

statewatch

monitoring the state and civil liberties in the UK and Europe

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“Voluntary” repatriation and the surveillance of EU-wide demonstrations

The meeting of the Council of Justice and Home Affairs Ministers (JHA Council) on 26-27 May in Brussels began at 2.30 in the afternoon on Monday 26 May and by 5.30 the Ministers were reported to have finished all their business and were drinking champagne prior to the formal signing of a Convention on corruption. In the three-hour meeting they had discussed 11 points on the main agenda and nodded through 23 items without debate. It was an apparently lacklustre JHA Council with little media interest or coverage.

Four of the items passed without debate were on: voluntary repatriation, a Joint Action on public order, implementation of the Dublin Convention, and the “analysis files” of Europol.

“Voluntary” repatriation

The Decision on “the exchange of information concerning assistance for the voluntary repatriation of third-country nationals” is reminiscent of the evolution of EU policy on extradition. In March 1995 the JHA Council adopted a Joint Action on “voluntary” extradition (officially termed “Simplified extradition”) which provoked the question whether this was to be followed by action on “involuntary” extradition? In November 1995 a new Convention on (involuntary) extradition was adopted.

The language and ideology behind this Decision on “voluntary repatriation” encourages the view that the “exchange of information” will be followed by action, and that “involuntary” may follow “voluntary”. Indeed there is a reference to “finding a dignified solution to reducing the number of illegally resident third-country nationals” in the Preamble. For the “legally resident third-country nationals” it says “assistance for voluntary return.. is purely designed to facilitate return of those who have taken a decision of their own free will”.

The EU Member States who have established “support programmes.. [for] the voluntary return of legally as well as illegally resident third-country nationals” are to send details to the General Secretariat of the Council in Brussels each year. This information will include: the designated authorities carrying out the “programme”; the numbers; “requirements” placed on “the country of origin” and on the “returnees”; the level of “assistance” (eg: travel costs, removal costs, and “repatriation allowance”) (Article 1). The aim is to achieve “possible approximation” of the “programmes”. While:

The Member States.. which have not introduced these programmes shall examine the results and usefulness thereof. (Article 4)

If there was any doubt as to the long-term direction of EU policy the Amsterdam Treaty says that measures will be taken to combat:

illegal immigration and illegal residence including repatriation of illegal residents.

Surveillance of EU-wide demonstrations

The JHA Council held in March 1996 adopted a “Recommendation on guidelines for preventing and restraining disorder connected with football matches”. This was a UK initiative in the run-up to the European Championships to be held in June. Even though there was no mention of accountability or data protection it was generally welcomed in the media (but see the case of the Boore brothers, *Statewatch*, vol 3 no 2, vol 4 no 5, vol 5 no 5, vol 6 no 4 & vol 7 no 2). This seemingly uncontroversial measure has just been extended to cover all aspects of public order through the Joint Action regarding cooperation on law and order and security which was adopted, without debate - nor do Joint Actions have to be ratified

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by national parliaments.

The Joint Action says cooperation on “football hooliganism” should be extended and “strengthen cooperation on law and order and security” and goes on:

more detailed arrangements need to be made for cooperation with regard to events taken in a broad sense, ie: meetings attended by large numbers of people from more than one Member State, at which policing is primarily aimed at maintaining law and order and security and preventing criminal offences;

such meetings include sporting events, rock concerts, demonstrations and road-blocking protests campaigns [and] related matters such as guarding and protecting people and property may also form part of the cooperation in question;

in addition to neighbouring Member States, it is also possible for non-neighbouring Member States and Member States of transit to be involved...

exchange of information on groups of people that may pose a threat to law and order and security in various Member States as well as secondment of liaison officers...

The binding nature of the Joint Action is indicated in Article 1.1 which says:

Member States shall provide.. information, upon request or unsolicited, via central bodies, if sizeable groups which pose a threat to law and order and security are travelling to another Member State in order to participate in events. (emphasis added)

Article 1.2 says the:

information shall include the fullest possible details regarding: a) the group in question; overall composition; nature of the group (whether aggressive and whether any chance of disturbances); b) routes to be taken and stopping-off points; c) means of transport; d) any other relevant information; e) reliability of information. The information to be provided shall be supplied in compliance with national law.

Article 2 says Member States can send temporary liaison officers, with “no powers” and “unarmed”, to advise and assist in accordance with “instructions from their home Member State and guidelines from the Member State to which they are seconded.” Article 3.c encourages the “holding of exercises”.

This measure raises a host of concerns. By way of illustration two recent events come to mind - the 60,000 plus anti-Le Pen demonstration in Strasbourg and the series of demonstrations, including one of 50,000 plus, in Amsterdam during the Summit (see story in this issue). In both cases tens of thousands of demonstrators, from a dozen or more countries and dozens of groups, crossed “transit” borders and neighbouring countries to registers their protests.

This Joint Action covers not just the control of demonstrators but the potential interception of groups before they can gather together (a trainload of Italians were held on the way to Amsterdam) and the “targeting” of alleged (“suspected”) trouble-makers. Will it be used to legitimise the surveillance of groups prior to a European protest. For example, say groups intend to join an anti-racist march in Germany from Denmark, Sweden, Netherlands and Italy. All anti-racist groups in these countries could be targeted for surveillance, intelligence-gathering and the infiltration of police “agents” who might travel with the demonstrators and “finger” alleged “ring-leaders” for the host police force?

The sole reference to any limits on police cooperation says the information supplied “should be in compliance with national law”. This may or may not have meaning to the police involved but it certainly has little for people who may be stopped, searched, arrested or deported (as over 100 people were during the Amsterdam Summit). Will the information supplied include “speculation” or “supposition” and if arrested but not charged (as during the Amsterdam Summit) will individuals held and deported be put on national police files or on the Schengen Information System (SIS) as “threats” to public order and

security?

Europol regulations

The JHA Council adopted without any debate Europol staff regulations and the rules applicable to analysis files (both will be formally adopted when the Europol Convention enters into force). It also reached “political agreement” on the “Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and employees of Europol” (it will be formally adopted and signed later, after which the Protocol has to be ratified by the national parliaments of all Member States). The Confidentiality regulations, the subject of a report from the Select Committee on the European Communities in June, will not be adopted until there is the proposed “security manual” has been agreed.

The “rules applicable to analysis files” of Europol are highly controversial. They include: “data related to racial origin, religious or other beliefs, political opinions, sexual life or health may be included..” (Article 5.2); “lifestyle (such as living above means) and routine” (Article 6.2.f); “contacts and associates, including type and nature of contact or association..” (Article 6.2.g); and “suspected involvement in criminal activities”.

Dublin Convention finally ratified

Nearly seven years after it was signed by the then 12 EU Member States the Dublin Convention on the determination of the Member State responsible for examining an asylum application was finally ratified by the Irish parliament on 15 May. It is expected to come into effect in September. Sweden, Finland and Austria who joined the EU after the Convention was signed still have to get parliamentary ratification of the Convention.

The JHA Council agreed two measures to implement the Convention: Conclusions on the practical application of the Dublin Convention and Rules of Procedure of the Committee set up by Article 18 of the Dublin Convention. The Conclusions on practical application seeks to set a “time limit for replying to a request that an applicant be taken in charge” (handed over to another Member State), adopts the Conclusions on the transfer of asylum applicants agreed in London on 30 November - 1 December 1992; and the “means of proof” (adopted 20 June 1994, OJ C 274, 19.9.96, pp35-41). The second brings into effect the Ministerial-level Executive Committee under Article 18 of the Dublin Convention (until ratification Sweden, Finland and Austria will attend as observers).

The meeting with Ministers from the “associated countries of Central Europe” on 27 May concentrated on asylum including the “possible application” of the concept of “safe third host country” to the 10 countries attending and on the Dublin Convention the possibility of them signing a “draft Parallel Convention” (on which the EU is not yet agreed).

Other decisions

Temporary protection: a Commission proposal for a Joint Action to set up “temporary protection regimes” for displaced persons in “large-scale movements of people”. *Draft Convention on mutual assistance in criminal matters*: the JHA Council approved a report which effectively extended the existing draft Convention to cover “modern cross-border investigation methods” (eg: undercover agents and sting operations) (see report on High Level Group on Organised Crime, *Statewatch*, vol 7 no 2) and the “legal interception of satellite communications” (see *Statewatch* vol 7 no 1). *Resolution on unaccompanied third-country national minors*: sets minimum standards for people, under 18, who arrive in the EU without their family. *Decision on monitoring the implementation of instruments concerning asylum*: the Council has been concerned for some time over whether its agreed policies have been enacted at national level by Member States. *Europol Drugs Unit (EDU)*: a 20% increase was agreed to EDU's budget for 1998, ECU 6,722,000 with an additional ECU

3,260,000 for the development of the Europol Computer System (TECS).

Recommendation on guidelines for preventing and restraining disorder connected with football matches, Limite, ref: 5424/96 ENFOPOL 57; Joint Action on cooperation in the fields of public order and safety, Limite, refs: 8012/97 & 8164/97 ENFOPOL 111 & 117, 20.5.97; Conclusion concerning the practical implementation of the Dublin Convention, Official Journal, C 191, 23.6.97, pp27-28; Proposals for rules applicable to analysis files, Report from the Presidency to the K4 Committee, Limite, 6100/2/97 REV 2, EUROPOL 10, April 1997; Protocol on privileges and immunities of Europol, the members of its organs and the deputy directors and employees of Europol, Note from the Presidency to the Europol Working Group, Limite, 5106/6/97 REV 6, 15.4.97; see also European Update: June 1997 from the Immigration Law Practitioners' Association (ILPA) and Justice's submission to the House of Lords European Communities Committee on the rules and regulations governing Europol; Europol: Confidentiality regulations, report from the Select Committee on the European Communities, 17.6.97, HL Paper 9, £6.30, 28 pages; Press release: Justice and Home Affairs Council, 26 and 27 May 1997, Presse 166; Background: JHA Council, 22.5.97; The fight against trafficking in human beings and sexual exploitation of children, Commissioner Anita Gradin's report, 27.5.97; Press Conference, Brussels, 26.5.97.

EUROPE

NETHERLANDS

Amsterdam Summit: hundreds held, then released

A week of demonstrations and disturbances during the recent EU intergovernmental conference has led to the Dutch government consider new public order legislation. More than 50,000 people demonstrated on June 15, leading to over 300 arrests.

The demonstration held on the afternoon of the 15 June saw groups from all over the EU converge on Amsterdam. Organisations represented included trade unions, political parties, national campaigns and community groups. The demonstration began peacefully but along the route widespread disturbances led the organisers to complain about "heavy-handed policing".

However the incident which has raised serious questions about Dutch public order enforcement began on the evening of the 15 June, when a group of 300 demonstrators gathered outside "café Vrankrijk", a well known squat in Amsterdam, with the aim of holding a peaceful protest outside police headquarters supporting others already being held by the police. All 300 were eventually detained before they ever reached their destination under "Wetsartikel 140" (Article 140), a law aimed at serious organised crime which criminalises "membership of an organisation which aims to commit crimes".

When the protesters eventually came before the court their lawyers successfully argued that even if one accepted that there was an organisation present on the day that "aimed to commit crimes", there was no evidence that any individual arrested was a member of that organisation. This meant that of the 300 demonstrators arrested not one has yet been successfully prosecuted under this law.

This outcome has led to heated debates in parliament, with a majority eventually agreeing that "Wetsartikel 140" was too strong a measure to be used for this purpose. They also felt that the people held should have been brought before a court quickly rather than at the end of the IGC, thereby avoiding the necessity of holding people who had not committed any crime in custody for three days.

Some MPs also complained about the treatment of individual protesters at the hands of the police, claiming that

some were made to stand in a courtyard for hours and were refused permission to make a phone call. They have called for a public inquiry into these allegations.

In all 607 people were arrested at the various demonstrations. On Monday 16 June 143 people were arrested at the Nieuwmarkt when around 500 people gathered to walk round the different hotels where the EU Prime Ministers were staying and, in a playful fashion, sought to keep them awake by cheering loudly and blowing whistles. All the arrests took place outside the hotel Mr Chirac was staying in - the other Prime Minister staying at this hotel was Mr Blair.

On the morning of Tuesday 17 June the authorities started deporting over 100 of those arrested before the first cases were dismissed by the court. Most were charged under Article 140, which if they had been brought to court, would have been thrown out and there would have been no grounds for deportation. However, it appears in some cases people were handed back to German and Belgium police at the borders. Those held from the UK had their names sent over to the National Criminal Intelligence Service (NCIS) to be checked out.

In Denmark the issue has been raised in parliament by the Red-Green Alliance. They complained about the treatment of 29 Danes arrested in Amsterdam - twelve of whom were sent back by military plane, escorted by a Dutch fighter-bomber the first part of the way.

Some of the Danes were deported without their belongings. The Danish consul in Amsterdam was furious because she was not allowed to visit the arrested Danes in the "holding centres". The Red-Green Alliance has asked the government if Danish authorities gave information to Europol, Interpol, the Schengen Information System or to the Dutch police, and whether the fingerprints and photographs taken have been destroyed.

The wider issues raised in the police and prosecution authorities handling of those deported needs to be seen in the context of the Joint Action on cooperation in the fields of public order and safety at the May meeting of the Council of Justice and Home Affairs Minister (see feature in this issue). In the case of the Boore brothers it took over four years to get their names removed from police records in the UK and Belgium (see *Statewatch*, vol 7 no 2). Will the names of those deported be held on national police computer files and the Schengen Information System as people who are "suspected" of representing a threat to "public order" to combat future cross-border demonstrations?

In response to critics Ministers Zorgdrager (Justice) and Dijkstal (Home Affairs) have committed themselves to preparing new public order legislation in order to cope with similar events in the future. However Mrs Zorgdrager has rejected complaints about the treatment of individuals, claiming that "they were allowed to have a shower, make a phone call, contact their lawyer. They were all fed, even vegetarians were catered for."

Volkskrant Algemeen Dagblad, 17.6.97; NRC Handelsblad Weekeditie, 17.6.97 & 1.7.97.

SCHENGEN

Danish parliament to have no control

In the final session of the Danish parliament on 30 May a majority, comprising Social Democrats, Social Liberals, Centre Democrats, Liberals and Conservatives, voted for Denmark to join the Schengen Agreement. The decision to join Schengen was accompanied by warnings of constitutional problems, criticism from asylum and human rights experts and a government "guillotine" on its parliamentary passage.

The decision to join was the result of a long process which began in the early 1990s and gathered momentum in 1995 when

it was agreed that Denmark could become an "observer" from May 1996. In December 1996 the Danish government signed the Treaty together with Sweden and Finland. Iceland and Norway signed a special accord which enabled them, as non-EU members, to be "associated" with Schengen and thus preserve the Nordic Passport Union.

Right up until the final decision parliamentary critics on the left - the Red-Green Alliance and Peoples' Socialist Party - and the right - The Progress Party and the Danish Peoples' Party - tried to raise and clarify some of the many problems which membership gives rise to such as the relation between the Danish constitution and Schengen and parliament's control over the governments activities in the Schengen Executive Committee. However, the parliamentary majority were not willing to discuss these problems in detail and the decision was "forced" through, despite the government timetable allowing debate until 1997.

