

statewatch

monitoring the state and civil liberties in the UK and Europe

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"DINOSAURS" ON THE MARCH AGAIN?

"BRUSSELS STITCH-UP" THREATENS RIGHT OF ACCESS TO EU DOCUMENTS

THE COMMITMENT

Any citizen of the Union.. shall have a right of access to European Parliament, Council and Commission documents..

Article 255 of the Treaty establishing the European Communities (TEC, Amsterdam Treaty)

This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.

Article A of the new Treaty on the European Union (TEU, Amsterdam Treaty)

The Amsterdam Treaty embraces the concept of openness..by granting citizens of the Union a genuine right of access to European Parliament, Council and Commission documents..

Discussion paper on public access to Commission documents, 23 April 1999 and summarising the discussions held between "officials" from the European Parliament, Council and Commission

THE "STITCH-UP"

Under the present arrangements, all internal Commission documents are in theory accessible, unless covered by one of

the exceptions explicitly cited in the code of conduct.. In order to avoid any problem that may arise in the future and make it easier to apply the right of access, the new legislation should define what is meant by a "document from one of the institutions"...

Consequently, the scope of future legislation would not extend to working documents produced in the form of a contribution to internal proceedings.. This would make it possible to protect proceedings while ensuring access to the final outcome.

... an embargo could be imposed.. to delay access to certain documents to avoid any interference in the decision-making process and to prevent premature publication of a document from giving rise to "misunderstandings" or jeopardising the interest of the institution (eg: granting access to preparatory documents only after the formal adoption of a decision..

Discussion paper on public access to Commission documents, 23 April 1999 and summarising the discussions held between "officials" from the European Parliament, Council and Commission

Proposals drawn up by senior officials from the Council, Commission and European Parliament are seeking to deny citizens access to documents in direct contravention of the Amsterdam Treaty. The Amsterdam Treaty built on the successful challenges by citizens, in the Court of Justice and through the European Ombudsman, by explicitly establishing a right of access in EU Community law. The forces for secrecy in the EU - referred to by Mr Söderman, the European Ombudsman, at a Conference in Brussels on 26 April as the "dinosaurs" - are trying, under the cloak of implementing the Amsterdam Treaty, to turn the clock back so that the institutions can control what documents are to be released, to whom they will be released and when they will be released.

At the centre of this "stitch-up" are two key proposals:

1. In place of a right of access to all documents, documents would be divided into two categories:
 - a. "Accessible" documents concerned with the legislative process - new measures on police and customs cooperation under the revised Title VI of the TEU - and Regulations and Directives under the TEC. Access to these would be granted to the citizen subject to point 2 below and the current exceptions.
 - b. All other documents (except organisation and administrative ones) would be classified as internal "working documents" and would be "automatically" excluded from access.
2. Having divided documents into "accessible" (1.a above)

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UK: Immigration and Asylum Bill see page 16

EU-FBI telecommunications surveillance system see page 19

Statewatch, PO Box 1516, London N16 0EW, UK

Tel: (00 44) 0181 802 1882 Fax: (00 44) 0181 880 1727 E-mail: office@statewatch.org

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and non-accessible (1.b above), even "accessible" documents would be subject, in addition to the current exceptions (Article 4.1 of the 1993 Decision), to:

an embargo [which] could be imposed.. to delay access to certain documents to avoid any interference in the decision-making process and to prevent premature publication of a document from giving rise to "misunderstandings" or jeopardising the interest of the institution (eg: granting access to preparatory documents only after the formal adoption of a decision..

Discussion paper on public access to Commission documents, 23 April 1999 and summarising the discussions held between "officials" from the European Parliament, Council and Commission

The effect of these two proposals would mean that citizens and civil society would be *excluded* from public debate and the decision-making process - they would only be granted access, under the "embargo" system, *after* measures/legislation had been adopted.

The division between legislative and internal working documents would also mean that *all* documents concerning the *practices* of the institution could be defined as internal working documents. In the field of justice and home affairs more than 50% of the documents produced are not concerned with new measures/legislation but with practice.

Stewatch editor Tony Bunyan commented:

"These proposals would set the clock back and reimpose the secrecy of the pre-Maastricht days, they have no place in a democracy.

They have all the hall-marks of a "Brussels stitch-up", of a deal between the officials to exclude citizens and civil society from the decision-making process and from any knowledge of the ongoing practices of EU bodies and agencies.

The proposals even suggest that an "embargo system" should be created and access to documents delayed to "avoid any interference in the decision-making process" and to prevent "misunderstanding". In short to exclude citizens from finding out what is to be adopted in their name until after it had been agreed.

Such ideas seek to reimpose the pre-Maastricht "lobby-system" whereby "Brussels-based" trusted sources are given privileged access to information.

The Amsterdam Treaty was intended to enshrine the right of access to documents following years of conflict especially between the Council and citizens.

