companion pieces, John Austin-Walker and Gareth Peirce point out the reduced safeguards under the European Convention on the Suppression of Terrorism and the evisceration of the 'political defence' to criminal offences and extradition requests, to the point where political motivation results in increased penalties rather than international protection.

Kurdish Community in the UK and Defend the Kurds - Defend Human and Civil Rights in Britain and Europe, October 1996.

Control of immigration: statistics United Kingdom, first half 1996. *Statistical Bulletin* Issue 23/96 (Home Office) 1996.

NCADC Newsletter. National Coalition of Anti-Deportation Campaigns No. 4 (October-December) 1996. Latest newsletter includes round-up of developments in cases and pieces on the Asylum & Immigration Act 1996 and a report from a delegation that visited the "sans-papiers" (people without papers) following the brutal police raid on St. Bernard's Church in Paris, France.

Recent developments in immigration law, Rick Scannell, Jawaid Luqmani & Chris Randall. *Legal Action* (November) 1996, pp19-25. This article concentrates on the Asylum & Immigration Act 1996 and new Procedure Rules, and explains the combined effect of the legislation and recent cases on asylum-seekers.

The Asylum and Immigration Act 1996, compiled by Katie Ghose. Immigration Law Practitioner's Association, Lindsey House, 40/42 Charterhouse Street, London EC1M 6JH. 1996, 94 pages. A compilation of ministerial statements made on behalf of the government during the Bill's passage through parliament.

Refugees and national security, Pierre Makhoul. *Socialist Lawyer*, no 27, Winter 1996, pp16-17.

Is there a stranger in the house? Stephen Knafler. *Socialist Lawyer*, no 27, Winter 1996, pp20-21. On asylum-seekers in danger of destitution.

La Campagne FIDH pour la suppression des visas de court séjour: "Du pas suspendu du Gitan á temps de cigognes, de la libre circulation a la circulation libre" by Jean Yves Carlier, *La Lettre de la FIDH*, no 663-664, 31.10-7.11.96, pp.2-6. European campaign on the abolishment of short term visa.

Parliamentary debates

Asylum Commons 15.10.96. cols. 691-718

Asylum applications Lords 16.10.96. cols. 1690-1703

Asylum applications Lords 16.10.96. cols. 1721-1743

LAW

UK

"Justice for Satpal Ram" march

Over three hundred people marched through Birmingham in November supporting Satpal Ram's fight against a murder conviction. Satpal was found guilty of murder over nine years ago after stabbing one of a gang of six racists who brutally attacked him.

Satpal went for a meal at a restaurant in Lozells, Birmingham, West Midlands, where he was set upon by six white men. Plates and glasses were thrown and one of the men broke a glass and thrust it into Satpal's face. He was also stabbed twice in the attack; after the second stabbing Satpal pulled out a small knife and attempted to warn off his attackers. They went at him again and, fearing for his life, Satpal stabbed one of them. The man died later after refusing medical assistance.

During the trial most of the prosecution evidence came from the racists who were involved in the attack. Witness statements taken from the Bengali staff who worked in the restaurant were ignored by the police. Satpal's barrister advised him to change his plea from self-defence during a brief forty minute consultation, an approach later endorsed by the Court of Appeal. Satpal's trial was also compromised by the fact that vital defence evidence was lost because no interpreter was provided for an all-white jury.

The Free Satpal Ram campaign argue that Satpal did not have a fair trial. They complain that when Satpal took his case to appeal, in November last year, the judges who found against him "only looked at the evidence from the five men involved with the attack on him".

The demonstration saw a large turnout from the local community, and by other defence campaigns from London and elsewhere, supporting Satpal's demand to have his case reopened. Supporters have also expressed concern for his safety as he has allegedly been attacked several times by prison officers.

The Free Satpal Ram Campaign can be contacted c/o 101 Villa Road, Handsworth, Birmingham B19 1NH, Tel. 0121 507 1618.

UK-USA

Treaty signed on "mutual legal assistance"

UK Home Secretary Michael Howard and US Attorney General, Janet Reno, formally ratified a treaty on "mutual legal assistance" at the American ambassador's home in London on 2 December. The treaty allowing cooperation between the two countries includes: 1) taking of witness statements; 2) providing documents; 3) "temporary transfer of prisoners (with their consent) to give evidence" (brackets in original); 4) "carrying requests to search and seize property" (which may have some relevance to S.89 of the Police Bill going through parliament, see story in this issue); "tracing, freezing and forfeiting the proceeds of drug trafficking and other serious crimes".

The new treaty formalises the 1998 UK/USA Drugs Agreement and extends its range to "all serious crimes". Over the past three years the UK and the USA have "jointly handled about 400 requests for mutual legal assistance."

Home Office press release, 2.12.96.

Law - new material

It's not them and us any more, Barbara Mills. *Police* Vol. XXIX No. 2 (October) 1996, pp12-14. Mills, the Director of Public Prosecutions, writes about "the changes that have been made to lessen the traditional gap between what the police and the CPS want from the criminal justice system."

Law and order, Barbara Mills. *Police Review* 11.10.96. pp25-27. The DPP discusses the relationship between the Crown Prosecution Service and the police.

Summary of activities 1995-96. *Criminal Justice Consultative Council* (Home Office) 1996, pp36. The Council's role is to "facilitate discussion and agree action across the criminal justice system". This is the fourth "summary" that they have published and it covers their work since July 1995. An annex covers the activities of its 24 Area Criminal Justice Liaison Committees.

State liability for breach of EC law. *Legal Action*, December 1996, pp20-21. Examines the issue of damages for violation of EC laws on equal treatment, free movement etc.

The Left and judicial review, Lee Bridges. *Socialist Lawyer*, no 27, Winter 1996, pp14-15. On strategies for challenging the executive.

The War Crimes Tribunal: legitimate justice, or a miscarriage in the making? Bill Bowring. *Socialist Lawyer* no 27, Winter 1996, pp18-19.

Parliamentary debates

Crime (sentences) Bill *Commons* 4.11.96. cols 911-1008

Crime and Punishment (Scotland) Bill *Commons* 5.11.96 cols. 1037-1144

MILITARY

US/European row over NATO headquarters

Key NATO member states are involved in a struggle over the designation of a military commander for the southern region. This debate is considered key to the entire process of reform of the Alliance and the redefinition of a more significant European role. The debate over the command of Allied Forces Southern Europe (AFSOUTH) based in Naples, is primarily between the USA, which has held the post until now, and France, backed by Germany, which wants the command assigned to a European officer.

At one point French officials said that the entire process of

NATO reform, and by implication the related enlargement of the Alliance, would depend on the appointment of a European.

French Foreign Minister Herve de Charette was claimed to have privately said he would be "massacred" in the National Assembly if France gave up on this symbolic issue.

Some European NATO members argue that a European officer should be appointed to this post because the Mediterranean region is regarded as a top security priority for European NATO members. Although some French officers warned that the dispute might not be settled until the mid-1997 NATO summit meeting, more conciliatory signals have been made. French Defence minister Charles Millon has said that a solution might not have to come immediately and that it might take time.

The reason given by US officers is that AFSOUTH also controls the US Sixth Fleet in the Mediterranean which is sometimes deployed in connection with Middle East contingencies. A possible compromise would be to take the Sixth Fleet out of AFSOUTH, but this would devalue the importance of the command.

Jane's Defence Weekly, 4.12.96.

UK

New Army chief

General Sir Roger Wheeler, 54, was appointed Chief of the General Staff of the Army at the end of October. He replaces General Sir Charles Guthrie, who was confirmed as the next Chief of Defence Staff in October, and will take up the position in February 1997. Wheeler was General Officer Commanding and Director of Military Operations in Northern Ireland from 1993 to March 1996. He also served in Borneo and the Middle East (1964-70) and as a Brigade Commander (BAOR) in Cyprus in 1974. He was Assistant Chief of the General Staff at the Ministry of Defence between 1990-1992. Air Chief Marshal Sir Richard Johns will become the Chief of the Air Staff in April 1997 on the retirement of Air Chief Marshal Sir Michael Graydon.

Ministry of Defence press release, 23.10.96.

Military - new material

Disarming women, Neil Goodwin. *Squall* No. 14 (Autumn) 1996, pp20-21. This piece examines the case of peace campaigners who were acquitted of criminal damage after disarming a fighter plane at British Aerospace that was destined for Indonesia.

Changing face of conscription, Phil Rimmer. *Peace News* (November) 1996, p14. Examination of conscript armies in Europe that concludes, "a combination of factors - career plans, peace campaigning, economics and the military - are ringing the death knell for conscription in Europe".

Documents of the **Assembly of the Western European Union**: Document 1540 (15 October 1996) The peace process in the Balkans. Document 1541 (15 October 1996) The role of Europe in Bosnia and Herzegovina. Document 1542 (4 November 1996) The Eastern Dimension of European Security. Document 1543 (4 November 1996) Security in the Mediterranean region.

Documents of the **Defence and Security Commission of the North Atlantic Assembly**: AN 230 (24 October 1996) CJTF and the reform of NATO AN 231 (9 October 1996) Partnership for Peace: A basis for new security structures and an incentive for Military reform in Europe AN 233 (10 October 1996) Baltic Security: A challenge for a new Europe.