Outside parliament experts and organisations raised concerns and complained that serious consideration of the many consequences of Schengen membership was impossible because of the time limit which the government imposed on the process. The Danish Refugee Council, the Danish Centre for Human Rights, Amnesty International Denmark and the Solicitor's Council are usually consulted before legislation is put before parliament. On this occasion they strongly criticised the procedure which meant that they received the text on the same day as it was put before parliament and the limited time they were given to respond to it. A representative from the Danish Human Rights Centre, who criticised the changes in the Aliens Law which follows as a result of Schengen, said about the proposed changes:

The experiences with the Schengen cooperations up to now shows, that in some countries the tendency is that the asylum seekers are being cut off from entering (the Schengen countries).

There was also criticism from the Danish Refugee Council, in their comments on the law they wrote:

In reality this means, that it becomes very difficult for persons with a protection need to get to find refuge in Europe legally.

The Constitution and parliamentary accountability

The decision to join did not take place without opposition. The Red-Green Alliance and Peoples Socialist Party asked the Government to have independent judicial analysis of the relation between the Constitution and the Schengen Convention. This was rejected.

Furthermore they put forward a proposal to include in parliamentary procedures a "scrutiny" system whereby the government would have to ask the Justice Committee for a mandate before each meeting in the Executive Committee. This proposal was rejected by the Justice Minister, Mr Frank Jensen. He said that the parliament would only get briefed before each Executive Committee meeting but would have no powers of scrutiny - even though a similar procedure applies to EU-Council meetings.

SCHENGEN

Belgian police chief criticisms

The head of the Belgian International Police Cooperation section of the Algemene Politieonderdienst (General Police Support service), Patrick Zanders, has criticised aspects of the Schengen treaty. In a long report written in response to questions put by the chair of the Parliamentary Commission into organised crime Zanders claims that the Schengen treaty has "in practice only a marginal effect on practical police cooperation".

Schengen is discussed in some detail in the report. Zanders is complimentary about the Schengen Information System,

saying that it has "delivered impressive results". He also claims that Schengen has improved international police cooperation. However, Zanders calls for a review of the procedures for cross-border pursuit and observation. The Schengen treaty makes any agreement reached on the basis of the treaty subject to bilateral arrangements between the countries involved. Zanders states that "these methods are difficult to perform and do not work in practise... In regards to cross border operational cooperation Schengen collapses into bilateral cooperation networks."

Parlementaire Commissie van onderzoek naar Georganiseerde Misdaad Hoorzitting, 25.4.97.

Europe - in brief

■ **EU-US cooperation:** During the visit of President Clinton to Holland, he spoke with the Dutch minister of Justice Mrs Winnie Sorgdrager on the subject of closer cooperation between Europol and the FBI, focusing on the structural exchange of data and analyses on organized crime groups and financial transactions, eg: via the Internet. Also State Secretary Albright and the Dutch Minister of Foreign Affairs Van Mierlo on behalf of the EU signed agreements on a system of information exchange on the export of precursors of chemical drugs such as XTC and on a customs exchange programme on international fraud (see also the report on the Council of Justice and Home Affairs Ministers in this issue).

■ **UK-France: Channel Tunnel "arrest":** Henry Tuson, 23, who was born in Dunkirk, France, but left with his parents when 3 months old to live in the UK was "arrested" in the French "control zone" at Folkestone, Kent because he failed to undertake military service in France. He was taken, under armed guard, to the military barracks in Lille and released after 24 hours when French authorities declared he had failed the army medical examination. The Channel Tunnel Treaty of 1987 was supplemented in 1991 by the *Sangatte Protocol* which granted the French police jurisdiction over a passport control area. *Times*, 12.6.97; *Guardian*, 11.6.97; *Evening Standard*, 11.6.97.

Europe - new material

The Council of Ministers, Fiona Hayes-Renshaw and Helen Wallace. MacMillan, 1997, 340 pages. An excellent and up to date insight into the workings of the Council of Ministers.

Chronicles, Volume 9, Faculty of Law, Democritus University of Thrace, Komotini, Greece, September 1996. Collection of 20 essays on different aspects of criminology with contributions from the UK, France and Greece.

Provisions related to criminal law: Draft revision of the EU Treaties. Response on the Dublin II Outline and the Addendum of the Dutch Presidency, Standing Committee of experts on international immigration, refugee and criminal law, p/a Secretariat, postbus 201, 3500 AE, Utrecht, Netherlands, May 1997. The Standing Committee's report is highly critical of the new powers given to Europol in the Amsterdam Treaty drafts. In particular it says unless openness is guaranteed and "unless the Court of Justice has full jurisdiction to interpret the decisions of the Council" Europol should be given no further executive powers (ie: the proposed operational role in the new treaty) and, the "immunity" to be given to Europol employees - who national courts will not be able to call as witnesses or defendants - is "unacceptable".

Maastricht II. Zum Stand der Regierungskonferenz. [Maastricht II. The state of affairs of the Intergovernmental Conference]. Euroinfo, *Die Grunen im Europaischen Parlament*, April 1997.

Parliamentary debates

Intergovernmental conference *Lords* 4.6.97. cols. 650-700

IMMIGRATION

FRANCE

Government announces regularisation programme

The new Socialist-led government has announced that between 20,000 and 40,000 migrants and political refugees are to get residence permits. Only six days after taking office, Prime Minister Jospin authorised the regularisation of immigrants, most of them Africans, who have found themselves "without papers" (*sans papier*) due to contradictions in successive immigration laws. This decision, a public rejection of racist National Front doctrines exploited by the previous conservative government to seek electoral popularity, ends a 15-month struggle that included last summer's occupation of the St Bernard church in Paris. The categories of people to be given residence permits includes parents of children born in France, partners of French people or legally resident immigrants, people already well integrated into the French society, political refugees in danger if they were deported to their country of origin, foreigners undergoing treatment for a serious medical condition, and students. This measure corresponds with the recommendations for a reform of the immigration law given by the *Commission nationale consultative des droits de l'homme* in September last year. Until the immigration law is changed in the autumn, each case will be examined individually.

The move is in sharp contrast to immigration policy in Germany and the UK and runs contrary to the "Fortress Europe" mentality.

Le Monde, 11 & 12.6.97.

NETHERLANDS

Airlines carrying asylum-seekers face new measures

Junior Justice Minister Schmitz has announced new plans to deal with airline companies carrying asylum seekers without valid papers. Schmitz wants all airline companies to copy or scan all documents possessed by travellers before they allow them to travel. The Dutch government aims to make it easier to establish the identity and nationality of any asylum seeker, which will make deportation easier. Any company failing to do this faces heavy fines. Although such measures are legally sanctioned they have not been applied up until now.

Iranian asylum-seekers to be deported

The Dutch government has announced that all Iranian asylum seekers whose applications for leave to remain are rejected will be deported back to Iran. According to junior Justice Minister Schmitz none of the Iranians who have been deported have had any problems with the Iranian authorities. Army deserters and conscientious objectors will also be deported according to Schmitz, as there is "no evidence that their individual situations pose any danger".

The Dutch Justice Ministry has based its assessment on a report from the embassy in Iran, which claims that although incitement to desert or to refuse military service remains a criminal offence, the act of desertion is no longer included in criminal law. The embassy report claims that recent events in Iran have led to increased democratisation although it does express

concern over human rights.

Evidence from civil liberties and human rights groups, however, contradicts the Dutch government's analysis of Iran. The European Race Audit reports that of the nine Iranians deported from the Netherlands since 1994, "five have subsequently disappeared, probably detained by the security police."

NRC Handelsblad Weekeditie, 17.6.97; *European Race Audit*, 23.5.97.

Immigration - new material

Immigration policy for a multicultural society. A comparative study of integration, language and religious policy in five western European Countries, Hans Vermeulen (ed), Migration Policy Group, Brussels, 1997. Includes Belgium, Germany, France, UK and the Netherlands.

Asylum developments in Europe, John Sunderland. *Chartist* No. 166 (May-June) 1996, pp22-23. Looks at restrictive asylum practices and argues for the Labour government to champion a shift in policy towards greater co-operation between states in making a balanced contribution towards humanitarian aid, resettlement programmes, military support etc under the leadership of the UNHCR.

Asylum statistics United Kingdom 1996, Madeleine Watson & Nick Cooper. *Home Office Statistical Bulletin* (Research and Statistics Directorate) Issue 15/97, 1997

Control of immigration: statistics United Kingdom, second half and year 1996. Keith Jackson & Barry Bardwell-Snow. *Home Office Statistical Bulletin* (Research and Statistics Directorate) Issue 14/97, 1997

Newsletter National Coalition of Anti-Deportation Campaigns, Issue 6 (May-June) 1996. This issue contains an update of cases and features on immigration law and black Britons and the Autonom Centre in the Netherlands.

Is there a new agenda on immigration? *CARF* 38 (June/July) 1997, pp4-5. This article looks at the Labour Party's promises on immigration while in opposition and asks how progressive they will be in government.

Austerity hits migrants first. *CARF* 38 (June-July) 1997, pp6-7. Examines the state of welfare - health, housing, family life and social security - from the point of view of migrant workers and asylum seekers. It warns that their exclusion from these provisions is an intimation of the "shape of things to come".

Parliamentary debate

Special Immigration Appeals Commission Bill *Lords* 5.6.97. cols. 733-756

MILITARY

NATO exercise in Poland

In April NATO held its largest ever exercise in Eastern Europe. Over 4,000 troops with 1,500 vehicles of the Dutch Army as well as helicopters and F-16s of the Dutch Air Force practised high-intensity conflict scenarios in north-west Poland between 1 and 20 April. The deployed units included a mechanised brigade and components of the air-mobile brigade. The objectives of "Rhino Drawsko" were to conduct a brigade-level field training exercise and to exercise a major strategic deployment and logistic sustainment operation.

Six roll-on, roll-off ships were used to ferry 1000 wheeled vehicles from the Netherlands to Poland. Tracked vehicles including Leopard 2 main battle tanks were transported by rail, while troops travelled by road. The helicopters (Apaches,

Chinooks and BO 105s) flew to the training area. A logistic support air bridge was maintained by Fokker 60 transport aircraft using the Polish base at Miroslawiec as an airhead. Daily offensive missions were flown by Leeuwarden based F-16s, refuelled in mid-air over Germany. The Drawsko-Pomorskie training area east of Szczecin was used for the exercise. The Dutch paid \$1 million for this. US advisers from Fort Hood, Texas were present.

Military - new material

Joris Janssen Lok, **NATO exercises in the east as Russia looks on**, *Jane's Defence Weekly*, 23.4.1997.

Calling the shots on arms purchases, Pamela Pohling-Brown. *Jane's Defence contracts*, May 1997, pp4-7. While NATO is reviewing its arms purchasing procedures, there are moves in the EU to include a common armaments policy in the Common Foreign and Security Policy (CFSP).

Kommando Spezialkräfte: Gefahr in Verzug. [Special Forces Command: Danger in delay]. *AMI* 1997/4, pp7-8. The German Ministry of Defence (mis)uses a High Court judgement to avoid parliamentary consultation before special forces operations abroad.

Le 5e Regiment de Forces Speciales Slovaques [5th Regiment Special forces of Slovakia]. *Raids* no 132, May 1997, pp46-52. The 5. "Pluk Specialneho Urceňa", located in Zilina, is destined for actions behind the enemy lines.

Les Commando de l'air [The special air troopers]. *Raids* no 133, June 1997 pp10-21. Article on the special forces of the French Air Force.

Compulsory military service in central and eastern Europe. A general survey. *European Council of Conscript Organisations* (ECCO), 1996. From: Postbus 2384, 3500 GJ Utrecht, the Netherlands.

The Illustrated Guide to the world's top counter-terrorist forces. Samuel M. Katz, Concord Publications Company, Hong Kong 1995.

van De Arbeid" as well as single-issue groups. He claims that "any group blockading an industrial estate or a trade union group that sabotages a conveyor belt" could be covered. People should also realise that "these acts do not have to be committed, only contemplated".

In his view there is already more than enough legislation to tackle organised crime. "Organised crime could best be tackled by removing bank secrecy or extending the right to expose suspected money laundering, which at present has to come from senior staff in a bank, down to ordinary employees."

The new legislation proposed in Belgium shows marked similarities with earlier legislation passed in other European countries including article 140 of the Dutch criminal law which allows police to arrest and hold individuals suspected of being members of a criminal organisation for up to three days without charge (recently used against demonstrators protesting in Amsterdam against the intergovernmental conference).

The new Belgian bill's definition is similar to that in the 1997 UK Police Act, which says serious crime covers "conduct by a large number of people in pursuit of a common purpose". The same concept can be found in the report of the EU "High Level Group on organised crime" where the suggested definition of organised crime includes "behaviour of any person which contributes to the commission by a group of persons with a common purpose of one or more offences".

De Morgen, 17.5.97; *Solidair*, 4 & 18.6.97.

Police chief suspended

New allegations linking the police commissioner for Schaarbeek, Johan Demol, with the far-right organisation Front de la Jeunesse (FJ) have led to him being suspended. Evidence produced by the newspaper *Solidair* includes membership lists that appear to indicate that Demol joined the FJ in April 1979, maintaining his membership into 1980. Further evidence produced by *Solidair* suggests that not only was Demol a member of the FJ, but he visited its party headquarters on thirteen separate occasions during 1979/80, including meetings of the organisation's national committee.

The first indications of Demol's past appeared in the *De Morgen* newspaper at the beginning of last year, when a leaked copy of a 1984 Rijkswacht report connected Demol to a group of police officers in the anti-terrorist "Diane" organisation. Diane was discovered to have connections to a host of far-right organisations, including the notorious Westland New Post as well as the FJ.

Demol has always denied being a member of any fascist organisation and although FJ leader Francis Dossogne verified *De Morgen's* claim he later retracted his admission when questioned by the P-committee. The Belgian Home Affairs Minister, Johan Vandelanotte, chose not to take any action against Demol, stating: "we should not draw conclusions about people based on what they might have done ten years ago".

However new material compiled by *Solidair* claims that not only was Demol a member of the FJ in April 1979 but that he attended national committee meetings in the same month. Here he met Michel Libert, number three in the Westland New Post, as well as Jean-Marie Paul, later accused of the murder of an Algerian and Marcel Barbier, convicted of a double murder carried out in the name of Westland New Post. *Solidair* now claims that Demol was a member of an elite FJ group, some of whose members later transformed themselves into Westland New Post.

Solidair also claims that other members of the FJ, known as the G-Group, later formed the "Nijvel" gang responsible for a series of violent robberies later dubbed "the Brabant massacres".

Following the evidence published by *Solidair* Minister Vandelanotte suspended Demol, claiming that his earlier denials

POLICING

BELGIUM

Crime Bill "targets trade unions"

A Belgian lawyer has criticised draft legislation directed at organised crime claiming that it will also target trade unions as well as small political parties. Lawyer, Raf Jaspers, also claims that the new legislation could make it impossible for lawyers to defend their clients.

The new bill proposed by the Belgian government aims to make membership of a criminal organisation illegal. Criminal organisations are defined in the bill as being:

any group of two or more persons who consult together to commit crimes carrying sentences of three or more years, with the aim of profit or to influence the operations of the public or private sector, using violence, intimidation, threats or corruption and creating commercial structures to hide their crimes.

Jaspers attacks this definition on the grounds that, under the new law, no crime has to be committed by any defendant. In order to succeed all the prosecution has to do is prove that the organisation of which the defendant is a member was planning to commit these crimes. Lawyers too could be targeted as the new law aims to outlaw any legal intervention which aids the operation of a criminal organisation.

Another cause of concern is that apart from criminal conspiracies "extremist political groups" are also included within the legislation. Jaspers points out that state security sources indicate that this could include parties such as the left-wing "Partij

of being a member of FJ had seriously damaged his credibility. Demol's appeal against his suspension was recently rejected by the Raad van State, Belgium's supreme court.

Solidair, 4 & 18.6.97.

Policing - in brief

■ **Netherlands: 100 arrests follow international police operation:** A combined operation involving police from three countries against drug traffickers and drug "tourists" (people who travel to the Netherlands in order to buy drugs), codenamed "St Martin", has led to over 100 arrests. The operation on 14-15 June led to over 9 kilos of soft and three kilos of hard drugs being confiscated and involved 2,300 officers, 8,700 vehicles and 17,000 people were stopped in the operation. Apart from drugs the operation also led to 57 people being held either on arrest warrants or for being in the EU without valid documents. *NRC Handelsblad Weekeditie*, 17.6.97.

■ **UK: Quicks Acts: four Bills passed:** Just before parliament was dissolved on 21 March in the run-up to the General Election four Bills - the Police Act, Crime (sentences) Act, the Sex Offenders Act, and Protection from Harassment Act - became law. The controversial Police Act which gives police powers to "bug and burgle" was in Committee when the General Election was announced (see *Statewatch*, vol 6 no 6).

■ **UK: NCIS seeks "global role":** launching the annual report of the National Criminal Intelligence Service (NCIS) Mr Albert Pacey, its director-general, called for a "network" of UK police officers posted around the world. At present there are eight liaison officers in Europe and only two outside Europe compared to 42 deployed abroad by Germany and 28 by France. Liaison officers are based in UK embassies. The FBI, which is seeking a global role, now has 70 officers overseas and plans to have 129 in three years time. *Times*, 13.6.97; see also *Statewatch* vol 6 no 5).

Policing - new material

The drugs trail, Helen Rumbelow. *Police Review* 24.4.97, pp16-17. This piece discusses a "policing partnership" between Britain and Bosnia set up as part of the UN Drug Control Programme which approached the Foreign and Commonwealth Office and the Association of Chief Police Officers.

New guidelines for police misconduct damages, Stephen Cragg & John Harrison. *Legal Action* May 1997, pp22-23. This article summarises guidelines for the award of damages in civil actions against the police outlined by the Court of Appeal in the case of the Metropolitan Commissioner of police against Thompson and Hsu (see *Statewatch* Vol. 7, no. 1).

Informal police cooperation in the fight against international crime, John Lavers & Yiu-King Chu. *Police Journal* Vol. LXX, No. 2 (April-June) 1997, pp127-132. This piece examines "informal" police cooperation and notes: "accountability is the major drawback of using the informal relationship." Given this difficulty, the authors' feel that more formal regional police cooperative organisations (eg, Europol) should be developed.

How the yardies duped the Yard, Nick Davies. *Guardian Plus* 3.2.97. pp2-5. This piece investigates the so-called "Yardies", their involvement in dealing crack cocaine and Scotland Yard's response. This was to cultivate informers who, despite violent convictions before and during their employment, continued to be used by the police.

Identity crisis, Keith Potter. *Police Review* 30.5.97. pp26-27. This is an account, by a police officer who served with the Greater Manchester police, of undercover work with the Omega Squad - "an elite team of detectives set up...to target football hooligans", which later extended its role to tackle other crimes. The article complains of the lack of support from his force in helping him to re-adjust to normal life after he was

"overexposed".

Terrorism and international law, edited by Rosalyn Higgins and Maurice Floy. Routledge/LSE, 1997, 382 pages, hardback, £65.00. Series of essays on aspects of terrorism, including legal cooperation, cooperation in the European Union, and the British and French experiences. Completed in "1992" it is somewhat dated.

Parliamentary debates

Police Bill *Commons* 19.3.97 cols. 888-941

Police Bill *Lords* 20.3.97. cols. 1104-1132

RACISM & FASCISM

UK

Fascist election farce

As widely predicted, the racist and fascist organisations that contested the UK general election, on 1 May, failed to emulate their counterparts elsewhere in Europe, and made no significant inroads. Four parties - the Third Way, National Front, National Democrats and the British National Party - stood eighty-four candidates of whom all but four lost their deposits. The vast majority of these, fifty-six, belonged to the BNP who got an average vote of 1.4%.

Of the four candidates who got above 5%, thereby retaining their deposit, three belonged to the BNP - Dave King (7.5%) and John Tyndall (7.2%) in east London and Frances Taylor (5.2%) in Dewsbury - and one - Stephen Edwards (11.4%) in West Bromwich - to the National Democrats. Edwards vote for the National Democrats was massively inflated by the fact that he contested the seat held by the Speaker of the House of Commons who is traditionally unopposed.

The largest UK party, the BNP, is expected to attract some new and urgently needed members to fill their depleted ranks courtesy of a free television broadcast and mailed publicity that they acquired for standing over 50 candidates. Nonetheless, it is inevitable that their abysmal performance will only encourage the ongoing disaffection over the leadership of John Tyndall. At the moment, two quasi-official BNP magazines, produced by the main contenders for Tyndall's crown, Tony Lecomber and Nick Griffin, have been putting the BNP's official journal, *Spearhead*, to shame. A recent television "sting" revealed Griffin's ambition to oust Tyndall and assume the leadership of a united far-right; whether the disclosures will delay or precipitate his next move remains to be seen.

In contrast to the BNP the French fascist party, the Front National (FN), obtained 15% of the vote - some 4 million votes - in the French parliamentary election. They won one seat, the southern town of Toulon where they already run the council. During the run in to the campaign the fascist leader, Jean Marie Le Pen, was filmed threatening a Socialist Party candidate, before pushing her into a wall.

SPAIN

Mugak launched

The "Centro de Estudios y Documentacion sobre el racismo y la xenophobia" has launched a new journal, *Mugak*. The editorial in the first issue sets out its concerns: the way forward for the independent anti-racist movement, the bolstering of support networks, the improved dissemination of information, the impact of the European Union in curtailing migration and thereby encouraging racism.

The first issue contains important and well-documented

articles including a substantial piece on the clampdown on refugees that considers proposed Spanish legislation and international agreements. Another article examines thirteen years of anti-immigration legislation in France and the struggle of the *sans-papiers* (people without papers).

This is an excellent and well-produced journal with very good research and important documentation. It is available from: Centro de Estudios y Documentacion sobre el racismo y la xenofobia, Peña y Goñi, 13-1°, 20002 Donostia, Spain. Tel: (9) 43 32 18 11. Fax: (9) 43 27 69 82.

PORTUGAL

Skins jailed for racist murder

Eleven racist skinheads have been jailed for between 14 and 18 years for beating a young black man to death in a racist attack in Lisbon in June 1995 (see *Statewatch*, vol 5 no 3). The eleven were part of a gang of fifty skins who rampaged through the Barrio Alto attacking black people with iron bars and baseball bats. At least twelve people were injured and Alcindo Montiero, a naturalised Portuguese citizen from Angola, died of injuries to his head and spine. At the time the police were criticised for taking two hours to respond to the attack.

Racism & fascism - new material

The Tory hard Right marches on, David Rose & Nick Lowles. *Observer* 27.2.97. Useful piece on the fortunes of the Conservative Party's "hard right", including Gerald Howarth, Warren Hawksley and Peter Bruinvels as well as former members of the Federation of Conservative Students.

All quiet on the race card front, Don Flynn. *Chartist* No. 166 (May-June) 1996, p15. Article which notes that race was not an issue during the recent UK general election but warns that the Labour government "will have to get serious about black issues".

Connected Issue 3, 1997. This is the third issue of the Good Practice Against Racism Network's bulletin. It contains an extensive article on the decision, by Labour councils, to cut or reduce funding to independent anti-racist, police and legal monitoring groups that refuse to "become docile", a piece on the BNP's electoral strategy and a round-up of recent cases and campaigns. Available from: Barry, GPARN, Sia, Winchester House, 9 Cranmer Road, London SW9 6EG.

European Race Audit No. 23, (May) 1997, pp26. Indispensable bi-monthly bulletin from the Institute of Race Relations which covers the rise of racism and fascism across Europe.

Nick Griffin...the sting. *Searchlight* 264 (June) 1997, pp6-15. Extensive piece on the hubris of Nick Griffin, former public schoolboy and self-proclaimed UK fuhrer in waiting. Griffin's main contribution to fascism has been to split every organisation that he's been involved in - is he just incompetent or is somebody jerking his chain?

Mission impossible. *CARF* 38 (June/July) 1997, p14. This piece looks at the (mis)fortunes of the far-right in the UK general election. Compared with the electoral achievements of the main European fascist organisations the BNPs result was pitiful - but then the European outfits don't have leaders quite as hopeless as John Tyndall.

London Update, No. 4 (Spring) 1997. This issue looks at racism on the assembly line at Ford's motor plant in Dagenham, Essex and has round-ups on racist attacks, immigration and policing. Available from the IRR, 2-6 Leeke Street, London WC1X 9HS.

UK

Big increase in phone-tapping

The number of warrants issued in England and Wales for telephone-tapping and mail-opening in 1996 was 1,142 - the second highest figure since records began. Indeed it is a higher yearly figure than any during the Second World War (1939-45) except for 1940 (1,682).

The number of warrants for tapping in Scotland, 228 is the highest since they were first published in 1967. For the previous year, 1995, the tapping figures rose from 66 to 137.

The number of warrants, signed by the Home Secretary, in England and Wales issued in 1996 for intercepting "telecommunications" was 1,073 - again the highest since records began in 1937.

Each of the warrants issued can cover more than one phoneline if they are issued to cover an organisation or group. For the first time the Commissioner, the Rt Hon Lord Nolan, acknowledges that "telecommunications" warrants cover: "all forms of telecommunications including telephone, facsimile, telex and other data transmissions whereby the information is communicated via a public telecommunications system". Last year the Commissioner noted that warrants also apply to mobile phones using private telecommunications service providers.

The figures give - as usual - part of the picture. Under Section 2 of the Interception of Communications Act 1985 warrants to intercept communications are meant to be applied for by the Metropolitan Police Special Branch, the National Criminal Intelligence Service (NCIS), Customs and Excise, Government Communications Headquarters (GCHQ), the Security Service (MI5), the Secret Intelligence Service (MI6), the Royal Ulster Constabulary (RUC) and Scottish police forces. However, the number of warrants issued by the Secretary of State for Northern Ireland (RUC and MI5) and the Foreign Secretary (MI6 and GCHQ) are not published, nor are the numbers issued in response to a request from another state. Nor, of course, will "bug and burgle" figures resulting from new powers under the Police Act 1997 (see *Statewatch* vol 6 no 6).

Total figures for warrants issued, England and Wales 1989-1996:

1989	458
1990	515
1991	732
1992	874
1993	998
1994	947
1995	997
1996	1,142

Total figures for Scotland 1989-1996:

1989	64
1990	66
1991	82
1992	92
1993	122
1994	100
1995	138
1996	228

Last year Lord Nolan's report said that "the number of warrants issued under the counter-subversion head remains very small", for 1996 he says: "there are no warrants in force under the counter-subversion head". These statements suggest that the

surveillance of political activists is now hidden in the warrants covering either national security or "the prevention and detection of serious crime".

As usual no complaints from the public were upheld by the Tribunal - in fact, no complaint has ever been upheld since the Act of 1985.

Security Service Commissioner

The annual report by Lord Justice Stuart-Smith on MI5 (the Security Service) does not give the figures of the number of warrants issued by the Home Secretary allowing MI5 (the Security Service) to enter homes or offices to "interfere" with property. Last year he said it was a "comparatively small number", this year nothing is said.

The report notes the extension of MI5's role under the Security Service Act 1996 (which came into effect on 14 October 1996) to support "police forces and other law enforcement agencies in the prevention and detection of serious crime" (S.1.1). Stuart-Smith comments that this does not mean MI5 "will become another police force or that it will be patrolling the streets or arresting people".

The Commissioner notes the resolution of the different powers of the police and MI5 to "interfere with property" following the passing of the Police Act 1997 (see *Statewatch*, vol 6 no 6). However, he seems unconcerned that the statutory basis is different. MI5 have to get a warrant signed by the Home Secretary, the police are now able to "bug and burgle" on their own authority except where it involves intrusive surveillance (homes, offices, hotel bedrooms) when the permission of yet another Commissioner (High Court judge) is required - but even here no prior approval is necessary if the "police or customs are acting with the consent of a person who is able to give permission in respect of the relevant premises".

The second report on MI6 (the Secret Intelligence Service, SIS, UK's CIA) and Government Communications Headquarters (GCHQ, the UK's world-wide tapping agency) is by the same Lord Justice Stuart-Smith. Its three and a bit pages carry no information of value.

The three reports confirm that not one complaint to the Tribunals set up hear complaints between 1985 and 1996 has been upheld. The Tribunals meet in secret and complainants are not told whether they have been under surveillance.

Report of the Commissioner for 1996, Interception of Communications Act 1985. Cm 3678, HMSO, £2.80; Report of the Commissioner for 1996, Security Service Act 1989. Cm 3679, HMSO, £2.30; Report of the Commissioner for 1996, Intelligence Services Act 1994. Cm 3677, £1.85; for previous years reports on telephone tapping see Statewatch, vol 1 no 4, vol 2 no 5, vol 3 no 5 & vol 4 no 3, vol 5 no 3, vol 6 no 3.

Union ban lifted at GCHQ

A 13-year campaign by the labour movement and civil rights groups ended in May when the Labour government reversed the ban on independent trade union membership at the Government Communications Headquarters (GCHQ) in Cheltenham, Gloucestershire. GCHQ is the intelligence gathering centre which monitors radio transmissions from around the world as a part of the Anglo-American UKUSA Agreement.

The ban was imposed by the Thatcher administration in 1984 after the US National Security Agency expressed concern about industrial action. In response to the American complaints, Sir Brian Tovey, head of GCHQ between 1978 and 1983, requested the ban which was introduced by Defence Secretary, John Nott. Independent trade unions were replaced by a toothless, management approved, Staff Federation and fourteen workers, who refused to give up their right to trade union membership, were summarily dismissed. Obviously, the Federation could not be recognised as a legitimate trade union by the official

Certification Officer.

Members of the Federation are now expected to merge with the Public Services Tax and Commerce Union (PTC). The fourteen employees dismissed by the Thatcher government, after refusing to give up union membership for a £1000 payoff, can now reapply for their jobs, although several of them have passed retirement age.

However, the battle is not yet over and negotiations between the government and the PTC will need to ensure that there are no "no-strike" arrangements to undermine the credibility of the new trade union. Finally, there is the still unresolved question of compensation for the 14 sacked trade men, some of whom have been unemployed for more than a decade.

Independent 16.5.97.

NORWAY

People can see files

Norwegians who suspect that they have been under surveillance by the Norwegian security police (POT) are to be allowed to read their own files. If the surveillance was illegal they may have the right to compensation for damages and everyone is guaranteed that the information can be destroyed if necessary. This is the result of the parliamentary debate after the Lund-report, where the parliament also ordered the government to create a special body to handle these issues.

Approximately 50,000 Norwegians have been recorded in the POT-register mainly because of their political views. POT's activities in gathering the information involved the active cooperation of the Social-Democratic party. Former Prime Minister Gro Harlem Brundtland as well as the present Prime Minister Thorbjörn Jagland, both leaders of the Social Democratic Party, have refused to give any form of apology to the illegally surveilled people, even though the Social-Democrats actively - even personally - took part in the illegal bugging and telephone-tapping.