Mediterranean to get rapid reaction force. *Jane's Defence Weekly*, 20.11.96. Italy, France, Spain and Portugal have inaugurated the 20.000 strong Eurofor, a combined rapid deployment force in the Mediterranean area with headquarters in Florence.

Kernwaffen in Europa: Auslaufmodell oder Force d'Europe? (Nuclear weapons in Europe; opt-out model or european force), Oliver Meier. The development towards a common European foreign, security and defence policy puts the question of a European nuclear force on the agenda.

Lastenteilung und Steitkrftenumfang der Atlantischen Allianz (Burden-sharing and strength of armed forces in the Atlantic Alliance), Riener K. Huber and Paul K. Davis. Unilateral reductions of NATO's armed forces for financial reasons could endanger a fair burden-sharing on the long term and lead to the decline of the alliance.

Das Kommando Spezialkrfte ist eine Elitetruppe (The special forces command is an elite unit), Peter Streubel. *Wehrtechnik*, no 11, 1996. Short description of the new 1000 man strong German special forces group.

Martin Butcher, **Nuclear Weapons in the European Union**. CESD (Centre for European Security), Martin Butcher. *Issues in European Security*, no 5, May 1996. The report examines the future of nuclear weapons in the EU, in particular the possibility that European nations will create a European nuclear force based on French and British national nuclear forces and separate from US forces in NATO.

Parliamentary debates

Defence estimates *Commons* 15.10.96. cols. 609-690

Foreign affairs and defence *Commons* 24.10.96. cols. 129-226

Political-Military doctrines *Lords* 28.11.96. cols. 443-458

NORTHERN IRELAND

Northern Ireland - new material

More revelations in Douglas case, Paedar Whelan, *An Phoblacht/Republican News* 10.10.96. p3 & 13. Follow-up article on British/RUC black propaganda in northern Ireland (see also AP/RN for 19.9.96.).

Public inquiry into the death of Patrick Shanaghan, Caitriona Ruane. *Just News* Vol. 11 no. 10 (October) 1996, p.6-7. This

article examines the murder of Patrick Shanaghan, which was claimed by the Ulster Freedom Fighters, in August 1991. It presents disturbing evidence of police (RUC) collusion in the killing.

The misrule of law: a report on the policing of events during the summer of 1996 in Northern Ireland. *Committee on the Administration of Justice* (October) 1996, pp99 £5. This booklet is based on reports from independent observers who represented the CAJ at over twenty contentious parades between June and September 1996. It includes observations on "policing and public order" (tactics, policy, sectarianism and issues requiring further study) and the use of plastic bullets (number, circumstances and injuries). It also incorporates an examination of four specific incidents: the death of Dermot McShane, the baton charge at Altnagelvin Hospital, the near curfew on the Ormeau Road and the events at Drumcree/Garvaghy. A final section looks at the "International & Domestic legal perspectives" and appendices present background information. An extremely useful review of "public order" operations in northern Ireland that is all the more pertinent for the paucity and bias of coverage in England, Scotland and Wales.

Parliamentary debates

The Northern Ireland peace process *Lords* 21.11.96. cols. 1412-1448

PRISONS

Prisons - new material

Drugs on the inside. *Penal Affairs Consortium* (November) 1996, pp12. This report highlights "the problems of drug dependence" in prisons in England and Wales. Working from a survey of 2000 prisoners they estimate that 11% (5000) of male adult prisoners, 6% of young males and 23% of women prisoners are drug dependent. Available from PAC, 169 Clapham Road, London SW9 0PU.

Housing benefit and prisoners, *Penal Affairs Consortium* (November) 1996, pp7. Examines recent changes in housing benefit regulations and warns that "up to 5000 additional prisoners could be released homeless each year" thereby greatly increasing the risk of re-offending.

The Doncatraz File, Andrew Billen. *Observer Life* 3.11.96, pp6-12. Profile of far-right billionaire, and former FBI agent, George R Wackenhut, who runs the US based Wackenhut Corporation which is responsible for several private jails including the controversial Doncaster prison in south Yorkshire.

Prison Privatisation Report International No. 5 (November) 1996. This issue contains articles on "Latvia's private prison system" and the US based BI Inc., which is involved in electronic monitoring technology. Available from PRT, 15 Northburgh

Street, London EC1V 0AH.

RACISM & FASCISM

GERMANY

Racists jailed for brutal attack

Two self-confessed racists, Mario Poetter and Sandro Ristau, who took part in a gang attack which resulted in a black man being paralysed for life, were jailed for 8 and 15 years respectively by a Potsdam court in December. Birmingham building worker, Noel Martin, was with two black colleagues when they were harassed outside Mahlow railway station, in the eastern state of Brandenburg, last June. The three men managed to reach their car but were pursued by the racists. As the racists overtook them a rock was thrown through their car window and their vehicle crashed as they attempted to escape. Noel's friends escaped uninjured but Noel was paralysed from the waist down. Following the attack the Brandenburg police showed little interest in the case and even issued a press release blaming Noel and his friends. The authorities also denied any knowledge of far-right activities in the area, despite a widely publicised attack on left-wing meeting place in 1994. It was not until a campaign by the German Anti-Racist Initiative and the Campaign Against Racism and Fascism ensured widespread publicity in England and Germany that any action was taken. Poetter and Ristau were eventually arrested after boasting about the attack. Their convictions are for causing grievous bodily harm and dangerous driving after the prosecutor failed to make a case for attempted murder. *CARF* August/September 1996; *Guardian* 3.12.96.

Racism & fascism - new material

The estate of race relations. *Labour Research* Vol. 85 no. 11 (November) 1996, pp19-20. This piece examines racist harassment on housing estates and the legal measures taken by local authorities to prevent them.

London Update. *Institute of Race Relations* No. 3 (Autumn) 1996, pp4. The latest issue of "London Update" which monitors racism in London. Available from the IRR, 2-6 Leeke Street, London WC1X 9HS.

Taking steps: multi-agency responses to racial attacks and harassment. Inter Departmental Racial Attacks Group (Home Office) 1996, pp81. The Racial Attacks Group is made up of police officers, members of the CPS, Probation Service, Commission for Racial Equality and government departments. This is their third report and it responds to recommendations made by the Home Affairs Select Committee in October 1994.

Ethnic minorities: victimisation and racial harassment: Findings from the 1988 and 1992 British Crime Surveys, Marion FitzGerald & Chris Hale. *Research Study 154* (Home Office) 1996, pp97. This Home Office report examines "Victimisation", "Reporting to the police" and "Fear of crime" based on the results of recent British Crime Surveys.

Searchlight for beginners, Larry O'Hara. *Pheonix Press* 1996, £2.50. More on the Searchlight/O'Hara debate. This pamphlet will primarily be of interest to Searchlight and Larry O'Hara. Available from: L O'Hara, BM Box 4769, London WC1N 3XX.

European Race Audit. *Institute of Race Relations* No 20 (October) 1996. Bi-monthly bulletin that compiles developments on the rise of racism and fascism across Europe.

SECURITY & INTELLIGENCE

UK

GCHQ Federation not a Union

The official Certification Officer, Ted Whybrew, a statutory official appointed by the President of the Board of Trade, has refused to grant the government authorised GCHQ Staff Federation the status of an independent Trade Union. The Federation was set up in 1984 when union membership was banned by the Thatcher administration on the basis that: "There is an inherent conflict between the structure of trade unions and loyalty to the state.". The judgement, which confirms the banned GCHQ unions opinion that the Staff Federation is a nothing more than a "puppet organisation", gave six main reasons for the refusal:

- *Its structure gives GCHQ management powers of discipline
- *It cannot merge with another union or recruit elsewhere
- * It has to satisfy conditions of service at GCHQ
- * 80% of funding is provided by the employer
- * Members have limited access to industrial tribunals
- * It has a ban on industrial action

His decision increases the likelihood that the International Labour Union, which is part of the United Nations, will denounce the government in the strongest terms. This action is normally taken against authoritarian regimes.
Independent 7.11.96.

Committee to monitor MI5

The Sub-Committee on Security Service Priorities and Performance has been established to monitor the activities of MI5. It will include officials from the Treasury, Home Office, Foreign Office, Department of Social Security, the Northern Ireland Office and the Department of Trade and Industry. The committee was set up after a secret review by a former permanent secretary at the Ministry of Defence (1988-92), Sir Michael Quinlan. Quinlan has been Director of the Ditchley Foundation since 1992.
Guardian 15.11.96.

ITALY

New P2 exposed

A clandestine freemason lodge centred around the Italo-American

Enzo De Chiaro has been discovered by magistrates from Aosta (northwest Italy) working on the "Phoney Money" investigation. Mr De Chiaro, who reportedly has close connections to Clinton, Dole and the CIA, is a consultant to Clinton for "International Affairs" and in Italy to both the STET telecom company and the Italian railroads. He is alleged to be involved in a fraud scandal in both companies.

Director General of the STET Ernesto Pascale is suspected of being a member of the lodge, which has been dubbed "the new P-2". Another suspect is General Nicolo Pollari, chief of staff of the financial police, who is believed to have tipped off members of the clandestine organization that their phones were being tapped. The secret lodge reportedly has had many prominent figures among its members, including senior state managers, police chiefs, CIA officials and other intelligence services, and political leaders. The main financial backer of the separatist Liga Norte party, Mr Gianmario Ferramonti was also among them. On Nov. 1, the police raided the offices of both the STET and the railroads in Rome and searched the houses of Pascale and Pollari.
De Volkskrant, 2.11.96.