Göteborgs-Posten, 8.6.97.

SWITZERLAND

Analysis of state databases

In 1989, a parliamentary fact-finding committee of the Swiss Justice and Police Ministry found a great many files in the offices of the federal state prosecutor. Today, the committee would need to log into a computer system. As a consequence of the *Fichenskandal* (file scandal), the Justice and Police Ministry extended old and established new computer systems to gather information.

ISIS

Efficient, constitutionally correct and extremely well controlled - that is how the state protection information system (ISIS), led by the federal police since 1992, is presented by the Justice and Police Ministry. Incorrect and outdated data would be deleted regularly and according to Minister Koller the federal police is the best controlled administrative unit in the country. The term "controlled" (implying accountability or oversight), however, means the police policing themselves. The people on record do not have a right to examine their files, nor does the parliament and the public is not given any information about the number or content of files. In 1994 information on about 40,000 people was believed to be stored in ISIS. Today, the spokesperson for the state prosecutor will not give the exact number of people concerned nor the number of deleted files. However, "less than 40,000" people are concerned.

Taking into account the rapidity of data gathering and the

annual deletion rate, the number of people registered in ISIS must be around 70-80,000. Some 9,000 old files have been returned by the special commissioner for state protection files to the state prosecutor. The Gulf War and the war in former Yugoslavia would have resulted in further registrations. The federal police tried to appease criticism in 1994 saying that most of the people registered were foreigners. This comes as no surprise as the checking of asylum seekers (1,200 in 1994) is one of the tasks of the federal police. In the same year, the police checked a further 1,500 foreigners for the federal office for foreigners affairs. Out of around 20,000 security checks by the military, 544 people were registered in ISIS. How many Swiss citizens have been registered as alleged "violent extremists" because of their political activities is not known. According to the State Protection Bill passed in March, the federal and cantonal police, the federal state prosecutor and the federal office for police affairs have direct access to the ISIS data.

DOSIS

The federal office for police affairs also has its own data systems. During the pilot phase 1994-1996, the cantonal drug departments were directly linked to the drug data bank DOSIS (see *Statewatch*, vol 6 no 4) - only Zurich has its own, DOSIS incompatible, data system. Out of the 56,000 people registered in DOSIS in 1996, 376 are supposed to have dealt in drugs as well as consumed drugs. Drug consumption alone is according to the regulations not a reason to be registered in DOSIS. The information system is supposed to be a weapon against large scale organised drug trafficking. However, anyone who believes that the other 55,000 people registered are dangerous dealers is mistaken. 20,000 people are "contact" persons. The remaining 35,000 people registered as dealers exceed the estimated 30,000 drug addicts in Switzerland. Statistically, there are 1.2 dealers per "junkie", an absurd figure which leads to the conclusion that the police, as in the case of state protection, lay in a stock of data. This data collection rarely leads to the arrest of big dealers. In 1993, the last year for which statistical data is available, 1,834 people were convicted of drug trafficking, and just 500 of these resulted in a sentence of more than 18 months in prison. Only the last group are regarded by the justice authority as serious offenders.

RIPOL

ISIS and DOSIS are instruments of specific police departments. RIPOL (recherches informatisees de police), is a general search system used by the federal office for police affairs. The federal state prosecutor, the federal offices for foreigners affairs and refugees, the Swiss consulates as well as customs and cantonal police authorities have direct access to RIPOL. Most of the 3,500 terminals are operated by the cantonal police authorities and at the borders; some of them are mobile radio terminals. At the end of March, about 123,000 people were "wanted". 10,000 searches were finished and deleted and around 30,000 new cases were added. Only a third of the new searches was related to crime: there were arrest warrants against 5,729 persons, 3,940 cases concerned minor offences which only demanded the establishment of the place of residence.

Two thirds of the new data concern foreigners: 15,269 entry bans, 1,691 deportations, 2,247 entry refusals and 305 restrictions of movement of "criminal foreigners" in Switzerland. The border posts and the cantonal police can via RIPOL also access data from the central foreigners register (ZAR), based at the federal office for foreigners affairs. ZAR records all immigration permissions and refusals, all births and deaths, naturalisations, convictions, departures and entries as well as entry bans. Further data stored concerns people resident in Switzerland who invite and host foreigners. Altogether, 5 million people - three and a half times more than the total foreign population in Switzerland, including seasonal workers. The federal state prosecutor and the federal police are also directly connected to RIPOL.

Data concerning asylum is only stored in RIPOL after the asylum seeker has either been recognized as a refugee, obtained another legal status or has been deported. The federal office for refugees (BFF) manages an automatic personal register, AUPER. This register can be accessed by the cantonal police. The BFF has registered information on 628,462 people, the federal office for foreigners affairs and the federal state prosecutor have added further data. When AUPER was established in 1986, all people who have applied for asylum in Switzerland since 1935 were registered. Deletion of this old data is not planned in contrast to ZAR where out-of-date data has been removed. A spokesperson for BFF said: "We are still below one million, the number is still easy to grasp."

Security - new material

Watch with big brother, Seamus O'Conner. *Squall* No. 15 (Summer) 1997, pp28-30. Article on the increase in police/MI5 powers of intrusive surveillance directed at political protesters.

Eternal vigilance? 50 years of the CIA. Special issue of *Intelligence and National Security*, vol 12 no 1, January 1997. A useful collection of essays, not for their politics which are often uncritical, but for providing information on areas previously unresearched such as the CIA funding of womens' groups, the role of science and scientists, and the predominant role of economic intelligence in the post-Cold War era.

Parliamentary debates

Chinook Helicopter Accident Inquiry, *Lords* 22.5.97. cols. 542-562.

PRISONS

UK

Prisoners top 60,000 as prison ship forced to evacuate

The prison population of England and Wales passed the 60,000 mark in April, an increase of over 40% since 1992. The record 60,012 prisoners are a consequence of the former Conservative government's policy of enthusiastically locking up offenders and encouraging courts to hand out severe sentences. According to figures cited by Paul Cavadino of the Prison Reform Trust the UK has 116 prisoners for every 100,000 people compared with 89 in France, 84 in Germany, 67 in Holland and 65 in Sweden. In western Europe only Spain and Portugal jail proportionally more people than the UK.

The record figure included 2,580 women prisoners although it is possible that this number will decrease if the new government carries through plans to halt the jailing of fine defaulters, which is estimated to effect up to 1,300 women a year. In June the Chief Inspector of Prisons, Sir David Ramsbotham, expressed concern about the number of women in prison, particularly pregnant women prisoners. In a comment all the more germane considering the treatment of Roisin McAliskey, he said during a BBC radio interview: "I don't think prison is the right place...to have them [pregnant women] because they're confined conditions."

By June the prison population had increased by another 600 and the Prison Governor's Association issued an emergency statement supporting any governor who decided to refuse to accept new inmates if it created unnecessary risks to their prison.

Against this backdrop the controversial prison ship, HMP Weare, received its first inmates at Portland Harbour, Dorset in June (see *Statewatch*, vol 7 no 2). Twenty-one low-security prisoners arrived at the 100 foot-tall prison ship, which cost £3.7 million, plus £800,000 for transportation, and is still in the

process of being refurbished.

Within hours, and to the considerable embarrassment of the prison authorities, a fire alarm forced the prisoners to be evacuated and held in a quayside pen. It was fortunate that it was a false alarm as the evacuation was a shambles and initially there was confusion over whether all twenty-one of the prisoners could be accounted for. After the Fire Service and prison authorities examined the ship it was discovered that much of the fire sprinkler system no longer worked. The ship is supposed to accommodate 400-500 inmates and take pressure off the overcrowded prisons.

The Prison Officer's Association has criticised the cost of the ship and expressed doubts about security while the National Association for the Care and Resettlement of Offenders (NACRO) said that it highlighted the need to address the soaring prison population in England and Wales. The new Labour Home Secretary, Jack Straw, described the use of the ship as "unavoidable". He has also overturned Labour's election pledge, and his own his "fundamental objection", to private prisons by inviting security companies to open two new prisons.

A report by the Prison Reform Trust, published earlier this year, argued that millions of pounds were being wasted on prison sentences when there are more cost effective methods to deal with offenders outside the prison system. The report notes that it costs an average £24,000 a year to lock up a prisoner compared with £2,230 for a probation order and £1,670 for a community service order.

"An expensive way of making bad people worse: custody v community sentencing" *Prison Reform Trust (January) 1997; Independent 2.5.97; Guardian 12.6.97., 13.6.97.*

Shackled pregnant prisoner to sue

Annette Walker, the Holloway prisoner who was manacled to her bed for ten hours while in labour (see *Statewatch*, vol 6 no 1), has started a legal action against the Home Office. Her summons is seeking basic, aggravated and exemplary, or punitive damages of up to £50,000 for the pain, distress, humiliation, anxiety and injury caused by the use of unnecessary, excessive and unlawful force. Ms Walker's daughter was born in January after a 12 hour birth and her mother suffered post traumatic stress disorder within a month of the birth.

Independent 20.5.97.

"Lack of care" death prompts call for review of private security

In June an inquest jury at Hammersmith Coroner's Court, investigating the death of a 30-year old black man, Peter Austin, decided that a "lack of care" contributed to his death. The decision prompted the pressure group, Inquest, who arranged legal representation for Mr Austin's family, to call for a review of private security firms responsible for prisoners.

The inquest was told how Mr Austin, who was charged with burglary, had been taken from Chiswick police station to Brentford Magistrate's Court, where he was held in a cell for a bail hearing. There he met with his barrister, Stuart Armstrong, who described him as "clearly distressed and bewildered". He checked him half an hour later and found him hanging from a light fitting by his T-shirt. He alerted the Securicor guards who looked into the cell, one of them telling him: "It's ok, his feet are on the ground: he's faking it." They went on to explain that his face would be a different colour if he was trying to hang himself and added that he had moved. When the guards' supervisor, Roger Clarke, arrived he looked into the cell and remarked that

the "cheeky bugger just winked at me". A bail hearing was then convened outside Austin's cell as he lay dying.

Deborah Coles, director of Inquest, condemned the "cruel and callous indifference a man in desperate need of care and humanity [received] from those staff responsible for his care and welfare". She added:

The inquest has exposed grossly inadequate training of Securicor staff both in basic first aid and in suicide prevention. Staff displayed a lack of professionalism and humanity in their dealings with Mr Austin with the result that he died in these most appalling circumstances. We remain disgusted by the complacent attitude of Securicor over this death. They have had no inquiry into this death whatsoever and no action has been taken to ensure that such a tragedy could not be repeated.

Inquest can be contacted on 0181 802 7430. Inquest press release 4 & 25.6.97; Voice 16.6.97.

Prisons - new material

Wolds remand prison - an evaluation, Keith Bottomley, Adrian James, Emma Clare & Alison Liebling. *Research Findings* (Home Office Research & Statistics Directorate) No. 32, 1996, pp4.

Reducing re-offending. *Penal Affairs Consortium* May 1997, pp8. This PAC briefing proposes a strategy to reduce prisoner's from re-offending. They argue that the government should: a) make greater use of community supervision, b) improve prisoners preparations for release and c) establish a comprehensive network of resettlement facilities.

Prison Watch. Press release 201 (30.5.97.). This press release covers the inquest into the suicide of 19-year old Neil Short who died at Hmp Exeter in October 1996. It calls for "full suicide prevention procedures and training to be implemented...at Exeter prison."

Deaths in prison 1997. *Prison Watch* May 1997. Detailed breakdown of 41 deaths in prison until April 1997. Available from Pete Moore, fax 01332 756158.

Prison Privatisation Report International Nos. 9 & 10 (April-May) 1997. These issues contain a report on the Home Affairs Committee report on "The management of the Prison Service (Public and Private)" (HC 57-1) which notes a "political convergence" of Conservative and Labour support for further prison privatisation. Additional reports cover Wakenhut Correction Corporation and Wold's prison.

Parliamentary debates

Prison and Probation Services Lords 9.6.97. cols. 808-826

NORTHERN IRELAND

Northern Ireland - new material

Just News, Committee on the Administration of Justice. Vol. 12, nos. 4 & 5 (April-May) 1997. Articles on ten miscarriages of justice, headed by the Casement Park Three; brutality following "what appears to have been an undercover operation carried out by members of the SAS" in Crossmaglen in April; treatment of detainees in Holding [interrogation] centres and proposals on a Bill of Rights. Available from CAJ, 45/47 Donegall Street, Belfast.

Caught on camera, Helen Rumbelow. *Police review* 2.5.97. pp18-20. Brief examination of the "ultra-high speed" (under 4 seconds) Automatic Number Plate Recognition system used to check car number plates in the City of London's "ring of steel" against records on the Police National Computer.

"Confess or be extradited", Seth Linder. *Observer* 8.6.97. Important article on Roisin McAliskey, who was held as a high-security prisoner in Holloway prison for 6 months while pregnant. It includes excerpts from her prison journal which documents how the threat of extradition

and imprisonment was used in an attempt to coerce a false statement from her.

Her supporters say her prison conditions are appalling. The truth is a very different story, Ian Burrell. *Independent* 15.5.97. Absolutely disgraceful piece on unconvicted prisoner Roisin McAliskey based on "documents obtained by the *Independent*" that purport to show that contrary to all other reports - including those elsewhere in the *Independent* - the pregnant high-security prisoner received generous and "unprecedented" treatment while imprisoned. Raises the question of which government department the misnamed *Independent* got its brief from.

Shoot-to-kill in Coalisland, Mick Naughton. *An Phoblacht Republican News* 3.4.97., p5. Report on British undercover operation in Coalisland in March in which a youth was wounded. AP/RN is available from 58 Parnell Square, Dublin 1, Ireland.

Parliamentary debates

Northern Ireland (Entry to Negotiations) *Commons* 19.3.97. cols. 996-1010

Prevention of Terrorism (Northern Ireland) *Commons* 19.3.97. cols. 1011-1029

Public Order (Northern Ireland) *Commons* 19.3.97. cols. 1030-1048

Northern Ireland (Entry to Negotiations, etc) Act 1996 (Revival of Section 3) Order 1997 *Lords* 22.5.97. cols. 504-521

Northern Ireland (Entry to Negotiations) *Commons* 2.6.97. cols 135-155

Northern Ireland *Commons* 12.6.97. cols. 1321-1332

Northern Ireland (Emergency Provisions) Act 1966 (Amendment) Order 1997 *Lords* 16.6.97. cols. 1092-1100

LAW

UK

Verdict in longest libel case

After 314 days, and the longest libel trial in English history, Mr Justice Bell delivered his verdict in the \$30 billion-a-year McDonald's hamburger company's case against two unemployed activists who handed out leaflets critical of the company. In a 1000 page judgement, summarised at the Royal Courts of Justice in London, he awarded the fast-food giant £60,000 damages for libel but acknowledged the accuracy of the leaflet when it accused the company of paying low wages, being responsible for some cruelty to animals and exploiting children in its advertising (see *Statewatch* Vol. 6, no. 3).

Helen Steel and Dave Morgan, both members of the London Greenpeace organisation (which is not linked to international Greenpeace), took part in pickets of the outlets during the late 1980s when they handed out the leaflets. McDonald's, after consulting with the Special Branch and hiring security firms to infiltrate and collect information on the activists, issued writs against five people involved with the organisation. Because there is no legal aid for defamation cases three of them felt coerced into apologising, while Steel and Morris were forced to represent themselves as 'litigants in person' with free advice from a barrister and several solicitors.

Although the multi-national company has claimed that it was vindicated by the outcome, this is widely dismissed as hyperbole, and the case has more accurately been described as the "biggest corporate PR disaster in history". McDonald's spent over £10 million fighting the case and, while it won the majority of the legal points, the trial resembled an inquiry into their questionable practices. Regarding the damages, Steel and Morgan have made

clear that they neither can nor will pay.

McLibel Support Campaign press release 19 & 20.6.97; Guardian 20.6.97.

CPS re-organisation

The Crown Prosecution Service (CPS) is to be re-organised into 42 areas, each with its own Crown Prosecutor, to correspond with existing police force areas. The changes are designed to "create a locally-based service, structured to co-operate with the police in ensuring an effective prosecution system." The Director of Public Prosecutions will name the Crown Prosecutors in June and they will assume management responsibilities in April 1998. During 1995 the CPS had its 31 regional areas reduced to thirteen.

Police Review 30.5.97.

Law - new material

Prosecuting domestic assault: Victims failing courts, or courts failing victims, Antonia Cretney & Gwynn Davis. *Howard Journal of Criminal Justice* Vol. 36, no. 2, 1996, pp146-157. Examines the policy of the police and the Crown Prosecution Service and concludes that "despite an expressed willingness to take domestic violence seriously...it provides no encouragement to women to sustain their commitment to an arduous and possibly dangerous enterprise."

Television licence evasion and the criminalisation of female poverty, Christina Pantazis and David Gordon. *Howard Journal of Criminal Justice* Vol. 36, no. 2, 1996, pp159-186. This paper considers "the disproportionate number of women entering the criminal justice system for possessing a television without a licence." In 1994 57% of all female criminal convictions related to television licence evasion.

17 year olds and the youth court. *Penal Affairs Consortium* (May) 1997, pp4. This briefing argues that the government should reject proposals to remove 17-year old offenders from the youth court.

The Law. Issue 10 (April-June) 1997. The latest issue contains articles on Stonehenge and the Public Order Act 1986, the M25 Three campaign, the Crown Prosecution Service, prisons, refugees and black women in prison.

Parliamentary debates

Crime (Sentences) Bill *Lords* 18.3.97. cols. 788-831

Crime (Sentences) Bill *Lords* 18.3.97. cols. 841-892

Crime and Punishment (Scotland) Bill *Lords* 19.3.97. cols. 936-967

Crime (Sentences) Bill *Commons* 19.3.97. cols. 981-994

CIVIL LIBERTIES

Civil liberties - new material

Agenda No. 20 (Spring) 1997, pp8. This issue of Liberty's journal has articles on the Police Bill and "the disturbing proposals contained in several other Bills currently going through Parliament", Bloody Sunday and a "new telephone advice line service". Available from Liberty, 21 Tabard Street, London SE1 4LA.

Eighteen years of feathering their nests. *Labour Research* Vol. 86, No. 5 (May) 1997. When John Major launched the Conservative election campaign he said their aim was to "turn the have-nots into haves"; this special edition of *Labour Research* contains a series of articles on sleet and greed under the Tories over the past 18 years.

Too close circuit for comfort, Gibby Zobel & Simon Griffiths. *Squall* No. 15 (Summer) 1997, pp34-35. Useful article on new surveillance technologies which "are the foundation stones of a surveillance society which will lock us in for all time."

The Amsterdam Treaty

Confirming their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and the rule of law.

Preamble to the Treaty of European Union signed at Maastricht, 7 February 1992.

The Court of Justice shall have no jurisdiction to review the validity or proportionality of operations carried out by the police or other law enforcement agencies of a Member State or the exercise of responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

Amsterdam Treaty, signed 18 June 1997. (Articles H.2 of the new Title on free movement, asylum and immigration, K.7.5 of the revised Title VI and B.1 of the

Introduction

The Amsterdam Treaty, following two days of negotiations on 16-17 June, was finally signed in the early hours of Wednesday 18 June. In the new Chapter 2 of the Treaty, covering the existing Title VI (immigration and asylum, policing, customs and legal cooperation; the “third pillar”) there are, in addition to the Treaty text, no less than 17 Declarations and 6 Protocols. The only conclusion it is possible to reach is that it represents a collection of “compromises”.

As an exercise in transparency and simplification the Treaty is a total failure. As an attempt to produce a comprehensible decision-making structure it completely fails too.

There are no less than three provisions in the Treaty that expressly exclude the European Court of Justice from ruling on issues involving “the maintenance of law and order and internal security”. These terms cover *all* aspects on covered by free movement, internal controls and checks, police operations, public order, alleged “illegal” migrants and refugees (including the “centres” in which they are held and the manner of their treatment or enforced deportation). This may be a bridge too far for the continued legitimacy of the institutions and agencies of the European Union.

The final text of the Amsterdam Treaty - when it has been tidied up by the lawyer/linguists and when the Presidency has resolved four or five major disagreements on its contents - will be formally adopted in Amsterdam in October. It will then have to be ratified by each of the national parliaments of the 15 EU Member States and in some cases will involve national referendums. Early estimates suggest it will not come into effect until 1999.

A general summary of Chapter 2 (the full text is available free from *Statewatch*).

This feature takes up just two aspects of the Treaty - the implications of incorporating the *Schengen acquis* and the new roles of the Council of Justice and Home Affairs Ministers. *The interpretations presented below should be viewed as provisional*

because the Treaty is almost unintelligible even to a reasonably seasoned observer. If, at times, what is being described seems incomprehensible the reader would be drawing the right conclusion.

The Amsterdam Treaty amends the Treaty establishing the European Community (TEC, “first pillar”) and the Treaty of European Union (TEU, which covers the “third pillar”). It also, in Chapter 2 integrates the *Schengen acquis* into the “framework of the European Union”.

Integrating the Schengen acquis

The relatively easy proposition to move immigration and asylum out of Title VI of the Treaty of European Union (the Maastricht Treaty) and into the mainstream of Community decision-making - from the “third pillar” to the “first pillar” - could have been achieved very simply.

The first substantial draft treaty was produced for the Dublin European Council, dated 5 December 1996 (“Dublin II”), and there were further drafts of 14 May, 30 May and 12 June. It was the decision to incorporate the “Schengen acquis” early in February which has led to much of the confusion (see *Statewatch*, vol 7 no 1, which includes the first draft of the Schengen Protocol). The “Dublin II” draft simply had a four-line “Comment” to the effect that the incorporation of the Schengen Agreement required “further consideration”. On 11 February the Dutch Minister for European Affairs, Michiel Patjin, said: “We now have to accept that there is no prospect of any future British government abandoning national frontier controls.” This followed confirmation of the future Labour government’s position given by Tony Blair to a meeting of socialist party leaders in Dublin last December. By early February a series of “Non-papers” (negotiating position papers from the Dutch Presidency) began to appear on the incorporation of the Schengen Agreement.

There is, however, a significant difference between the draft “Schengen Protocol” circulated in February, when the Conservative government was still in office, and the final version adopted in Amsterdam.

The February draft “Schengen Protocol” envisaged integrating the *Schengen acquis* and giving the “thirteen Member States” of the Schengen Agreement the power to adopt new “Schengen” decisions. The UK and Ireland could attend these sessions of the Council but would take no “part in the deliberations” nor bear any financial liability. The only opt-in available to the UK and Ireland was:

with a view to the accession of those countries to the Convention implementing the Schengen Agreement (Article 6)

Whereas this draft only envisaged the UK and Ireland being able to “opt-in” to the Schengen Agreement and its *acquis* taken as a whole, the new Labour government took a different view and wanted to “opt-out” or, effectively “opt-in”, on a case by case basis.

The adopted text allows the UK and Ireland to adopt into measures on an *ad-hoc* basis. The fourth paragraph of the preamble to the “Protocol integrating the *Schengen acquis* into the framework of the European Union” says that:

provision should, however, be made to allow those Member States [UK and Ireland] to accept some or all of the provisions (emphasis added).

The Treaty becomes complicated from this point. *Article C* of the Schengen Protocol says the UK and Ireland:

*may at any time request to take part in some or all of the provisions of this *acquis**

The UK and Ireland can therefore request to take part in any “provision” already adopted - this could apply to any one of the 200-plus decisions already adopted by the Schengen Executive Committee and to “provisions” of the Schengen Agreements.

The Amsterdam Treaty

The Amsterdam Treaty, signed on 18 June, by the 15 EU governments amends both the Treaty of the European Communities (TEC, “first pillar”) and the Treaty of European Union (TEU, the Maastricht Treaty, “third pillar”).

Within a new Chapter 2 on the so-called “area of freedom, security and justice” are both a new Title on free movement, immigration and asylum and a revised Title VI covering policing, customs and legal cooperation.

The new Title on free movement, immigration and asylum is to be added to the TEC, thus signalling that these issues will move from the intergovernmental “third pillar”. Although the European Commission is to be given the right of initiative (as is usual under “first pillar” procedures) the Council of Justice and Home Affairs Ministers will, for the first five years after the Treaty comes into force, have to agree measures unanimously.

It is set out in Articles A-I. Article C includes a Treaty commitment to the “repatriation of illegal residents”. The main Articles are followed by three Protocols (Y, X and Z) providing “opt-outs” for the UK and Ireland (Y and X) and for Denmark (Z). The UK and Ireland Protocols allow these two countries to maintain their border and passport controls (the other “13” Schengen member states of the EU have, or are committed to, removing internal border controls with the EU). Another Protocol severely restricts the right of asylum for EU nationals within the EU.

The revised Title VI sets out revised “provisions on police and judicial cooperation in criminal matters” in Articles K.1-K.14. These include giving Europol operational powers (Articles K.2.2.a and b.), allowing “competent authorities” to operate in another Member State (Article K.4), and the harmonisation of laws on arrest, charging and sentencing (Article K.3). Article K.6 sets out new forms of decision-making: “common positions”, “framework decisions”, “decisions for any other purpose”, and “conventions” the last three being binding.

A new Chapter 10 covers “Transparency” (to be covered in the next issue). Section IV, Chapters 14-19 cover the revised roles of the EU’s institutions - the European Parliament, the Council, Commission, Court of Justice and the role of national parliaments. Section V covers “Closer cooperation - “Flexibility” (variable participation).

Confusion leads to disagreement

The complexity of the final Treaty also had an effect on the negotiators in Amsterdam. Far from just dotting the “i’s” Prime Ministers, Foreign Ministers, officials and advisers were discussing and deciding on substantive issues. A “Working document”, circulated on the morning of Tuesday 17 June, was entitled: “IGC - Presidency suggested overall compromise”. Although the changes being suggested were single words or phrases they could have major effects. For example, Article C.4 of the new Title on free movement, asylum and immigration said in the draft Treaty on the table on the Monday morning that the Council should adopt:

Measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member state may reside and seek employment in other Member States.

The “overall compromise”, which ended up in the final Treaty, deleted the words “and seek employment”.

The “overall compromise” also included gems like: Position of Denmark: Add to Article I (see page 32a above): “The application of this Title shall be subject to the provisions of Protocol Y and to Protocol Z, and without prejudice to Protocol X.”

It was during the negotiations into the early hours of Wednesday 18 June that it is said a proposal put forward by Spain, but not agreed by the UK, led to the insertion of an additional clause to Article C which says that a “request” to take part in a “provision” has to be agreed “with the unanimity of its members referred to in Article A” - the members in Article A are the “13” Schengen countries (*Times*, 26.6.97). In short, one Schengen Member State can block the participation of the UK and/or Ireland. A UK official is quoted as saying: “We don’t know how this got in, but we are going to make sure it’s reversed”.

However, the proposal was not new. Indeed it must have been a key issue for the Ministers and officials from the UK and Ireland. The draft Treaty dated 15 May says any request from one of these Member States to “accept some or all of the provisions of the *acquis*” had to be agreed by:

the Council, acting with the unanimity of its Members mentioned in Article A (that is the “13” Schengen Member States) emphasis added

The draft of 30 May contain “Option 1” and “Option 2” (agreed at the meeting of IGC Representatives on 26-28 May). Option 1 was, as above, by unanimity of the “13”, while Option 2 was by “qualified majority” (under Article 5a.3 and Article K.12.3 of the TEU) which would probably have allowed UK and Ireland to get sufficient support for their request.

By 12 June (in the draft Treaty on the table in Amsterdam) the UK position, to adopt Option 2, was in place. By the end of the Summit the 15 May “unanimity” formula was back and in the circulated final Treaty text.

It is intended that the final text, checked by lawyers and linguists will be published at the end of July. But this issue remains unresolved. The UK and Ireland say they never agreed to the “unanimity” clause while Spain is saying it may not ratify the Treaty if the unanimity requirement is removed.

A *Times* editorial commented: “Spain, which was not alone in grumbling about Britain having its cake and eating it too, insisted that other states should have the right to veto such *ad hoc* British participation.” Italy too recorded its opposition to a UK “opt-in” without adopting the Schengen Agreement as a whole.

Moreover, the UK government had signalled a much deeper opposition to the Schengen Protocol by tabling changes to “adopt the necessary measures to *replace*” the provisions of the *Schengen acquis* within “two years of the entry into force of this Protocol” and put them under the “institutional and legal framework” of Titles of the new Treaty. This “informal proposal”, tabled for the IGC Representatives meeting on 26-28 May will not have gained many friends in the hard-core Schengen Member States who are committed to ensuring that the “motor” for change provided by Schengen is continued after the new Treaty is in force.

Although this UK proposal did not get off the ground the Schengen states got through an important change. The fourth paragraph of the “ANNEX” defining the *Schengen acquis* had previously been limited to the decisions adopted by the Schengen Executive Committee. To this was now added:

as well as acts adopted for the implementation of the Convention by the organs upon which the Executive Committee has conferred decision making powers.

This effectively means that decisions taken in secret, by officials, for example to "implement" the Schengen Information System (SIS) and the SIRENE system (see story on UK and SIS) are to be "integrated" into the framework of the European Union lock, stock and barrel.

The "Protocol integrating the *Schengen acquis* into the framework of the European Union" is part of Chapter 2 of the new Treaty. The *Schengen acquis* comprises the 200 plus decisions and measures adopted by the Schengen Executive Committee and the provisions in the Schengen Agreements (see box). The Protocol starts, in *Article A*, by saying that the 13 EU Member States who have signed the Schengen Agreements:

are authorised to establish closer cooperation among themselves within the scope of those agreements and related provisions.. referred to as the Schengen acquis.

This "cooperation" is to be conducted within the "institutional and legal framework" of the EU and with "respect for" the TEU and TEC.

Article B says that the *Schengen acquis*, which will include all decisions taken by the Schengen Executive Committee up to the time the whole Treaty comes into force (1999 at the earliest) will immediately apply to the "13" Schengen states. The Schengen Executive Committee will also transform itself into the

Council of Justice and Home Affairs Ministers (JHA Council).

The Council, here defined as the Council of "13", will "determine" by unanimity:

the legal basis for each of the provisions or decisions which constitute the Schengen acquis.

This "determination" will require each "provision" and each "decision" (already 200+) to be placed either within the TEC (first pillar) or the TEU (third pillar) or to both, and the status of each will have to be decided - for example as a "regulation" or a "framework decision" (one of the new categories under Title VI or "a common position" (another new Title VI category). This "determination" will be for the "13" to decide, *the UK and Ireland will have no say on the matter.*

Article B says the European Court of Justice will exercise the powers conferred on it by the EU treaties, except that:

the Court of Justice shall have no jurisdiction on measures or decisions relating to the maintenance of law and order and the safeguarding of internal security.