NETHERLANDS

BVD's secret contacts with Apartheid's spies in 1980s: ex-chief Docters van Leeuwen accused of perjury

Mr C Landman, head of political affairs at the South African embassy in the Hague from 1983-1987, has disclosed that an agent of the National Intelligence Service (NIS) stationed at the embassy maintained regular contacts with the *Binnenlandse Veiligheidsdienst* (BVD) and other Dutch security services during that period. Mr Landman was speaking in a closed session of the court case of journalist Willem Oltmans against the state, which centres around the assumed thirty-year long covert government campaign to undermine Mr Oltmans's credibility and journalistic activities.

In an earlier court session on 30 May 1996, former BVD chief Arthur Docters van Leeuwen stated under oath that the BVD has never maintained contacts with its South African sister service. Mr Oltmans's lawyers have announced they will ask the public prosecutor to charge Docters with perjury. In his current function as Procurator-General, Docters is the formal head of the public prosecutors' office. Mr Landman, who following his tour of duty in The Hague went on to head a special intelligence section of the South African Foreign Office from 1987-1992, declined to go into details of the intelligence collaboration between Holland and South Africa. He only said that "if we wanted information on Oltmans, we would get it from our sister service. That's how things went", and added that interested parties should ask the South African government to release relevant documents. Mr Oltmans's lawyers intend to do just that: they have already obtained three confidential documents supporting Mr Landman's testimony through "backdoor" channels, and intend to ask the authorities in Pretoria for more.

NORWAY

Minister resigns

Grete Faremo, Minister of Justice during the period when the

Lund-commission investigated the Norwegian security police (POT) (see *Statewatch*, vol 6 no 3) was forced to leave her new post in the government (Minister of Industrial Affairs) on 16 December. During her period as Minister of Justice, Berge Furre, one of the members of the Lund-committee, was actively surveilled by the security police. The head of the security police, Hans Olov Östgaard, resigned the same day after having tried to defend the necessity to surveil Furre.

The security police did not like the Lund commission's report which is the most important investigation into the secret police in the western world since the Canadian MacDonald Commission in the seventies. The attempt to undermine Berge Furre was revealed when it became known that four times the security police tried, without success, to get information on Furre from the former STASI-register.

The new Norwegian Social Democratic Prime Minister Jagland now says there must be new oversight of the different secret services in Norway: "Taking in account what has become obvious in the last days I believe that it is necessary to start such an overview. This should be done immediately, even though the parliament still not has finished their examination of the Lund-report" (see *Statewatch*, vol 6 no 3).

Security & Intelligence - new material

Burger & Spies, Dan Mills. *The Law* October-December 1996, p.13. On the McLibel trial, in which two environmental activists are being sued for libel by the multinational McDonalds hamburger chain, and the dubious tactics and connections of the company. Donations and information from: McLibel Support Campaign, 5 Caledonian Road, London N1 9DX, Tel/fax: 0171 713 1269.

In defence of the party: the secret state, the Conservative Party and dirty tricks, Colin Challon & Mike Hughes. *Medium Publishing* 1996, pp68, £3.95. This interesting little pamphlet contains six essays by Hughes and Challen that consider the roots, and evolution, of the "special relationship between the secret state and the Tories." Starting with the Machiavellian manoeuvrings of Reggie "Blinker" Hall, founder of the Economic League, the essays present cameo portraits of some of the key players in Tory "dirty tricks" operations. These include Airey Neave, who steered Margaret Thatcher to power before he was blown-up by the Irish National Liberation Army; Brian Crozier, who ran the CIA backed Institute for Conflict Studies and David Hart who helped establish the scab National Union of Working Miners during the 1985-86 coal miners strike. Available from Medium Publishing, 1 Main Street, East Ardsley, Wakefield WF3 2AE.

FEATURE

Howard's way blocked

On 15 November, the European Court of Human Rights ruled that the British government was violating the fundamental human rights of Sikh dissident Karamjit Singh Chahal. An hour later, Chahal was free, after over six years in Bedford prison awaiting

deportation to India, and Michael Howard was mulling over the profound implications of the judgment.

Karamjit Singh Chahal came to Britain illegally in 1971, and became settled in 1974, getting the benefit of Britain's only amnesty for undocumented immigrants. He married and had two children. In 1984, he visited Punjab shortly before the Golden Temple massacre by Indian troops in Amritsar. Chahal was detained and tortured by the Punjab police. On his return to Britain, he became involved with British Sikhs campaigning for an independent Khalistan. Apart from two arrests for assault and affray after disturbances in temples (one resulted in acquittal, the other in a conviction which was overturned by the Court of Appeal) he had no problems with the police. But in August 1990, Douglas Hurd, then home secretary, had him arrested and taken to Bedford prison for deportation to India on grounds of national security, as part of the "international fight against terrorism". The allegation was that Chahal was involved in supplying funds and equipment to terrorists in the Punjab, and planning and directing terrorist attacks in India, Britain and elsewhere. No evidence was ever produced. There was no appeal, only a hearing before a panel at which he was not entitled to hear the evidence against him or to be legally represented, or to know what the panel's decision was, or whether the Home Secretary followed it.

Chahal applied for political asylum, saying that he faced a real risk of torture and persecution in India because of his non-violent support for Khalistan. The application was refused in March 1991.

Three more home secretaries were to uphold Hurd's decision. In July 1991 Kenneth Baker signed a deportation order against Chahal. The refusal of asylum was confirmed by Kenneth Clarke the following year, a decision defended by lawyers representing Michael Howard in the British and European courts in London and Strasbourg. But because of the national security dimension, the courts refused to engage with the merits of the asylum claim, the proposed deportation, or the detention. The Court of Appeal adopted a deferential attitude in October 1993, and the House of Lords refused leave to appeal. Even after the European Commission reported in July 1995 that in its opinion the British government was guilty of breaches of Articles 3, 5, 8 and 13 of the human rights Convention, the High Court still refused to release him, saying they did not know how strong the countervailing national security factors were.

The decision

The European Court voted by 12 to 7 that Chahal's proposed deportation to India would violate Article 3 of the human rights Convention by exposing him to torture and inhuman or degrading treatment. Since there was a real risk of torture in India, they reasoned, and since the prohibition on exposure to torture was absolute, admitting of no derogation, the issue of national security was irrelevant. It did not matter whether Chahal had been engaged in terrorism or not; he could not be sent to a country where he was at real risk of torture.

The Court also ruled, unanimously, that the British government had violated Article 5(4) by failing to provide effective judicial control of his detention. "The national authorities cannot be free from effective control by the domestic courts", the judges ruled,

"whenever they choose to assert that national security or terrorism is involved".

Finally, the court unanimously upheld the complaint that the government violated Article 13 in conjunction with Article 3 by not offering an effective remedy to prevent the deportation. This would require independent scrutiny of the asylum claim, and neither the national security panel nor the High Court on judicial review is an adequate substitute for a full statutory appeal.

The context

The decision represents a victory for human rights campaigners, and a serious setback for EU ministers' proposals to exclude anyone believed to be supporting terrorism from international protection - efforts which were to have borne fruit in the effective amendment of the UN Refugee Convention. As reported in the last issue of *Statewatch*, the G7/8 summit in July 1996 endorsed a UK-drafted declaration that those who "finance, plan and incite terrorist acts" are acting contrary to the purposes and principles of the UN and so cannot demand the protection of the 1951 Refugee Convention. The object of the Declaration, according to the UK representative to the sixth committee of the UN General Assembly, is to ensure that those believed to be carrying out or actively supporting terrorism would not gain access to the asylum process at all. It represents an inroad into the rights of asylum-seekers in two ways, first, by extending the scope of the exclusion clauses to cover supporters of terrorism as well as active terrorists; and second, by attempting to deny access to the asylum procedure altogether to such excluded people.

The statement to the UN goes on that states must also take their own measures to ensure that refugees on member states' territory do not prepare or finance terrorist acts abroad. By way of example to the others, the UK government is to extend the jurisdiction of the British courts to try acts of conspiracy and incitement to carry out terrorist acts - and indeed any serious offences - overseas. Finally, the declaration seeks further cooperation, by means of multilateral and bilateral extradition agreements, to limit the political offence exception so that terrorists are considered non-political offenders.

The implications

The purpose of all these proposals is to rid Europe of all refugees deemed inimical to commercial or diplomatic interests by redefining them as terrorists and supporters of terrorists and denying them asylum. The *Chahal* judgment represents the first occasion on which the European Court of Human Rights has taken a principled stand to stop the abuse of national security pretexts for the removal of politically inconvenient refugees. The judgment will make it impossible for Germany to deport PKK activists to Turkey, or for France to deport FIS activists to Algeria, or for the UK to deport Sikhs and Tamils to India and Sri Lanka. It will, however, allow them to be deported elsewhere - if anywhere else will have them; so the Al-Mas'ari saga could well be repeated.

The judgment will also force national authorities to justify national security deportations to independent tribunals. This part of the judgment will also apply to those detained under the

Prevention of Terrorism Acts for exclusion. No longer will the words "national security" be available as a shibboleth or mantra for ministers to evade judicial scrutiny - if the European Court's decision is complied with. Finally the British courts will have to get out of the habit of deference to ministers, and learn to assess "national security" risks for themselves.

Judgment in the case of *Chahal v United Kingdom*, Human Rights News 646, 15.11.96; UN General Assembly 51st session, Agenda item no 151, "Measures to eliminate international terrorism", statement by the representative of the UK to the sixth committee, UK Mission to the UN, New York, 3 October 1996; Declaration to implement the 1994 Declaration on measures to eliminate international terrorism, 4 November 1996.

Statewatch takes Council to the Ombudsman

[Introduction]

On 27 November *Statewatch*, through its editor Tony Bunyan, lodged five complaints against the Council of Ministers - the 15 EU governments - because of its refusal to give access to documents concerning the workings of the Council of Justice and Home Affairs Ministers, the K4 Committee, and its Steering Groups. A further complaint was lodged on 5 December.

The complaints charge the Council with a series of decisions which constitute maladministration including misapplying the Council decision on public access to documents, refusing to supply information, and abuse of power. All the complaints concern measures or reports already adopted or considered.

John Carvel, of the Guardian newspaper, who won a case in the European Court of Justice against the Council over access to documents in 1995 said:

"The Ombudsman will be appalled at the way the Council has broken its own rules in a paranoid attempt to maintain official secrecy. Mr Bunyan has been treated disgracefully."

"His experience calls into question the good faith of those politicians and diplomats who declare support for transparency in principle, but work behind the scenes to defeat it in practice."

Tony Bunyan commented:

"The Council of Justice and Home Affairs Ministers decides policies and practices in secret which cannot be amended and are not subjected to open, democratic debate. It is time to again challenge the culture of official secrecy advocated by some EU Member States before it is too late."

The decision to take the six complaints to the European Ombudsman rather than to the European Court of Justice was taken because it is quicker, free and open, and involves the European Parliament should the Council reject the decisions of the Ombudsman.

The European Ombudsman was set up in 1994 to investigate cases of maladministration concerning European community institutions and bodies. The first European Ombudsman, Mr

Jacob Söderman, was elected on 12 July 1995.

The timetable for dealing with these complaints will be as follows: the Ombudsman will reach a decision on the admissibility of the complaints in January 1997 after which they will be sent to the Council. The Council then has three months to respond - by the end of April. This response will be sent to *Statewatch* who will have one month to respond (May 1997). The Ombudsman then considers the original complaints, the Council's response and the complainants' response and seeks to mediate an agreed outcome - at this stage the Ombudsman can call for copies of reports and interview Council officials. Should the Ombudsman decide in favour of the complainant and against the Council's final response he would officially declare a case of maladministration against the Council and report the matter to the European Parliament for them to take further action.

This feature looks at the background to the complaints, the Council's review of the report from the Secretary-General on 6 December, and the issue of secrecy versus democracy.

[The complaints]

The six complaints are:

1. The decision of the Council to supply only 5 of 14 copies of the Minutes of the K4 Committee (see *Statewatch*, vol 6 no 3).
2. Concerns three instances where the Council appears to have destroyed - "not conserved" - documents which are of "historical value".
3. Concerns the failure of the Council to maintain, and make publicly available, a list of the decisions taken under the "third pillar" (justice and home affairs).
4. Challenges the Council's assertion that the Presidency of the European Union is a separate "body" from the Council of the European Union.
5. Concerns the Council's failure to give specific reasons for denying access to each document, using arguments which have no basis in the rules, and refusing documents "very recently adopted."
6. The final complaints concerns the decision of the Council to treat **four** separate requests as one request and to reject the first three *en bloc* not even "considering" them. On 19 November the Council of Ministers (Budget) voted by 8 votes to 5 to confirm this decision. The 8 votes for secrecy were: Austria, Belgian, France, Germany, Italy, Luxembourg, Portugal and Spain. The 5 votes for openness were: Denmark, Ireland, Netherlands, Sweden and the UK. Finland and Greece abstained. The 8 governments voting for secrecy also issued a statement saying that the applications "abuse the good faith of the Council in its willingness to be transparent."

Copies of the dossier of complaints against the Council can be obtained from *Statewatch*.

[Review of policy: Report rejected]

On 6 December the General Affairs Council adopted a report in response to the report of the Secretary General of the European Council which was completed in July 1996 but not released until October because a number of governments - especially the Dutch - objected to its "tone" (see below).

The Council of Ministers decided that there was "no need to alter the basic features" of the 1993 Decision on access to documents. In response to the Secretary General's report the Council did agree an amendment to the Decision to allow, "exceptionally", an additional month to reply to applicants (making it two months) "in periods of reduced working capacity" (a euphemism for the "vacational season") - this adds para 5 to Article 7. Article 9 is replaced by asking the Secretary General to report to the Council every two years on the issue.

The Council meeting also agreed that: 1) steps should be taken "to alert the public" on access to documents - which will certainly lead to more applications; 2) asked the Secretary General to examine the "fees" charged to applications "covering a high number of documents and hence involving particularly high administrative costs - a clear response to *Statewatch's* applications; 3) they noted the Secretary General's intention to try and establish a "register of documents" - what will be included or excluded is still being discussed.

What is most significant are the demands of the Secretary General's report which the Council of Ministers chose to ignore. They did not respond to the request that an "examination of the reasons for the applicant's interest" should be conducted where large numbers of documents were requested, nor the changing the appeal mechanism which involves "excessive" meetings of "experts, Ambassadors and Ministers".

In theory the Council's policy on access to documents will not be reviewed against until 1998. However, the amendment proposed in the draft IGC report confirms *Statewatch's* report that it is proposed to add to Article 151(3) of the treaty a clause giving the right of public access to documents where the Council is "acting in its legislative capacity" - which would exclude most of the decision of the Council of Justice and Home Affairs.

[Dutch government promises less secrecy]

The Dutch government has committed itself to oppose central tenets of the General-Secretariat's report. Answering a written question put down by the Green Left party, junior minister Patijn of the Ministry of Foreign Affairs stated that the Netherlands regards any changes restricting openness as "less than opportune".

The written question was put down following a Council of Ministers meeting in July when the Dutch government surprised many observers by voting against releasing the General Secretariat report into the public domain. It asked whether the government would care to clarify its position which appeared to contradict previously stated Government policy supporting increased openness in Europe.

It also asked the Dutch government whether they shared the view that the total of 443 documents requested in 1994-5 led to "excessive" handling costs and whether they felt that new grounds for refusing documents and expanding the length of time allowed before decisions had to be made on releasing documents.

In his reply Patijn explained that the reason that the Dutch government voted against releasing this report was that they regarded the whole tone of the report as "dubious". The government also felt that there were "a number of recommendations that in fact amounted to further restrictions on

the openness policy". They only eventually agreed to the report being published once it was made clear that this was a Secretariat-General report which had nothing to do with the policies of the member-states.

Patijn further stated that while the government supported certain parts of the General Secretariat report, such as the creation of a central register of Council documents, those referring to new grounds for refusing documents and extending waiting times before releasing documents were "generally less than opportune". Patijn rejected any new restrictions out of hand and committed the Government to opposing such changes to Council policy. He also stated that the Dutch government did not regard the number of documents requested as being excessive, especially as this amounted to less than thirty documents per member-state.

Parliamentary Question(Tweede Kamer der Staten-Generaal) 12.11.96.

[The issue of democracy v. secrecy]

[Conclusion]

1. On 20 May the Council of Ministers split 8-7 over a decision to deny Tony Bunyan access to K4 Committee Minutes. The voting was: **For secrecy:** France, Belgium, Spain, Germany, Austria, Luxembourg, Portugal and Italy. **For openness:** Denmark, Sweden, Finland, Netherlands, Ireland, Greece and the UK.

2. In the Secretary General's report on the Council's implementation of public access to documents in the 2 years 1994 and 1995 it states on page 9: "a single applicant submitted 14 requests involving more than 150 documents, i.e: more than one third of all the documents requested by all applicants" (emphasis in original). The person referred to is Tony Bunyan.

The respective figures so far in 1996 are: 24 applications for information, 12 confirmatory applications (appeals), total of documents applied for: 774 (160 concerning 1996 reports; the rest for 1992-5).

The question of numbers of documents requested is irrelevant, partly, because since 27 February 1996 the Council has charged applicants for copying and postage. More importantly, the Council of Ministers having agreed policies and measures in secret which affect the rights of citizens and refugees then complains because people want to find out what has been decided.

Secrecy, democracy and the European Union

Open, transparent and accountable decision-making is the essence of any democratic system. Secrecy is its enemy and produces distrust, cynicism and apathy among voters and closed minds among policy makers. EU governments must not assume that they know best and can legislate without informing the public and without allowing any debate.

The current battle to obtain documents produced by the Council of Europe and the Home Affairs Ministries is central to the maintenance of democratic standards within the European Union. We must have the right to be informed of new policy proposals and the practices that flow from them, we must have the right to be able to comment upon them, and we must have the right through democratic processes to oppose or alter them. None of these rights currently exist in relation to the majority of policies developed in relation to policing, immigration and asylum. Dozens of new policies have been developed in secret and agreed in secret.