As if to confuse any understanding even more *Article D.1* ends with the statement that until the status of each of the "provisions" and "decisions" has been determined:

the provisions and decisions which constitute the Schengen acquis

The Schengen acquis

The *Schengen acquis* includes:

1) the 1985 Agreement between Germany, France, Belgium, Luxembourg and the Netherlands;

2) the 1990 Convention implementing the Agreement;

3) the Accession Protocols and Agreements to the 1985 Agreement and the 1990 Implementing Convention with Italy (signed 27 November 1990), Spain and Portugal (signed 25 June 1991), Greece (signed 6 November 1992), Austria (signed 28 April 1995) and Denmark, Finland and Sweden (signed 19 December 1996). Iceland and Norway are to be "associated" on the basis of an Agreement signed 19 December 1996.

Italy, Greece, Finland and Sweden have yet to complete ratification. Denmark completed parliamentary ratification on 30 May. Austria has completed the ratification process.

The current members of Schengen are split into two groups: 1) the seven EU member states who have signed, ratified and are implementing the Agreement - Germany, France, Belgium, Luxembourg, Netherlands, Spain and Portugal, and 2) the six EU member states who are not yet implementing it - Austria (signed and ratified), Denmark (signed and ratified), Sweden (signed), Finland (signed), Greece (signed), Italy (signed). Plus Norway and Iceland, "associate" members, (signed). "Implementing the Agreement" means for example, putting files on and using the Schengen Information System (SIS).

4) The Decisions and declaration adopted by the Schengen Executive Committee "as well as acts adopted for the implementation of the Convention by the organs upon which the Executive Committee has conferred decision making powers".

Under the Protocol integrating the *Schengen acquis* into the framework on the EU the legal status of each of the "provisions" and "decisions" has to be "determined". Below is a broad indication of the likely "determination":

The provisions in the Convention implementing the Schengen Agreement plus the related decisions in the Schengen acquis (173 decisions, 1990-1995):

Title II: Articles 2-38

Abolition of checks at internal borders and the movement of persons ("first pillar")

3 decisions on internal borders
22 decisions on external borders
4 decisions on re-admission
23 decisions on visas
4 decisions on asylum

Title III: Articles 39-91

Police and security ("third pillar")

5 decisions on police cooperation
11 decisions on judicial cooperation
3 decisions on extradition
10 decisions on drugs

Title IV: Articles 92-119

The Schengen Information System ("first" and "third" pillars)

31 decisions on the Schengen Information System (SIS)
16 decisions on SIRENE
4 decisions on the Joint supervisory body

Title V: Articles 120-125

Transport and movement of goods ("first pillar")

2 decisions on this Title

Note: the "first pillar" comes under the Treaty establishing the European Community (TEC) covering economic and social affairs and general rules and provisions. The "second pillar" comes under the Treaty of European Union (TEU) and covers foreign and security (defence) policy. The "third pillar" also comes under the TEU and currently covers immigration and asylum, police cooperation and legal cooperation. The "second" and "third" pillars are "intergovernmental" and measures are drawn up and adopted by the 15 EU Members States without reference to the European Commission or to the European Parliament (they are *non-communautaire*).

shall be regarded as acts based on Title VI of the TEU.

This is presumably to maintain the, non-communautaire, intergovernmental, status of this *acquis* prior to “determination” of their status.

Article D deals with “proposals and initiatives to build upon the *Schengen acquis*..” confirming that the *Schengen acquis* is not simply to be incorporated but is to be “built upon”, and extended, in the future. The Article goes on to say that if the UK and Ireland “have *not* notified the President of the Council in writing within a reasonable period that they wish to take part [in a proposal or initiative]..” then the other “13”, or it could be “14” (if either the UK or Ireland “opt-in” alone; Article D.1), are authorised to act *either* under the new general treaty provision for “flexibility” (Article 5a) *or* under the new Article K.12 of Title VI of the TEU.

The Declaration attached to Article D says that “all efforts” should be made to include the UK and Ireland “*in the domains of the Schengen acquis*” - suggesting yet again the development of two “*acquis*”.

Article E says that an “Agreement” will be concluded by the “13” (Schengen Member States as defined in Article A) allowing Iceland and Norway to be “associated with the implementation of the *Schengen acquis* and its further development..” and making them liable for financial provisions.

And, of course, the logic of the Schengen Protocol dictates that yet another:

separate Agreement shall be concluded with the above mentioned countries [Iceland and Norway] by the Council, acting unanimously, for the establishment of rights and obligations between Ireland and the UK on the one hand, and Iceland and Norway on the other, in domains of the Schengen acquis which apply to these States.

Article F provides for the “Schengen Secretariat” to be integrated into the General Secretariat of the Council. It should be noted that although provision is made here for the “Schengen Secretariat” and in Article B for the Schengen Executive Committee to become part of the JHA Council, there is no mention of the rest of the Schengen infrastructure, ie: working parties and committees, the Schengen Information System (SIS) and the SIRENE network.

Article G says that any country applying to join the EU has to accept “in full” the “*Schengen acquis* and further measures taken by institutions within its scope...”

It should be noted that the *Schengen acquis* will be distinct from the “third pillar” (Title VI) *acquis communautaire*.

The JHA Council: a Council with (too) many hats

The result of this formulation for “integrating” the *Schengen acquis* is that the Council of Justice and Home Affairs Ministers (JHA Council) will partly deal with “first pillar” questions under the new Title on “free movement, asylum and immigration”, partly with “third pillar” issues under the revised Title VI, partly with the development of the *Schengen acquis*, and with other matters. Its composition of 15 Member States will become “13” under the Schengen Protocol minus “2”, the UK and Ireland and plus “2” (Iceland and Norway) - perhaps it will become known as “15-2(13)+2=15”?

Issues currently dealt with by the JHA Council concerning immigration and asylum are to be moved to the “first pillar” to the TEC (and out of the TEU). By moving asylum and immigration into the TEC the Commission has the “right of initiative”, *but*

for a “transitional period of five years” the Council will adopt Commission proposals by unanimity (rather than by qualified majority) and the European Parliament will be “consulted” (rather than having the right of co-decision).

However, three countries have “opt-outs/opt-ins” - the UK, Ireland and Denmark - respectively set out in Protocols Y, X and Z (maybe they'll sort that one out). Under Protocol X the UK and

Ireland are allowed to maintain their border controls. Protocol Y says the UK and Ireland:

shall take no part in the adoption by the Council of proposed measures pursuant to Title .. of the TEC (the new Title covering free movement, asylum and immigration)

This effectively creates a “Schengen-style” arrangement, the “13” Schengen member states in the driving seat under the new Title. Yet again, however, the UK and Ireland have an “opt-in”. Both countries have three months after the measure has been “presented to the Council” to decide to “take part in the adoption and application of a proposed measure..” It is possible that Ireland and not the UK will decide to adopt a measure, so when the JHA Council is not “15” or “13” it becomes “14”.

At “any time” after a measure has been adopted under Protocol Y the UK and Ireland can “accept such a measure”, this time under the “procedure provided for in Article 5a(3) of the TEC”.

If only the new Treaty were that simple. On top of the UK and Ireland “opt-outs” or “opt-ins” in Protocol X Denmark too has an “opt-out” with regard to the *Schengen acquis*. Denmark is “opting out” of instances where measures in the *Schengen acquis* are “determined” to be part of the new Title on free movement, asylum and immigration (“first pillar”), which will change their legal status by moving them from the intergovernmental “Convention applying the Schengen Agreement” to the TEC, but is not opting out of areas of the *Schengen acquis* “determined” to be part of the revised Title VI (“third pillar”). The Danish opt-out does not apply to measures under former Article 100c of the TEC on visas. Having just completed parliamentary ratification of the Convention the Danish government has no wish to prompt yet another court case over the transfer of powers (see *Statewatch*, vol 6 no 5). By the same logic, Denmark will accept the “determination” of the legal basis measures in the *Schengen acquis* assigned to the revised Title VI, which remains intergovernmental. Thus:

Denmark shall decide within a period of six months after the Council has decided on a proposal or initiative to build upon the Schengen acquis under the provisions of title [...] of the TEC.

For Denmark it is assumed they have “opted-out” unless they “opt-in”.

Thus on the **first area coming under the JHA Council concerning the new Title, free movement, asylum and immigration**, the “Council” will be comprised of 15, or 12 (UK, Ireland and Denmark “opt-outs”), or 13 or 14 (if either or both UK and Ireland “opt-in”). On new proposals “building on” the *Schengen acquis* concerning free movement, asylum or immigration (Title II of the Schengen Agreement) the JHA Council will decide as 12 plus Iceland and Norway, unless the UK and/or Ireland “opt-in”. Denmark will definitely not take part.

The **second** area covered by the revised Title VI, “provisions on police and judicial cooperation in criminal matters”, remains intergovernmental with unanimous decision making as at present.

But, yet again, the *Schengen acquis* comes into play, creating a **third** block of decisions with “opt out/opt-ins” for the UK and Ireland, where new measures are adopted which “build” on Title III of the Schengen Agreement (police, customs and legal cooperation). The Schengen “13” plus Iceland and Norway will hold a meeting within a meeting using either the new Article K.12 (or Article 5a of the TEC on flexibility).

It has to be assumed that decisions relating to issues which cover both the “first pillar” and the “third pillar” such as the Schengen Information System (Title IV of the Schengen Agreement) would fall under this block of decisions.

The **fourth** set of decisions could be taken if a number of Member States, using the “flexibility” provided in Article K.12, decide to “establish closer cooperation”. It should be noted that

there is no reference in Article K.12 to the new Article (1) on "flexibility" which says it must concern "at least a majority of Member States", therefore leaving open the opportunity for 2 or more Member States to work together. The new Article (2) on "flexibility" is referred to, allowing all Member States to attend and take part in the discussions but only those party to the arrangement are allowed to vote. Whether UK and Ireland regarding Iceland and Norway (see above) will constitute one of these groupings is a matter of conjecture.

Moreover, Article K.12 provides no limit to the *number* of such arrangements adopted.

The complexity of this decision-making structure will be a "nightmare" to the Member State participants and it will create "havoc" for any concept of scrutiny by national parliaments and the European parliament. While the media, many of whom do

not understand the present structures, will be even more reliant on the "news" as presented by the Council.

Many sources have been used, the main ones are: Adapting the European Union for the benefit of its peoples and preparing it for the future: General outline for a draft revision of the Treaties, DUBLIN II, CONF 2500/96, Limite, 5.12.96; Non Paper (Compilation of texts under discussion), SN/2555/97, 15.5.97; Consolidated draft Treaty texts, SN 600/97, 30.5.97; Draft Treaty of Amsterdam, CONF 4000/97, Limite, 12.6.97; Draft Treaty of Amsterdam, CONF 4001/97, Limite, 19.6.97; Revised working document no 1: New Protocol integrating the Schengen acquis in the framework of the European Union, 28.5.97; Informal UK proposal (on the Schengen Protocol), 27.5.97; IGC - Presidency suggested overall compromise, Working Document, CONF/4000/97 ADD.1, 17.6.97.

UK to join the Schengen Information System?

UK governments have never sought to join the Schengen Agreement because a fundamental condition for joining is the removal of internal border controls. They have argued that the UK needs to keep its border controls to keep out refugees, asylum-seekers, drug dealers, criminals and terrorists. Protocol X in the Amsterdam Treaty guarantees that the UK can keep its border controls.

However, while the last government made the same demands for water-tight border controls the new government wanted to be able to participate in all, or some aspects, of the Schengen system. By mid-May Mr Patjin, the Dutch negotiator in the intergovernmental conference, was saying that the UK wanted to join the Schengen Information System. Now possible under the new Treaty as the abolition of border controls becomes irrelevant.

The "Protocol integrating the *Schengen acquis* into the framework of the European Union" leaves the door open for the UK to "at any time request to take part in some or all of the provisions of this acquis". But, the disputed wording of Article C (second paragraph) means that all 13 members of the Schengen Agreement have to consent. The need for "unanimity" would mean that just one state say Spain, which insisted on the "unanimity" clause could block the UK.

If the UK "opts-into" any of the provisions of the *Schengen acquis* the question of the constitutional standing of any "request" arises. Some of the provisions are minor but the Schengen Information System (and SIRENE) are the most controversial aspects of Schengen. Each of the existing "13" Schengen governments have had to defend the decision to join Schengen through, sometimes very lengthy and heated, national parliamentary ratification procedures. Could the UK

join the SIS without primary legislation?

The 31 decisions in the *acquis* on the SIS and 16 on SIRENE include ones not taken by the Schengen Executive Committee but by officials under delegated powers. Moreover one of the ongoing criticism of the Schengen Agreement and of the SIS is that there is no provision for democratic accountability, no role for the European Court of Justice, and no, even limited, code of access to documents.

The *Schengen acquis* and the SIS and SIRENE has primarily been developed by Germany and France. By March 1996 these two countries had put 3,695,415 entries into the SIS, the other five countries just 173,114. The Benelux countries, and Spain and Portugal who joined later, are very much junior partners. While the states yet to implement their membership of Schengen - Austria, Greece, Italy, Denmark, Sweden and Finland - have had no influence at all on the contents of the *acquis*.

The (SIS), based in Strasbourg, went online on 26 March 1995 and holds information put in by each of the participating Schengen member states which is then available to the police, immigration, customs and other law enforcement agencies. Its purpose is "to maintain public order and security, including state security". The information the SIS holds includes people wanted for arrest or for extradition, "aliens" (migrants) who are to be refused entry to the EU, suspected "illegal" migrants, missing persons, data on "discreet surveillance", specific checks for the "prevention of threats to public safety". The even more controversial SIRENE system - "Supplementary Information Request at the National Entries" contains detailed "intelligence" on the "target" sent after searching the SIS, which supplies basic information, more detailed information is supplied through a "supplementary request".

Information and briefings on the Amsterdam Treaty

Copies of the full-text of Chapter 2, "Amsterdam Treaty text: immigration and asylum, Title VI, the *Schengen acquis* and transparency" are available free from Statewatch.

The full-text of the Schengen Agreement plus a full list of the measures adopted under the *Schengen acquis* (1990 to 1995) is available as a briefing paper, price £5.00.

The full-text of the whole Treaty is on the *Statewatch* web database: <http://www.poptel.org.uk/statewatch/> Enter the search term: "Amsterdam Treaty". The full-text of the Schengen Agreement is also on the database.

Statewatch will be producing a number of background briefing papers over the coming months on different aspects and implications of the Treaty.

The Schengen Protocol: attractive model or poisoned chalice?

Extracts from a talk given by Professor Deirdre Curtin, Professor of the Law of International Organisations,

Before Amsterdam we had just first pillar, third pillar, partly separate and partly overlapping in terms of substantive content, and Schengen as a completely separate form of treaty based cooperation. Post Amsterdam, the landscape has become frighteningly indeterminate in terms of its overall composition. To start with we have had some streamlining of the content of the first and third pillars but their separate existence continues. We have the new phenomenon of more intergovernmental type decision making within the context of the first pillar (those areas transferred from the third pillar) and specific opt outs for isolated Member States even where the subject matter is related to the concept of the internal market (border controls). Superimposed on all of this and "within the framework of the Union" we now have various parts of the Schengen "acquis" to which two Member States can opt in or opt out as they choose. It's Schengen a la carte for the United Kingdom and Ireland. Denmark on the other hand negotiated yet another protocol as a signed up member to the Schengen Conventions. What do we find? An opt out of the Schengen acquis which falls within the first pillar for Denmark but no opt out of Schengen acquis which falls within the sphere of the third pillar.