These policy areas pose the biggest threat to civil liberties and the human rights of citizens both within the EU as well as those who seek to enter as refugees and asylum seekers. European history suggests that it is in these areas that it is essential to have the most open and transparent system of policy-making. Yet policy-making in these areas is highly secretive and undemocratic. Citizens in the EU are currently more informed and have more chance to influence regulations concerning the shape and size of a cucumber than they are concerning new laws extending the powers of the police and immigration officials.

The complaints registered with the European Ombudsman all concern gaining access to documents on measures already agreed by the Council of Ministers. The fundamental issue, however, is for parliaments and people to have access to proposals before they become law so that they can seek to influence, amend, or oppose them. This issue is not even addressed by these complaints.

At the very least people and parliaments have an absolute right to get all the documents which have led to a decision and which have been agreed. In the case of the Council of Justice and Home Affairs Ministries this means documents considered by: the Council itself, COREPER, the K4 committee and the three Steering Groups. This excludes the findings of the "experts" at the Working Party level.

Legitimacy

For measures adopted by governments to be legitimate, that is to be accepted by citizens as valid, four criteria have to be met:

- *the measures must be seen to meet a "need" which the executive (governments) is able to argue publicly and in detail
- *measures must be open to public debate and discussion, be open to amendment, and be adopted in an open democratic manner
- *measures adopted must be available to citizens
- *measures must be seen as "fair", and subject to accountability (to parliaments and/or courts) in practice.

The intergovernmental "third pillar" of the European Union meets none of these criteria.

Sources: Public access to documents regarding application by

Tony Bunyan, Budget Council 19.11.96; answer of the German Foreign Ministry to Mandred Such MP, 7.11.96; Review of Council Decision 93/731/EC on public access to Council documents, General Affairs Council, 6.12.96; Council Decision on 6 December 1996 amending Decision 93/731/EC on public access to Council documents, OJ L 325, 14.12.96, p19; The European Union Today and Tomorrow: adapting the European Union for the benefit of its people and preparing it for the future: a general outline for a draft revision of the treaties, Dublin II, CONF 2500/96, Limite, 5.12.96.

COUNCIL OF JUSTICE & HOME AFFAIRS MINISTERS Brussels 28-29 November 1996 JHA under the Irish Presidency

This was the only meeting of the Council of Justice and Home Affairs Ministers under the Irish Presidency and the Dutch Presidency too is planning to have only one meeting of this Council compared to six for Agriculture and two for the Transport Council. A whole series of measures - with Joint Actions suddenly in fashion - were agreed under the Irish Presidency (see chart) although little time was spent discussing them. Indeed France and the UK were represented by their Permanent Representatives in Brussels on 28 November when most of the measures were agreed. Mr Howard, the UK Home Secretary turned up for the second day when the discussion almost exclusively focused on trying to persuade the Dutch government to adopt a Joint Action on harmonising the law on drugs.

[Summary of decisions]

Convention on external borders: there has been no movement on this Convention for the past three years - it is still held up by a disagreement between the UK and Spain over the status of Gibraltar.

Joint Action on residence permits: the Council agreed a Joint Action on a uniform format for residence permits "in order to facilitate controls" on third country nationals. Subject to a parliamentary reserve by the Dutch it will be formally adopted at a later Council meeting.

EDU-Europol: draft regulations on: 1) Europol staff regulations; 2) "rules applicable to analysis files" and 3) "guiding principles for the confidentiality regulations" were reported on. Formally adoption of these, and other Regulations under the Europol Convention, will not take place until the Convention has been ratified by all 15 EU member states.

Organised crime: a report on organised crime was agreed. It emphasised the need for "rapid ratification of the various Conventions already signed, in particular the Europol Convention and the Money Laundering Convention of 1990."

Joint Action on the fight against trafficking in human beings and the sexual exploitation of children: the Council agreed on a "compromise text" for this Joint Action which will be formally adopted later. The aim is to "reach a common approach in the definitions of these offences and to improve judicial cooperation". It leaves Member States with a "choice" to maintain "double criminality".

Joint Action establishing an incentive and exchange programme for persons responsible for combating trade in human beings and the sexual exploitation of children: This Joint Action, to be carried out by the Commission with a budget of 6.5 million ECUs, allows for exchange and training of "persons responsible" including judges, public prosecutors, police, civil servants, and public services concerned with immigration and border controls. It includes a feasibility study of centralised "DNA data" on the "perpetrators of these crimes". *Official Journal*, L 322, 12 December 1996, pp7-10.

Joint Customs Surveillance Operations: From 1 January 1997 the Council agreed that the Customs Cooperation Working Party

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[Drugs]

A whole series of measures on drugs were adopted by the Council but there was a major disagreement on a French initiative for a Joint Action harmonising the laws and practices on drugs within the EU - the vote was 14-1 in favour with the Dutch voting against. The official line was more diplomatic: "Ministers took note of a compromise text, which they will refer to their national governments, with a view to a final decision in the near future."

Prior to the 14-1 vote the status of the draft Joint Action was challenged by Denmark and Austria who wanted a Resolution and reservations were put down by Netherlands (general scrutiny reservation), and by Germany and Denmark (both parliamentary scrutiny). Article 1 calls for Member States to "align their laws to make them mutually compatible"; Article 2 to make the "practices of their police, customs and judicial authorities more compatible"; Article 3 would ensure that "the penalties imposed for serious drug trafficking are among the most severe penalties available for crime of comparable gravity" (reservation by Austria); and Article 4 for the "legal vacuums as regards synthetic drugs" to be filled; Article 7 for steps to "combat the illicit cultivation of plants containing active ingredients with narcotic properties" and Article 8 says that Member States should make it an offence to:

"publicly and intentionally incite or induce others, by any means, to commit offences of illicit use or production of narcotic drugs. They shall be especially vigilant as regards the use of on-line data services and in particular the Internet."

Other decisions on drugs were:

Resolution on sentencing for serious illicit drug trafficking: agreed on 28 November subject to a Dutch parliamentary scrutiny reservation; to be adopted later. The preamble states that the illicit trafficking in drugs "can undermine the lawful functioning of society" and "represents a threat to the health, safety and quality of life of the Union's citizens". It includes the import of Article 3 of the Joint Action above which was not adopted on the imposition of the most "severe custodial sentences".

Resolution on drawing up of police/customs agreements in the fight against drugs: adopted 29 November. Following the

"model" set by the numerous bilateral agreements under Schengen this resolution proposes "agreements" between police and customs (Article 2) and other "law enforcement agencies" (Article 3). These agreements can include: the responsibility for drug seizures, "questioning and detention of suspects, investigation and, where applicable, prosecution"; the sharing of intelligence; the exchange of liaison officers; "joint press statements"; "joint police-customs task forces, where appropriate, for intelligence and/or investigation purposes"; "agreed police-customs procedures for operational matters"; and "joint police-customs mobile patrol squads". *Official Journal*, C 375, 12 December 1996, pp1-2.

Resolution on measures to address the drug tourism problem within the European Union: adopted 29 November without discussion. The coded language recognises that not all EU Member States are affected by "drug tourism" but proposes that each Member State should provide a "focal point" to enhance coordination. Article 2.d. says: "to make the operation of the transfer of criminal proceedings as flexible and efficient as practicable so that, where this procedure is available to a Member State, it can be used effectively to deal with a large number of relatively small offences." *Official Journal*, C 375, 12 December 1996, p3.

Resolution on measures to combat and dismantle the illicit cultivation and production of drugs within the European Union: agreed on 28 November, formally adopted on 16 December 1996. Concern over heroin, cocaine, and impure products and organised criminal networks was put to one side in the adoption of this anti-cannabis measure which calls for making the "sale of cannabis seeds an offence" (Article 2) and the "banning of the cultivation of cannabis under glass, under polythene tunnels, and indoors" (Article 3). The Europol Drugs Unit has been charged with preparing and maintaining a manual on the detection and production of "illicit cultivation". *Official Journal*, C 389, 23 December 1996, p1.

Joint Action on cooperation between customs authorities and business organisations in combating drug trafficking: while on the surface this seems a logical extension of the EU's work on drugs it includes provisions which could present a threat to privacy and the civil liberties of employees where businesses sign a "Memorandum of Understanding" with customs authorities. The "Memorandum" can include: giving customs advance cargo or passenger data; access by customs to the "signatory's information systems"; assessment of security systems; and "checking on newly recruited staff". Article 5 says the "Memorandum" can "extend" to "other offences for which the customs authorities are competent in addition to drug trafficking." *Official Journal*, L 322, 12 December 1996, pp3-4.

Joint Action concerning the exchange of information on the chemical profiling of drugs to facilitate improved cooperation between Member States in combatting illicit drug trafficking: yet another new job for the Europol Drugs Unit (EDU) who will gather information on "drug profiling...[on] cocaine, heroin, LSD, amphetamines and their ecstasy-type derivatives MDA, MDMA and MDEA and such other drugs or psychotropic substances as Member States see fit" (Article 1). Article 3 calls for the provision of information on drugs in tablet form and "drugs not in tablet form" including the "logo" used, size weight and colour and a

picture. *Official Journal*, L 322, 12 December 1996, pp5-6.

Joint Surveillance Operations: Revised procedures for future operations, from the Customs Cooperation Working Party to the K4 Committee, ENFOCUSTOM 42, Limite; *Draft Joint Action concerning the approximation of the laws and practices of the Member States of the European Union to combat drug addiction and to prevent and combat illegal drug trafficking*, ENFOPOL 159, 10694/7/96, Limite, Brussels 19 November 1996; please note that we have included the references to the full text of measures which have appeared in the *Official Journal of the European Communities*.

Measures formally adopted during the Irish Presidency (July-December 1996)

One of the complaints against the Council of Ministers registered with the European Ombudsman by *Statewatch* is the failure of the Council to maintain, and make available, an up-to-date list of measures adopted under Title VI. This complaint is well illustrated by the summary below of measures adopted, of 26 measures 19 were adopted outside of the Council of Justice and Home Affairs Ministers by other Councils of Ministers without debate.

This list does NOT include all the reports considered by the JHA Council only new measures adopted.

Subject, date, by which Council adopted, and if printed in the "Official Journal":

- 1. Joint action adopted by the Council on the basis of Art.3 TEU concerning action against racism and xenophobia**, on 15.7.96, by the General Affairs Council. OJ L 185, 14.7.96, p.5
- 2. Publication of acts and other texts adopted in the area of asylum and immigration**, on 23.7.96 by the Agriculture Council, OJ C 274, 19.9.96.
- 3. Council act of 23 July 1996 establishing on the basis of Article K3 TEU the protocol concerning the provisional interpretation of the convention on the establishment of a European Police Office by the ECJ**, on 23.7.96 by the Agriculture Council. OJ C 299 9.10.96.
- 4. Council recommendation on combatting illegal employment of third country nationals**, on 27.9.96 by the Telecommunications Council, OJ C 304, 14.10.96.
- 5. Council act establishing a Protocol on the Convention regarding the protection of the financial interests of the EC**. This Protocol was signed by the 15 member states at the informal JHA Council in Dublin on 27 September 96, on 27.9.96 adopted by the Telecommunications Council. OJ C 313, 23.10.96.
- 6. Convention on extradition between the EU member states**. This Convention was signed by all 15 member states at the informal JHA Council in Dublin on 27 September 96, on 27.9.96

adopted by the Telecommunications Council. OJ C 313, 23.10.96.

7. Trafficking of works of art (conclusions following the expert meeting of 18-20/10/1996, on 14.10.96 adopted by the Economic and Financial Council.

8. Facilitation of the fight against forgery in the EU member states, on 14.10.96 adopted by the Economic and Financial Council.

9. Joint action of 14 October 1996 adopted by the Council on the basis of Article 3 TEU concerning a common context for initiatives by EU member states regarding liaison officers, on 14.10.96 by the Economic and Financial Council. OJ L 268, 19.10.96.

10. Council decision regarding the implementation of Article K1 TEU, on 14.10.96 by the Economic and Financial Council. OJ L 268, 19.10.96.

11. Council resolution on the priorities in cooperation in JHA for the period of 1 July 96 to 30 June 98, on 14.10.96 by the Economic and Financial Council. Council OJ C 319, 26.10.96.

12. Joint action adopted by the Council on the basis of Article K3 TEU regarding the establishment of a list of competencies, knowledge and special expertise in the fight against terrorism, destined to facilitate antiterrorist cooperation between the EU member states, on 15.10.96 by the Environment Council. OJ L 273, 25.10.96.

13. Joint position concerning assistance and information missions to borders, on 25.10.96 by the Internal Market Council. OJ L 281, 31.10.96.

14. Publication in the OJ of the ECs of the resolution of 17 January 1995 on the legal interception of telecommunications, on 25.10.96 by the Internal Market Council. OJ C 329, 4.11.96.

15. Financing of Title VI: GROTIUS programme (exchange programme for legal practices) and SHERLOCK programme (training, exchange and cooperation in the area of identity documents), on 28.10.96 by the General Affairs Council. OJ L 287, 8.11.96.

16. Joint Action concerning the creation and maintenance of a directory of specialised competencies, skills and expertise in the fight against international organised crime, in order to facilitate law enforcement cooperation between Member States of the European Union, on 29 November by the Justice and Home Affairs Council. OJ L 342, 31.12.96.

17. Joint Action on cooperation between customs authorities and business organisations in combatting drug trafficking, on 29 November by the Justice and Home Affairs Council. OJ L

18. Joint Action concerning the exchange of information on the chemical profiling of drugs to facilitate improved cooperation between Member States in combatting illicit drug trafficking, on 29 November by the Justice and Home Affairs Council. OJ L 322, 12.12.96.

19. Joint Action establishing an incentive and exchange programme for persons responsible for combating trade in human beings and the sexual exploitation of children, on 29 November by the Justice and Home Affairs Council. OJ 322, 12.12.96.

20. Resolution on the drawing up of police/customs agreements in the fight against drugs, on 29 November by the Justice and Home Affairs Council. OJ C 375, 12.12.96.

21. Resolution on measures to address the drug tourism problem within the European Union, on 29 November by the Justice and Home Affairs Council. OJ L 375, 12.12.96.

22. Protocols on the interpretation by the Court of Justice of the Convention of the use of information technology for customs purposes and the Convention on the protection of the European Communities' financial interests and its additional protocol, on 29 November by the Justice and Home Affairs Council.

22. Joint Action on a uniform format for residence permits, on 16 December by the Culture Council.

23. Resolution on measures to combat and dismantle the illicit cultivation and production of drugs within the European Union, on 16 December by the Culture Council. OJ C 389, 23.12.96.

24. Joint Action extending the mandate of the Europol Drugs Unit, on 16 December by the Culture Council. OJ L 342, 31.12.96.

25. Decision on monitoring the implementation of instruments adopted by the Council concerning illegal immigration, readmission, the unlawful employment of third country nationals and cooperation in the implementation of expulsion orders, on 16 December by the Culture Council. OJ L 342, 31.12.96.

26. Joint Action concerning the approximation of the laws and practices of the Member States of the European Union to combat drugs addiction and to prevent and combat illicit drug trafficking, on 17 December by the Agriculture Council. OJ L 342, 31.12.96.

To be adopted later:

A. Joint Action on trafficking in human beings and sexual exploitation of children, agreed but not adopted on 29

November by the Justice and Home Affairs Council.

B. Resolution for sentencing for serious illicit drug trafficking, agreed but not adopted on 29 November by the Justice and Home Affairs Council.

EU

Update: Europol to become EU police force

A little reported decision at the Dublin Summit on 13-14 December is contained in a single sentence of the "Presidency Conclusions", this states:

"Europol should have operative powers working in conjunction with the national authorities to this end."

In late November it had become clear that the German government had returned to its long-standing proposal that Europol should have operational powers to complement the planned intelligence-gathering role already agreed in the Europol Convention agreed by the 15 EU governments in July 1995 - all national parliaments have to ratify the Convention before it comes into effect (see below). This initiative is presented as following up the original German proposal in the Maastricht Treaty, "Declaration on police cooperation", which said extending the "scope of cooperation" should be considered.

This commitment by the EU governments suggests that either the Europol Convention will be amended in 1997 or that a new separate Convention will be prepared.

Whatever form it takes the extension of Europol's power into the operational field would mean giving it's officers powers of arrest or, in a "joint" operation with national police forces, letting "national" officers make arrests based on intelligence and surveillance provided by Europol. This latter road would obviate the need to create an EU Prosecutors Office and an EU Police Complaints system.

The "harmonisation" of national laws and legal procedures would have to go hand in hand. This process is already underway - a series of "mutual legal assistance" Conventions have already been agreed. Tricky issue like extradition have also been tackled through the Convention on Simplified Extradition (March 1995) and the Extradition Convention (xxxxx, 1996).

Also "hidden" in the Dublin Summit Conclusions is another legal provision it is intended to include in the new Treaty which will come out of the 1996 Intergovernmental Conference expected to be agreed in Amsterdam in June under the Netherlands Presidency. This states:

"The European Council asks the Conference to develop the important proposal to amend the Treaties to establish it as a clear principle that no citizen of a Member State of the Union may apply for asylum in another Member State, taking into account international treaties."

[UK first to ratify Europol Convention]

The final stage of the UK ratification of the Europol Convention

was completed on 3 December after which it simply required the Queen signature. Under the archaic parliamentary procedures there was no debate or vote as it was presented under the "Ponsonby rules" which means it simply had to "lay" before parliament for 21 days (see *Statewatch*, vol 6 no 1). It was formally "laid" before parliament on 8 December 1995 but the process was not completed because the role of the European Court of justice remained unresolved until 26 July 1996 when a Protocol was agreed (see *Statewatch*, vol 6 no 4).

Under a bizarre UK parliamentary process a draft statutory instrument, "International immunities and privileges: The European Police Office (Legal Capacities) Order 1996", cropped up in the Second Standing Committee on Delegated Legislation in the House of Commons by order of the Clerk to the Privy Council.

[EDU's role extended yet again]

The roles of the Europol Drugs Unit (EDU) have been extended yet again to include "traffic in human beings". The EDU was originally set up in June 1993 to deal with drug trafficking. On 10 March 1995 three roles were added: trafficking in radioactive and nuclear substances, clandestine immigration networks, and vehicle trafficking. The latest extension in their role was discussed at the "informal" meeting of Ministers in September in Dublin. It was not discussed at the November meeting of the JHA Council but was formally adopted at the Culture Council of Ministers on 16 December 1996.