It is small wonder that experts need multiple conferences to discuss and debate and try to get to grips with the at times truly horrible institutional complexities. And the citizens will only feel more bewildered and more baffled and uncomprehending at what has been done in their name. And at the same time they or their more active representatives, be they parliamentary or non-governmental, must confront the fact that precisely in those sensitive areas of police cooperation, immigration and asylum, the judicial protection of citizens under the EU system is weaker than if their economic interests were at stake.

First, in attempting a balance sheet on the Schengen protocol and related provisions I start with the credit side. This is relatively straightforward. The most important advance is the fact that some considerable streamlining takes place in the sense that the objectives and cooperation will henceforth take place within the framework of the EU as opposed to outside it. This is entirely logical given the well known history of Schengen and the fact that it was always conceived and implemented as a "laboratory" for the European Union as a whole. By virtue of this move and of the fact that the "single institutional framework" of the EU will henceforth be used, a quantum leap takes place in terms of democratic accountability and judicial control. The leap is from none to some. That result may still be imperfect but it is definitely a move in the right direction.

Let's now look a little further at the nature of the construction which has been chosen. The first preliminary point is that the Schengen acquis is obviously considered a special case. That may explain why the Treaty drafters included a specific provision to the effect that Article 5a TEC (new) "is without prejudice to the provisions of the Protocol integrating the Schengen acquis in the framework of the EU". I read that text as carving out a special status for that acquis compared to other examples of enhanced cooperation which may occur in the future. But what is special with the approach taken in the Schengen Protocol is the prior identification of the relevant parts of the Schengen acquis to be

the subject of flexibility. This is known as a "predetermined" flexibility approach as opposed to the "enabling clauses" flexibility approach contained in the special chapter on flexibility within the framework of the EU. The difference is that if the latter approach had been followed then the (13) Member State's concerned would themselves have defined the scope of the enhanced cooperation - which could have been the whole of

Schengen or simply parts of it - when applying for the authorisation to set up closer cooperation among themselves. What has happened now that the predetermined approach has been followed is that all 15 Member States have decided in advance that the scope of the enhanced cooperation to be followed within the framework of the EU is the entire Schengen acquis which is "incorporated" in one fell swoop.

The model of Union flexibility enshrined in the Schengen protocol is unfortunately directly to the negative side of our balance sheet. The Schengen acquis includes provisions and decisions which straddle both the first pillar (free movement of persons, immigration and asylum) and the third pillar (police cooperation). This is why there could be no specific enabling clause under the general flexibility chapter but the formula had to be that "proposals and initiatives for measures in the domains of the Schengen acquis shall be subject to the relevant provisions of the Treaties". "Treaties" plural embracing both the TEU itself and the TEC, as appropriate depending on the specific policy area in question. Apart from the obvious complexity and opacity of the superposition of the Schengen acquis onto both pillars of the Union, as amended further by the Treaty of Amsterdam itself, the key problem I perceive in the chosen model of flexibility is that it in effect allows (in part) "variable geometry" to take place with regard to the substantive "hard core" of the internal market.

The point however about the incorporation of the Schengen acquis into the Union is that it allows three Member states in total (if one reads various protocols together) not to participate in the substantive hard core of the Union with no limitation in time. This is a very serious, I would even venture to say unprecedented, breach of the *acquis communautaire*.

Another problem with regard to the approach adopted in the Schengen protocol is the fact that the role of the Court of Justice is not specifically regulated. In an earlier draft of the Schengen protocol from February 1997 a specific and relatively generous provision was included. This draft provision conferred the Court of Justice with jurisdiction on inter-state disputes as well as to give preliminary rulings on "the interpretation and application of the Schengen agreements and decisions taken for implementing them". A novelty was the inclusion of a provision to the effect that the Council could by unanimous decision exclude the jurisdiction of the Court over a decision taken in accordance with the Protocol. In later drafts this specific provision was excluded and the complexity and lack of transparency of the incorporation of the Schengen acquis was aggravated considerably. The position now is that Article B specifies that with regard to the provisions or decisions which form part of the Schengen acquis "the Court of Justice shall exercise the powers conferred upon it by the relevant applicable provisions of the Treaties". In other words, either the truncated powers for the Court as contained in the new chapter on the free movement of persons chapter or the

truncated, albeit different, powers of the Court contained in the third pillar. And then comes the sting in the tail in Article B of the Schengen protocol: "In any case the Court of Justice shall have no jurisdiction on measures or decisions relating to the maintenance of public order or the safeguarding of internal security". In my view this latter provision if generously interpreted by the Member States themselves, the interested parties, is a virtual catch all provision enabling the systematic exclusion of the jurisdiction of the Court of Justice. It is a provision without parallel in either the first pillar or the third pillar. We thus find examples of variable geometry also with regard to the Court.

Finally I come to the issue of the decision taker and the procedure to be followed. Article B informs us that the Council, acting on its own and with no apparent input from the Commission or the European Parliament, "determines the legal basis for each of the provisions or decisions which constitute the Schengen acquis". All of this "in conformity with the relevant provisions of the Treaties". In other words the Council translates the Schengen acquis into a Union acquis using the appropriate legal bases in the various Treaties. But I am puzzled by two things. First, Article B of the Schengen protocol does not actually prescribe that the Council follows the specific decision making procedure laid down in the various legal bases contained in the Treaties, but rather simply, more aloofly and autocratically, "determines", in splendid isolation, it seems, from the other institutional actors. Second, we should not forget that the bulk of the Schengen acquis is the decisions adopted by the Executive Committee which have been adopted in secret with no

judicial or parliamentary control whatsoever. In the list of "Schengen acquis" included in the annex to the Schengen protocol, we simply find in addition to the actual texts of the Agreement and Implementing Conventions, a tersely worded paragraph 4 which reads "decisions and declarations adopted by the Executive Committee established by the 1990 Implementation Convention, as well as acts adopted for the implementation of the Convention by the organs upon which the Executive Committee has conferred decision making powers". I would submit that this is entirely unacceptable not only to accept the entire past acquis adopted in the height of secrecy but not even to annex a complete and entire list of all the decisions and organs in question. What this seemingly innocuous provision in effect does is to give the status of binding law to decisions adopted by groups of civil servants more or less in total secrecy without any parliamentary or political control. Is the European Union which has "incorporated" this acquis even in possession of an up-to-date list of all the decisions in question?

With regard to the future Schengen acquis then I submit that the general rules on openness and access to documents and publication of draft decisions must be applicable. But do the organs etc conferred with "decision making" powers by the Executive Committee under the Schengen acquis continue to exist? And do the more limited rules on openness applying within Schengen continue to apply even after incorporation into the EU acquis? These and many other questions remain to be teased out. Sadly, the incorporation of Schengen into the EU does not offer an example of a Europe brought closer to its citizens in any meaningful way.

Council U-turns in *Statewatch* case

EU Council tries to answer *Statewatch*'s complaints; new Treaty establishes role of Ombudsman

The Council of the European Union has made two U-turns on the issue of access to documents, first on the *Statewatch* complaints lodged with the Ombudsman and second, by inserting the right of citizens to put complaints to the European Ombudsman on justice and home affairs into the revised Title VI of the Amsterdam Treaty. These are small, but significant advances in the ongoing struggle to establish the right of access to Council documents.

On 26 March the Council rejected a request by the European Ombudsman, Mr Söderman, to respond to six complaints concerning access to Council documents lodged by *Statewatch* editor Tony Bunyan. The Council had told the Ombudsman that the complaints "are inadmissible" and "their substance cannot be considered" because the complaints concerned "documents relating to justice and home affairs cooperation".

However, on 20 June the Council did a complete, if at times reluctant, U-turn and sent the Ombudsman a response to try and answer each of the six complaints.

The Council is still not conceding the Ombudsman's general right to inquire into refusal of access to documents concerning justice and home affairs:

In order to enable you to consider Mr Bunyan's complaints from the sole point of view of how the Council administered its Decision 93/731/EC [the Code of access], without examining the content of the documents requested nor appraising the substance of documents falling under Titles V and VI of the TEU and their confidential

character (Article 4(1) of Decision 93/731/EC), the Council is prepared in the spirit of sincere cooperation, to supply all useful information concerning the procedure it followed to apply the Decision in this case.

On the three major complaints - where complaints followed "confirmatory applications" and the final decision was taken by the Council of Ministers - the Council seeks to defend its decisions and is not budging. These three major complaints are:

1) over the use of the term "repeat applications" - where every new request is treated as a "repeat application" because requests always concern the Council of Justice and Home Affairs Ministers. Refusing access by saying that "a very large document" (which is the Decision on access to documents) means the same as "a very large number of documents" (which is not in the Decision on access to documents). Where either the excuse of "repeat applications" or "very large number of documents" is used by the Council they then use a "fair solution" to send only some of the documents requested.

2) the failure to give specific reasons for refusing access to each individual document (which goes against the judgement in the European Court of Justice in the *Carvel* case) and the use of the term "very recently adopted" to deny access. The complaint asked: what does "recently" mean?

3) the treatment of three separate requests sent on different dates, in separate letters, for a different set of documents, as one request, and not even to consider requests in two of the three letters.

On the three, procedural, complaints the Council is giving

ground in response to the *Statewatch* complaints. The complaint that the Council was not “conserving”, that is destroying, agendas of meetings of the numerous Working Parties under the K4 Committee has led to a change of practice:

since the problem arose as a result of the requests made by Mr Bunyan, draft agendas for Justice and Home Affairs (JHA) meetings have been systematically kept by the General Secretariat departments concerned.

The Council's reasoning for not “conserving” agendas in the past is tortuous:

A record of each meeting convened is moreover drawn up solely on the basis of the agenda for the meeting, which is adopted at the beginning of the meeting itself on the basis of the draft agenda sent by telex but which may differ from the draft.

The “non-violation” complaint that the Council fails to keep a register of all decisions taken under justice and home affairs on an updated basis is not conceded but the Council says it is in the process of “setting up its own databases which will.. be accessible via the Internet.” The question as to whether these databases would include *all* documents or some is not clear. As to giving applicant's access to the Calendar of Meetings held on justice and home affairs the Council says:

In the light of Mr Bunyan's arguments, the Secretary-General is now reconsidering its practice and its interpretation of Article 2(2) of Decision 93/731/EC with regard to requests for access to documents of this kind.

Statewatch has until 30 September to prepare its response to the Council's defence of its decisions.

The Amsterdam Treaty change

A small, but significant, change to Title VI of the current Treaty of European Union (TEU) in the Amsterdam Treaty will give citizens the *right* to send complaints to the European Ombudsman - exactly the point rejected by the Council in March and even in its letter of 20 June (which it pointedly notes is not in the current TEU).

Article K.13.1. says that Article 138e of the Treaty establishing the European Community (TEC) shall apply to Title VI - 138e give this right to citizens to complain to the European Ombudsman.

This change of heart during the Treaty negotiations followed an initiative from the new UK government - which changed sides on the role of the European Ombudsman - and put in a successful amendment to the draft Treaty. Another Treaty proposal by the UK was also adopted which will mean that all proposed measures under the revised Title VI will be published in the *Official Journal* prior to their adoption by the Council of Justice and Home Affairs Ministers.

By switching sides the UK gave support to the long campaign by Sweden, Denmark and Finland to establish the right of access.

Report on public access to documents

The report by the General Secretariat of the Council on public access to documents for the year 1996 shows that academics (61 applications), journalists (29 applications) and lawyers (28 applications) led the field.

On the country of origin of applications the UK leads with 55, followed by Belgium 24, Germany 17, Netherlands 12, France 11, and Spain 10.

Way out in front on the “Subject of applications” is Justice and Home Affairs with 71 followed by Environment and trade marks and patents with 12 each - no other area reaches double figures.

The total number of documents requested was 1,071 with 78% being supplied, up from 58.7% in 1995. The “application of a fair solution” under Article 3.2 was used 5 times for a total of

177 documents - largely used against *Statewatch*.

The combination of the UK leading in the number of requests in 1996 and the most popular area being “Justice and Home Affairs” needs no comment.

A good example of why it is necessary to have access to original documents is the widely-circulated *Citizen's Guide: “A new treaty for Europe”, Amsterdam, 17 June 1997* produced by the Commission. There is not a cloud in the sky and it will apparently establish a “more democratic Europe”. There is, of course, a valid role in the EU to provide “information”, but a line has to be drawn between “information” and completely uncritical propaganda.

The “Peers case”

Steve Peers, from Essex University, has lodged a series of complaints concerning access to documents against the EU Council of Ministers and against the European Commission with the European Ombudsman.

The complaints against the Council concerns five areas where he says they have misused, misapplied, or abused the 1993 Council Decision on access to Council documents concerning the work of the Council of Justice and Home Affairs Ministers. The subject matter of the documents refused includes: statistics on racial attacks carried out in the Member States of the EU; information on the implementation of a Joint Action on free movement of school parties and information on Member State asylum practices.

The first complaint concerns issues also raised in the *Statewatch* case, the use of the term “repeat applications”, “very large document” and “fair solution” to refuse access to documents by sending only a small number of those requested. Steve Peers argues that by saying that the term in the Decision, “very large document”, is the same as “very large *number* of documents” the Council “is in clear breach” of the Council's Decision. To great effect he employs throughout his complaints the judgement in the European Court of Justice against the Commission brought by the World Wildlife Fund:

If it is argued that this clause in the Decision is at all ambiguous, all exceptions to the Decision must be interpreted narrowly (ie: in favour of the applicant) according to paragraph 56, WWF v Commission judgement of 7 March 1997. This judgement specifies further that the exceptions cannot be interpreted in such a way as to frustrate the objective of transparency of Union activities.

This complaint also raises the issue of “consultation with the applicant” in relation to finding a “fair solution”. This procedure is referred to in the Code of Conduct concerning public access to Council and Commission documents (6.12.93) and in the Council Decision, “where necessary, the applicant shall be asked for further details” (20.12.93; Article 2.1). Steve Peers states he has never been “consulted” prior (or after) on the use of the “fair solution” (nor has *Statewatch* ever been “consulted” over “fair solutions”).

The second complaint against the Council is the “failure to balance the applicant's interest against the Council's”. In seven instances the Council neglected to balance the interests.

The third complaint concerns the use of the “confidentiality” exception - this allows the Council to refuse access “to protect the confidentiality of the Council's proceedings” (Article 4.2). The Council claimed that to give access to information on the application of a Joint Action of 1994 on schoolchildren's visas could “have negative effects on the Council's discussion on this question” and would “threaten willingness to exchange information”. Steve Peers says this reasoning fails to “give detailed reasons” and, in particular ignores the “public interest”:

It is submitted that information on monitoring the application of Member States' obligations cannot fall within the confidentiality exception to the Decision, given that it has no direct relation to the possibility of adopting a further action on this question.

Citizens clearly have the right to determine whether states have indeed implemented the obligations they have accepted under Title VI of the Treaty of the European Union, in important fields affecting the rights of individuals. If there are divergences in how Member States interpret their obligations, or if there are instances of Member States not complying, it is manifestly in the public interest to know of these matters.

These are standard principles applied throughout the "first pillar" of the European Union as well as in the monitoring of states' implementation of obligations accepted under the instruments of public international law.

The fourth complaint is over the use of the "mandatory" exceptions to refuse access. Steve Peers argues that the use of the exception that disclosure "could undermine.. international relations" can only be used where it is shown that "there is a direct link to international negotiations". Similarly, the use of the exception "protection of public security" can only apply "where there is a direct link to a planned or ongoing operational activity [and] that the document in question would genuinely jeopardise the planned or ongoing operational activity". For example, "it is obviously *not* in the public interest that statistics on racist crimes and asylum policy remain secret."

The fifth complaint concerns the failure of the Council to keep a register of documents (the *Statewatch* case too complains

about this). This "failure" makes it "exceptionally difficult for applicants to gain knowledge of which documents exist."

Steve Peers's two complaints concerning access to information from the European Commission are, first, that the "Commission has illegally imposed "confidentiality" automatically on documents relating to certain committees". He uses as evidence the Commission's internal document which sets out how departments should apply the Commission's Code of Conduct on public access to documents. This states that documents relating to a number of committees "set up under the Commission's aegis must *automatically* fall within the exception of confidentiality" in the Code. The European Court of Justice, both in the *Carvel* case and the *World Wildlife Fund* case, said that there could be no general exceptions of a category - an application for access to each individual document had to be considered. Steve Peers says not only are the Commission's guidelines excluding access to documents from certain committees but *these committees themselves* are then adopting rules of procedure to protect the "confidentiality" of their proceedings.

The second complaint against three departments of the Commission is that they, like the Council, do not maintain registers of documents and therefore make it very difficult for an applicant and frustrates the objective of transparency.

UK: Immigration and asylum: new policies?

Looks at the promises and prospects of the new government's policies

Campaigners are waiting for Labour to make good its pre-election promises to repeal the most objectionable parts of the Asylum and Immigration Act 1996 and to put in place fairer criteria and procedures for asylum-seekers, families and visitors to the UK.

Abolition of "white list"

Since its election, the government has confirmed its intention to scrap the 'white list' of countries deemed safe (currently India, Pakistan, Ghana, Bulgaria, Cyprus, Poland and Romania), whose citizens applying for asylum are subjected to fast-track procedures and restricted appeals under the 1996 Asylum and Immigration Act. It has also confirmed that it will not enforce the Act's employer sanctions, which force employers to make checks on those they hire on pain of fines for employing those without permission to work. In opposition Labour said the measure would deter employers from employing ethnic minority staff.

Removals suspended

One of the new government's earliest acts in taking office in May was to suspend the removal of asylum-seekers to "safe transit countries". The 1996 Act removed the in-country right of appeal from such people, exposing many to the risk of chain deportations on return to France, Belgium and Italy. Labour is pledged to restore this appeal, which had a success rate of over 50% (although the appeal only won the right to have the asylum claim considered in the UK, and did not guarantee that the claim itself would succeed). Refugee workers were dismayed when removals resumed after only 36 hours, but are still confident that the appeal right will be restored soon. Meanwhile, removals to Zaire were suspended and after the overthrow of Mobutu by Laurent Kabila, Zaire was declared a "country of upheaval", which allows its citizens in the UK to claim asylum during the next three months without forfeiting benefit rights. In addition, no asylum-seekers were removed to Algeria after the (mistaken) report of the death of a rejected asylum-seeker who was returned

there in late April.

Benefits for asylum-seekers

These are all welcome if small changes. Meanwhile, the government is conducting an urgent review of all asylum procedures, and it is therefore likely that substantial further changes are in the pipeline. The issue which will be the acid test for the new government's bona fides on asylum, however, is the restoration of subsistence benefits. They were removed from in-country and rejected asylum claimants by the Conservative administration by regulation and then, when that was declared unlawful, by adding the measure to the Asylum and Immigration Bill then going through Parliament (now the 1996 Act). Restoration of income support (which acts as a passport to other benefits such as free prescriptions) would be a lifeline for thousands of desperate asylum-seekers. So far, though, there has been no announcement, although in opposition Labour opposed the withdrawal of welfare benefits from asylum-seekers and pledged to restore some form of basic assistance.

A hopeful straw in the wind might be the government's late withdrawal from an appeal pending in the House of Lords. The previous government had lodged an appeal against the Court of Appeal's ruling that withdrawal of benefit was draconian and unworthy of a civilised country, which was due to be heard on 16 June. The Social Security Department under Harriet Harman decided, barely two weeks before the hearing, to pull the plug on it, saying that there was a "wide-ranging review" of all benefits in process.

Meanwhile, however, asylum-seekers are suffering in conditions of utter penury under the previous government's rules. Local authorities are shipping them out to far-flung areas to comply cheaply with their duty to feed and house those who are destitute; both Westminster and Camden announced their intention in May of sending their asylum-seekers to hostels in Toxteth, Liverpool, which would be much cheaper than keeping them in London. How asylum-seekers with absolutely no money

are expected to keep in touch with their lawyers, the Home Office, the appeal authority and/or friends and relatives they might have in the boroughs concerned is not addressed. To make matters worse, there appears to have been no relaxation of the previous government's policy preventing rejected asylum-seekers from taking jobs, and a number of legal challenges are coming up in the High Court in June.

Need or numbers?

The problem for the Labour government is that the "starve-them-out" policy appears to have worked for the Tories. Certainly, the number of asylum-seekers to the UK was down dramatically in 1996, from 44,000 to 28,000, Europe's largest decrease. The Home Office Statistical Bulletin observes, "An important factor in the fall in applications in 1996 was the introduction, in February 1996, of DSS benefit restrictions to asylum-seekers." That is why a restoration of benefits will be an acid test for the Labour administration; is it genuinely concerned to offer asylum to those in need of it, or will it succumb to the imperative of keeping numbers down?

Bogus gays?

Anne Widdecombe, the former junior Home Office minister who became a brief darling of the left when she spectacularly destroyed Michael Howard's chances of becoming leader of the Tories, was one of the first to play the "race" card on Labour in the aftermath of the election. More accurately in her case, it was the "gay lovers" card: she believes that a flood of bogus gay lovers will descend on the UK, "opening the floodgates for abuse" of the system. "If you allow people to come in on the basis that they have a same-sex relationship you have no real means of testing it," she said.

Her fear was set off by Labour's announcement of a review of policy on immigration for family reunion, including marriage, cohabitation and same-sex relationships. It has already said it will abolish the infamous 'primary purpose' rule, under which couples had to prove that they did not marry for immigration purposes. The rule was used against large numbers of husbands from the Indian sub-continent, particularly those who had had arranged marriages; at one time two-thirds of all applications from the sub-continent were rejected on primary purpose grounds after lengthy cross-examination on the minute details of

the couple's meetings, courtship, marriage and married life. The sighs of relief at the announcement were, however, tempered by fear that the price of abolition of the rule will be the extension of the 'probationary period' before spouses get permanent settlement from one year to two or even four. The 'one-year rule' is already responsible for many women being subjected to the choice of enduring violent and abusive relationships or ending them and risking deportation; the misery of such women would be multiplied if the period were made longer.

On the ground, however, with the Home Office conceding all 'primary purpose' appeals, there is at present nothing but relief at the removal of such a central plank of the 'culture of disbelief' at the heart of the Tories' policies which made all immigrants liars and cheats. There is hope that the incorporation of the European Convention on Human Rights into domestic law will result in a more central role for human rights considerations such as the right to respect for family life, and that policy changes will prevent the deportation of those with British partners or British-born children.

European policy

The Labour leaders made clear before and after the election that they would not remove border controls between the UK and the EU. Their rationale is that to do so would require the introduction of identity cards as the foundation of a system of internal controls, and Labour has summarily rejected the idea of ID cards. This rejection is good news, although it has to be acknowledged that a fairly systematic network of internal controls is already in place, with welfare benefits, social housing and non-emergency health care all contingent on immigration status.

What has emerged from the first few weeks of the Labour administration has been fairly minor changes which may however signal a change in culture at the Home Office, away from exclusion as a priority to a more rights-based immigration and asylum policy. But asylum-seekers are still detained, and the Home Office minister's response to the hunger strike and other protests among detainees at Rochester, Campsfield and Winson Green was no more conciliatory than that of his Tory predecessor. Labour in government shows contradictory tendencies; campaign groups will be redoubling their efforts to ensure that policy is based on principles of justice and humanity.

Italy: the new migration bill - an honourable compromise?

Italy shares with other so called "new countries of immigration" such as Portugal and Spain the speed by which, after being "socially" discovered and acknowledged as a new reality, immigration has been constructed as a pressing social problem. The potential "flood" is, accordingly, addressed by restrictive legislation. Legislation is usually presented and legitimised as a given necessity to be part of the Schengen club. More precisely the Italian migratory legislation has been characterised by a contradictory mix of increasingly restrictive measures on new entries, always matched by liberal provisions of regularisation: in 1986, in 1990 and in 1995.

Such a compromise oriented approach is a mark of the new bill approved by the Council of Ministers on 14 February which, on the one hand introduces very illiberal measures such as the temporary camp for undocumented migrants waiting the implementation of expulsion orders, while on the other allegedly

increases the sphere of social rights for regular immigrants and grants them active and passive voting rights in municipal elections.

Presenting the bill to the press Romano Prodi, the Prime Minister, emphatically stressed that it signals the end of the politics of emergency in dealing with immigration and the beginning of a new era of "governed migration". Indeed the government proposal, consisting of seven sections and a total of 46 articles, is quite ambitious and addresses three separate issues: "the struggle against undocumented immigration and smuggling syndicates", the regulation of labour migration through a system of annual quotas the improvement of rights provision to documented immigrants.

The ambivalent character of the bill is clearly confirmed by the way in which the government has presented the law to the media. On the one hand, various members of the government and

MPs of the Ulivo (meaning Olive tree, the name of the electoral centre-left coalition which won the elections in April 1996) have emphasised that the measures aimed at fighting undocumented migration will bring Italy closer to Schengen, an effort that, as put it by the Minister of interior Giorgio Napolitano, "must be acknowledged by our European partners" (*Il Sole*, 24 ore, 14.2.97). On the other hand, the slogan of "un percorso di cittadinanza" (a path to citizenship) has been constructed to present the progressive side of the bill - a compromise to pass the entry exam of the Schengen criteria and also to appease the centre-right opposition. At the same time it gives the bill a progressive character as would be expected of a centre-left government. A thorough scrutiny of the bill, however, shows that, while the restrictive side will actually make legal entries more difficult and the guarantee of human rights weaker, the sections concerning the provisions of more rights to regular immigrants remains vague and its scope questionable.

The restrictive measures mainly concern the procedures for expulsions and their implementation. The bill sets two types of administrative expulsion: one exceptional that can be decided only by the Ministry of Interior for reasons of public order and security, the other ordinary and issued by the prefects for those who enter undocumented or did not renew their residence permit or turn out to be "socially dangerous". The major innovation is the establishment of "centri di permanenza e assistenza temporanea" whereby individuals, whose expulsion orders cannot be immediately implemented, will be gathered. NGOs such as the Lega Anti-Razzismo, the Green party and the left wing of the coalition have strongly criticised these measures doubting their constitutionality. The biweekly *Solidarieta Come* (Solidarity How), a publication sold by immigrants, has commented on the bill with the telling headline "A Police State" (no 29, 1.3.97) stressing how it contributes to the process of securitisation of immigration. Naturally the new restrictive measure on entries and expulsion have been welcomed by all the parties in the opposition coalition Polo della liberta, by the Northern League, but also by the moderate segments of the Ulivo.

In the field of labour migration the bill introduces a system of annual quota for employed, self-employed and seasonal workers. The quota is to be set every three years by the government in a "migration flows plan" in accordance with the general conditions of the labour market and the demand for immigrant labour in the economy. This measure exclude any possibility for a direct relationship between the demand and the supply of labour and places limits on all entries of workers from abroad. It is also planned that this system will be preferentially applied for those countries that have signed bilateral agreements with Italy on co-operation on the control of emigration. It remains to be seen how this system will actually work and which agencies in the sending countries will be responsible for selecting the workers to be sent to Italy: Italian consulates or governmental agencies of the sending countries? It is reasonable to suspect that such a system will make the market for immigrant labour more rigid and also prone to bureaucratic abuses. It also leaves out all the undocumented immigrants workers already present in Italy. As a result of the last regularisation process decided in November 1995, 243,000 undocumented immigrants have applied for a residence permit of whom so far 234,000 have obtained one, but the Observatory on Migration of Milan estimates that at least another 150,000 have been excluded by the conditions requested for the regularisation .

The liberal measures in the bill aim, according to the government, at strengthening the position of documented immigrants by opening up or offering better security in various areas of citizenship. One feature is the strengthening of immigrants' right to family reunion. The real innovation is, however, the introduction of a "carta di soggiorno" (residence

card) which in principle entitles the holder to the following rights:

- the possibility to undertake any legitimate activity
- re-entry without visa requirements into the national territory - equal access to government subsidised housing
- full access to free education
- equal access to public health services
- starting with the 1999 administrative elections, the right to vote and be elected in municipal election (an immigrant however cannot be elected mayor or vice-mayor because there is a law specifically requiring Italian citizenship for these offices).

At first sight these measure look quite progressive and liberal and would certainly contribute to make the presence of immigrants in Italy less informal and more secure. However, certain limits must be noted.

First, the bill does not explicitly repeal all previous legislative measures and implementation requires a new administrative code, leaving open the question of how these measures will be applied in practice. In particular it does not abolish the question of reciprocity and therefore weakens the rights of immigrants to exercise any legitimate activity: administrative agencies might deny the right to buy property or open a business to an immigrant with a residence card but who comes from a country where such rights are denied to Italians.

Second, the residence card can be issued only to those who have resided legally in Italy for at least six years and it leaves out many individuals who do not meet this condition because of the lengthiness of bureaucratic procedures, as indicated by many stories carried in the press. Samia Kouider, an Algerian sociologist, for instance has explained how she has been in and out of the country and worked regularly with various temporary permits in Italy since 1990 but obtained her residence permit only in 1993 (*Il Manifesto*, 16.2.97). Incidentally it can be noted that, in view of the enfranchisement, a requirement of five years is suggested by the European Convention on the Participation of Foreigners to Public Life at the Local Level. Third, the residence card requires also that the applicant matches a minimum criteria of income in accordance to the number of persons in his/her family. This criteria, which inevitably will be rigid and not always clear-cut, will have to be ascertained and applied by an administrative structure such as La Questura, that is the police. Moreover, the income criteria discriminates against immigrants in relation to the composition of their families, for example, for families with equal incomes, those with larger families are disadvantaged. A fact that in practice weaken the right to family reunion.

Finally the residence card can be taken back if the holder is simply charged with certain categories of crimes, without even waiting until the end of the trial. It must be noted that among the crimes covered are several where someone can be accused and brought to trial simply on the basis of being denounced by another individual. So an immigrant could loose their residence card simply because of what might in the end turned out to be a mere defamation.

These brief considerations support the view that the liberal measures are limited in scope and run the risk of being restrictively implemented by administrative agencies. They are not enough to qualify the bill as progressive as the left component of the government has tried to do. On the other hand, some have argued that, given the diplomatic pressure from the European partners and the political position of both the opposition and of some segments of the ruling coalition, it represents the best possible compromise. However, such pragmatism serves to legitimise a conservative approach to migration and leaves the progressive left with no distinctive programme of reform.

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