The EDU has also been given three new jobs: it has been charged with preparing and maintaining a manual the detection and production of "illicit cultivation" (see below); with gathering information on chemical profiling of drugs to facilitate improved cooperation between Member States (see below); and with establishing a "directory" on "centres of excellence" to combat organised crime (see below).

Jailhouse UK: Prison Expansion

In 1993 at the Conservative Party Conference Michael Howard attempted to regain the initiative from Labour on law and order and told his audience that "prison works" and left the courts with a clear political message that he wished to see far greater use of imprisonment as a method of punishment. In 1995 notwithstanding clear evidence that the courts were already sending more people to prison, he announced radical changes in sentencing policy.

"It's time to get honesty back into sentencing. Time to back the courts. And time to send a powerful message to the criminal." He then announced that there would no longer be automatic early release or release for good behaviour. In addition, he declared that there would be "no more half time sentences for full time crime" and proposed that people twice convicted of a serious violent or sexual offence would automatically receive a life sentence and that there should be a minimum sentence for burglars and dealers in hard drugs.

In June of this year the head of the Prison Service gave evidence before the House of Commons Home Affairs Select Committee

and drew attention to the rapid rise in prison numbers. He asked the Home Secretary for an urgent £115 million jail building programme pointing out that work would need to start straight away to produce places by the middle of 1997 when he thought that the prisons would be in difficulties. It was a clear challenge to the Home Secretary to provide the funds for his Prison Works's policy. In October Howard published the Crime Bill introducing his sentencing proposals and a number of other draconian policies (see Police Bill in this issue). At the same time he promised to build at least another 12 new private super-prisons - at the cost of an estimated #3 billion.

Since the Conservative Party came to power in 1979 it has built 22 new prisons and provided another 11,635 places. The 12 proposed new private prisons will provide an extra 11,000 places. This prison building programme contrasts sharply with the government's commitment to build new schools, hospitals and universities. Uniquely only prisons have had their physical capacity doubled in the period.

Prison numbers.

Fig 1

Fig 1 shows the average daily prison population for England and Wales over the last 125 years. As can be seen the numbers in prison declined steadily from 1870 to after the First World War, remained fairly constant until after the Second World War and have been rising ever since. Britain is now imprisoning nearly double the number of people than in the 1870s.

These figures, however, take no account of changes in the size of the population. Fig 2 shows the average daily number per 100,000 of the population. As can be seen the overall trend is broadly similar but it shows even more clearly the decarceration which started in 1870s with the centralisation of local prisons and continued to just after the Second World War when the policy was put into reverse. Since then Britain has pursued a policy of increasing the proportion of its population who are incarcerated.

Fig 2

The Home Office makes regular attempts to predict the long term trends in the prison population taking account of a range of factors such as changes in the numbers brought before the court, the numbers found guilty, the length of sentences and the effects of changes in legislation. In 1995 using 1994 figures, it estimated that the population would be 52,000 in 1997 and 56,000 by 2002. These proved to be gross under-estimations. If the sentencing proposals in the Crime Bill are enacted, the numbers will increase even more rapidly and it is very probable that by the end of the century Britain will be incarcerating more people per head of population than at any time in its history.

European comparisons

The Council of Europe collates prison statistics for member countries. Fig 4 shows the incarceration rates for selected

Western European countries for 1993. It shows very wide variation between the rates for different countries. Of the selected countries Northern Ireland and Scotland head the list together with Spain and Luxembourg. England and Wales is in the next group with Austria, Italy and France. At the bottom of the selected list with nearly half of the incarceration rates in the various parts of the United Kingdom are Finland, Norway, Ireland and Iceland.

Fig 3

Classification of Ethnic groups in prison

Since 1985 the Prison Service has been collecting information on the ethnic composition of the prison population. In October 1992 it introduced a new classification which is congruent with that used for the Census of Population. It is therefore difficult to compare the incarceration rates for different ethnic groups over the whole period. In addition, until 1992 it was not possible to distinguish between British nationals and other nationals in prison.

The other important point to emphasise about the ethnic classification of prisoners is that although the Irish form the largest single ethnic group in Britain neither the old nor the new classification used by the Prison Service provide a separate category for Irish people. This is an extraordinary anomaly given the requirement under the Criminal Justice Act 1991 that the Secretary of State shall publish each year such information which they considers expedient for the purpose of facilitating the performance by such persons of their duty to avoid discriminating against any persons on the grounds of race, sex or any improper ground. Members of the Irish community, academics and politicians have in recent years put considerable pressure on the Office of Census, Population and Surveys to include a separate category for Irish people in the next Census. But it is unlikely to do so despite an increasing number of studies which show high levels of social deprivation and disadvantage of Irish people in Britain and prima facie evidence of discrimination in the criminal justice system.

Incarceration of ethnic groups

Fig 4

Fig 4 shows the changes in the number of prison population for different ethnic groups from 1989 to 1995. The figures need to be treated with caution. First, they are not directly comparable because of the change in the system of classification. Second, it will be noted that the number of unclassified prisoners has been declining. As they stand, they suggest that there has been an increase in the numbers of all ethnic groups incarcerated. There appears to have been a marked increase in the number of black people imprisoned since 1992.

Fig 5 and Fig 6

When the numbers of different ethnic groups in prison are related

to their numbers in the population, the figures show some startling trends. Figs 5,6 and 7 show the number of different ethnic groups as a proportion of numbers in the general population excluding foreign nationals and children under 16. Fig 5 shows that the incarceration rate for South Asians as a whole less than the incarceration rate for Whites except for Pakistani who have a rate of 179 per 100,000. Chinese and others, who make up the smallest proportion of any monitored ethnic group in prison have a rate of 280 per 100,000 as can be seen in Fig 6.

The most startling figure is for Black people. Fig 7 shows that the incarceration rate for black people is now nearly ten times the rate for white people. There are also particularly noticeable differences in incarceration rates within the Black Group. For example, the number per 100,000 varies from 759 for Black Caribbean, to 1314 for Black Other.

Conclusions

There appears to be no limits to the United Kingdom's preparedness to incarcerate increasing numbers of its population. As has been seen, in 1993 it had one of the highest incarceration rates of any Western European country and over the last three years has been sending even larger numbers to prison. If the Crime Bill becomes law the United Kingdom's rates will climb even higher. At the same time the differential incarceration rates between whites and blacks is likely to widen, giving rise to even stronger allegations from the black community of racism within the criminal system. Whether or not some future government decides to introduce a policy of decarceration, the billion pound or more building programme will leave future generations with a physical imperative to incarcerate.

BRIEFING on The POLICE BILL [H.L.]

The Police Bill published at the end of October would:

- 1.Put the National Criminal Intelligence Service (NCIS) on a statutory basis (Part I).
- 2.Create a National Crime Squad (NCS) bringing together the existing Regional Crime Squads (Part II).
- 3.Allow Chief Constables, or their deputies, to authorise the entry on or interference with property (Part III).
- 4.Set up the Police Information Technology Organisation (PITO) (Part IV).
- 5.Allow the passing of criminal records to applicants and to registered bodies (Part V).

PART I National Criminal Intelligence Service (NCIS)

S.1 Puts the NCIS, founded in 1992, on a statutory basis (2.1) and creates a NCIS Service Authority of 19 members with

powers to co-opt.

S.2 Defines the functions of the NCIS:

2.2.a: "to gather, store and analysis information in order to provide criminal intelligence"

2.2.b: to provide criminal intelligence to UK police forces and the NCS

2.2.c: and in support of "other law enforcement agencies carrying out their criminal intelligence activities."

2.3: defines "law enforcement agency" as including:

2.3.a: "any government department"

2.3.d: "any other person engaged **outside** the United Kingdom in the carrying out of activities **similar** to any carried out by the NCIS Service Authority, NCIS, a police authority, a police force, the NCS Service Authority or the National Crime Squad."

Other provisions: S.20.2: allows for "commercial sponsorship of any activity"; S.38: covers complaints to the Police Complaints Authority; S.42: provides penalties for "causing disaffection".

COMMENTS:

1.The role of the NCIS is not limited by these provisions to "serious crime" which is not mentioned.

2.The scope of "criminal intelligence" is not defined or limited.

3.Section 2.2.3.d: allows the NCIS to act in "support of" **any** police force or law enforcement agency **anywhere** in the world. In "support of" can be taken to mean both providing intelligence and seeking intelligence on the initiative of a third body.

No mention is made of data protection standards in this or any other context.

PART II The National Crime Squad

S.46 Sets up the National Crime Squad Service Authority of 17 members, with powers to co-opt and creates the NCS (47.1).

S.47 Defines the functions of the NCS:

47.2: "The function of the NCS shall be to prevent and detect serious crime which is of relevance to more than one police area in England and Wales." 47.3.d. enables it to co-operate "with other police forces in the UK".

47.3.e and 47.4.d: together **allows the NCS exactly the same powers as the NCIS to act in "support of" any police force or law enforcement agency anywhere in the**

world.

There are similar provisions on complaints (S.81) and causing disaffection (S.85) as for the NCIS.

"serious crime" is not defined here but in Part III below.

PART III Authorisation of action in respect of property

S.89.1 "No entry on or interference with property or with wireless telegraphy shall be unlawful if it is authorised under this section."

S.89.2.a Allow the "authorising officer" to "authorise":

"the taking of such action, in respect of such property in the relevant area, as he may specify" or

S.89.2.b "the taking of such action in the relevant area as he may specify in respect of wireless telegraphy."

COMMENT: At this point it is important to note the distinction being made between "interference with property" and "wireless telegraphy" (Wireless Telegraphy Act 1949, "wireless" can best be understood as literally without a "wire", eg: a "bug" or "video camera" which transmit information).

S.89.3 This clause defines the cases where authorisation can be given:

89.3.a: where it is "likely to be of substantial value in the prevention and detection of serious crime";

89.3.b: that the results "cannot reasonably be achieved by other means"

COMMENT: See the stricter conditions imposed by the 1984 guidelines below.

S.89.5 Provides a definition of "serious crime" is exactly the same as the Security Service Act 1996 which gave MI5 the powers to "bug and burgle" under a warrant issued by the Home Secretary (see *Statewatch*, vol 6 no 1).

89.5.a: defines "serious crime" as conduct where:

"it involves the use of violence, results in substantial financial gain or is conduct by a large number of people in pursuit of a common purpose, or

89.5.b:

"the offence or one of the offences is an offence for which a person who has attained the age of twenty-one

and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more."

S.89.6 Defines the "authorising officer" as:

89.6.a: a Chief Constable in England and Wales

89.6.b: the Commissioner or Assistant Commissioner of the Metropolitan Police in London

89.6.c: the Commissioner of Police for the City of London

89.6.d: a Chief Constable in Scotland

89.6.e: the Chief Constable or Deputy Chief Constable of the Royal Ulster Constabulary in Northern Ireland

89.6.f: the Director General of the NCIS

89.6.g: the Director General of the NCS

89.6.h: the customs officer designated by the Commissioners of Customs and Excise.

S.89.7 Defines the "relevant area" where an "authorising officer" can give "authorisation":

For Chief Constables, the Commissioners etc for police forces this means the force area (89.7.a,b,c).

But for the NCIS and customs it "means the **United Kingdom**" and for the NCS it "means **England and Wales**" (89.7.d,e,f).

S.90 Deals with "authorisation" by police officers other than the Chief Constable or their deputies as defined in 89.6.

This provision is relevant in comparison with the 1984 guidelines (see below).

90.2, 3, 4: provides for other officers (eg: An Assistant Chief Constable or a Commander in the Met or a "person designated" by the NCIS or NCS) to give "authorisation". No further standards are imposed for this.

S.91.1.1: Says "authorisation" should be in writing except where it has been "given orally" (limited to 15 days, 91.2a).

91.2.b: Sets a limit of six months on "authorisation" issued.

91.3: Allows "authorisations" to be renewed for a further six months.

- lotteries; judicial appointments. This can also include information supplied by the local Chief Constable.
- COMMENT:"Oral" authorisations of 15 days can be extended by six months, six months authorisations can be extended by six months. Indeed, provided it is renewed each six months, the "authorisation" could be indefinite.
- S.92Provides for the Secretary of State (Home Secretary) to draw up a "code of practice" to be laid before parliament as a statutory instrument.
- 92.10: states that failure by the authorising officers to comply with the "code of practice" will not make them liable to "criminal or civil proceedings". The "code" will be admissible in evidence (92.11).
- S.93Provides for the Prime Minister to appoint a person who has "held high judicial office" to be the Commissioner to deal with complaints.
- 94.2: states:
- "where the complainant work or resides shall be treated as property of the complainant".
- 94.4: says the decisions of the Commissioner "shall not be subject to appeal or liable to be questioned in any court."
- COMMENT:The appointment of a "Commissioner" must be viewed with a degree of scepticism given the performances of the Commissioners dealing with the interception of communications, MI5, and the intelligence agencies who have never upheld a single complaint from the public.
- S.97Creates the Police Information Technology Organisation
- S.100Creates a Criminal Records Agency and Certificates of criminal records: 100.1: says the Home Secretary will send an individual on application a "criminal conviction certificate".
- S.101101.1-4 A "Criminal record certificate" will be sent by the Secretary of State (Home Secretary) both to an individual and the counter-signing "registered body" covering "details of every relevant matter" (a conviction, spent conviction and caution). The "registered body" (the employer) sends a statement saying that the certificate is required for an "exempted question" - sections excluded by the Secretary of State of the Rehabilitation of Offenders Act 1974.
- S.102"Enhanced criminal records" can be issued to the individual and the employer where the applicant is being considered for a paid or unpaid post involving children (under 18); gaming machines;
- S.105Evidence of identity: The Secretary of State can insist that an applicant "has his fingerprints taken" (105.2.a) before issuing a certificate.
- S.107"Registered bodies": effectively employers who can show they are likely to ask "exempted questions". This is broadly drawn: to provide "employers with the information they need about people they place in positions of trust."(Home Secretary, 1.11.96).
- "GUIDELINES ON THE USE OF EQUIPMENT IN POLICE SURVEILLANCE OPERATIONS"**
- (announced on 19 December 1984 by Home Secretary Leon Brittan, following the 1984 Police and Criminal Evidence Act)
- This summarises its main rules and highlights issues raised in the current Police Bill in the light of the widely-held contention that all the Bill does is, under S.89, to legitimise powers already exercised by the police under the 1984 Guidelines.
- COMMENT:The Guidelines deal with "surveillance operations" through the use of listening devices or video cameras. It expressly did not cover telephone-tapping (where a warrant from the Home Secretary was required).
- The 1984 Guidelines did **not** give the police a power of "entry" [except as defined] or of "interference with property" as set out in S.89.
- II COVERT USE OF LISTENING DEVICES**
[microphones, tape recorders and tracking equipment]
- Para. 4Sets out the "principles to be followed in the "covert use of a listening device" meeting the "following criteria":
- 4.a:it must concern "serious crime"
- 4.b:"normal methods of investigation must have been tried and failed, or must, from the nature of things, be unlikely to succeed if tried."
- 4.c:there had to be "good reason to think that the use of the equipment would be likely to lead to an arrest and a conviction."
- COMMENT:These criteria are much stricter and narrower than the provisions in 89.3.a and b. above.
- Para. 5Defines the criteria to be applied where the surveillance

concerns "a high degree of privacy" for example in the home where:

"listening devices should only be used for the investigation of major organised conspiracies and of other particularly serious offences, especially crimes of violence."

COMMENT: This is a much stricter and narrower definition of "serious crime" than set out in 89.5 above.

Para. 6 Says the use of:

"listening, recording and transmitting equipment... requires the personal authority of the chief constable."

Para. 7 Says this authority can only be "delegated": "where there is a degree of consent" to an Assistant Chief Constable.

It then defines what constitutes "consent":

7.a: where the device is "knowingly carried by a person other than a police officer..."

7.b: where the device is carried by "a police officer whose identity is known to at least one other non-police party..."

7.c: "installed in premises, with the consent of the lawful occupier, to record or transmit a conversation in circumstances where at least one of the parties to the conversation will know of the surveillance."

7.d: cover recording a telephone conversation as part of general surveillance (but not solely for that purpose which is covered by Home Secretary warrants)

7.e: with the consent of the owner of a vehicle to track it or a package or person.

The only exception set out under 7.d is crimes concerning malicious or obscene phone calls.

COMMENT: S.90 makes no provision for "consent" where the "authorising" is delegated by a Chief Constable.

Para. 8 Sets a maximum of one month for surveillance which is renewable.

COMMENT: S.91.3 has a maximum of six months, a significantly longer period.

Para. 12 Expressly excluded the use of listening devices in public telephone boxes - where a proper warrant from the Home Secretary has to be obtained (telephone are not "wire-less" in the meaning of the 1949 Act).

COMMENT: The Bill is silent on this issue but S.89.1 could clearly include a public phone.

III VISUAL SURVEILLANCE

[video, closed circuit television, photographs]

Para. 14 Sets out the same principles and criteria as in paras. 4-12 above including that of "consent" or "knowledge" where "authorising" is delegated.

Para. 17 Covers "non-recording equipment" such as "ordinary binocular night vision equipment, monoculars and telescopes" which while not requiring "authorisation" should follow the criteria set out in para. 14 when "used to observe target individuals in a private place" - "consent" or "knowledge".

COMMENTS ON THE RESPECTIVE POWERS UNDER THE 1984 GUIDELINES AND S.89 OF THE POLICE BILL (1996):

1. The 1984 Guidelines did NOT cover "interference with property" only "wireless telegraphy".

2. The 1984 Guidelines did NOT confer a power of "entry" except to effect "wireless telegraphy".

3. The 1984 Guidelines set much stricter criteria for the "authorisation" of the use of "wireless telegraphy" (para. 4) than S.89.5.

4. The 1984 Guidelines defined "serious crime" when listening devices were to be used in the home much more narrowly (para. 5) than 89.5.a & b.

5. The 1984 Guidelines only allowed the delegation of "authorisation" from the chief constable where there was a "degree of consent" (para. 7) - this test is missing from S.90.

6. The 1984 Guidelines set the time limit for "authorisation" at 1 month (para. 8) - not the 6 months in S91.3.

7. The 1984 Guidelines did not allow for agencies like the NCIS to have powers to conduct surveillance anywhere in the UK or on behalf of any "law enforcement agency" in the world.