Let us hope that the European Parliament and those EU Member States in favour of openness will throw these proposals out. And the Commission should know better, has it learnt nothing? Secrecy breeds corruption, cover-ups and the abuse of power.

Citizens and civil society have to demand that the right of access to documents is not subverted and that the spirit of the Amsterdam Treaty is followed to the letter."

The proposals came to light when a "Discussion paper" from the European Commission (dated 23 April 1999) and a earlier document "leaked" to *Stewatch* (dated 22 January 1999) were distributed at a conference in Brussels on 26 April: "Opening doors for democracy in Europe - transparency and access to documents" organised by *Stewatch*, the European Federation of Journalists (EFJ), Group of the Party of European Socialists (PSE), Group of the European Liberal, Democratic and Reform Party (ELDR) and the Green Group in the European Parliament (V).

See feature on page 23

Draft Communication to the Commission from the President on public access to Commission documents, Brussels, 22 January 1999, SG.C.2/VJ.CD/D(98)12 (Stewatch translation); Discussion paper on public access to Commission documents, Brussels, 23 April 1999, SG.C.2/VJ/CD D(99)83; Stewatch press release: "EU plans to undermine citizens' right of access to documents", Brussels, 26 April 1999.

IMMIGRATION

GERMANY

Citizenship reform law disputed

German citizenship law is based on the "blood principle" (*Jus sanguinis*), which makes it almost impossible for anybody who is not of German origin to be recognised as a citizen. Other European countries practice the "soil principle" (*Jus soli*), which grants citizenship on the basis of having been born in a country. Although abolition of the racist German law is long overdue, government attempts to amend it have been greeted by a backlash of nationalist opposition. At the start of the year the conservative *Christlich Demokratische Union* (CDU) together with her sister party, the *Christlich-Soziale Union* (CSU), launched a petition to "mobilise the population" against the reforms, particularly those amendments relating to dual nationality.

Reform of the citizenship law has long been a demand by the Green party and was advocated by sections of the *Sozial Demokratische Partei Deutschlands* (SPD) while the CDU was still in power. It was, therefore, a central point in the coalition agreements between the SPD and *Buendnis '90/Die Gruenen* when they won the general election in 1998. In mid-January this year, the Interior Minister Otto Schily (SPD) presented a *White Paper on the Reform of the German Citizenship Law* in which important paragraphs of the foreigner as well as the citizenship law were to be reconsidered.

If the White Paper was to be adopted, the following would apply:

* *Children born in Germany will receive citizenship if one parent was born in Germany or has immigrated before the age of 14.*

* *Adult foreigners will receive citizenship after eight years (formerly 15 years) of legal residency. Under-age foreigners will receive the right to German citizenship after five years residency (formerly eight years) if one parent has unlimited right to abode.*

* *Foreigners married to a German receive citizenship after three years of legal residency if the marriage has been existing for two years.*

The White Paper does not require the applicant to give up his/her original citizenship, thereby allowing dual nationality. Schily's proposal did, however, make the granting of German citizenship dependent on other criteria. Applicants have to give a written pledge to the "free democratic constitutional structure", (i.e. to the Basic Law, which has underpinned Germany's political and legal system since 1947); they have to be able to speak German (the degree of proficiency not being determined), and finally applicants should not receive social or unemployment benefits nor have a criminal record. The Greens wanted to include a hardship clause in order to include those dependent on benefits. The SPD chairman, Peter Struck, however rejected the proposal with the argument that the Federal Government, its *Laender* and their municipalities would not be able to deal with the consequent financial pressure due to acute budget deficits.

These amendments, although neither a radical change, nor at variance with citizenship laws in the rest of Europe, signify an important and necessary step towards changing the legal remnants of Germany's racist past. The CDU/CSU however, have reacted strongly against the reforms and initiated a petition in order to rally opposition to them. Exploiting xenophobic fears, between January and April, they collected 4.5 million signatures from German citizens opposed to dual nationality. Given the airing of racist sentiments at their public collection points, it was not only dual nationality that was opposed, but the mere presence of foreigners as well. It comes as no surprise then that the far-right *Nationale Partei Deutschlands* (NPD) offered to support the

CDU in their campaign. It was an offer that received little opposition from within the party. The campaign also coincided with regional elections in Hesse where the CDU/CSU ran a campaign that exploited racist fears to win a majority. They have, therefore, not merely won support through condoning the public acceptance of racist sentiments but have managed to destroy long overdue attempts to change the most racist citizenship law in Europe.

Rather than resisting the reactionary backlash, the SPD is now looking to amend the proposal and is discussing the so-called "Option Model" proposed by the *Freie Demokratische Partei* (FDP), which is basically a reform of the reform. The FDP wants to automatically grant German citizenship to children of foreigners who have been legally resident in Germany for at least 10 years. By the age of 18 however they should decide for a single nationality, thereby only allowing dual nationality for a limited time until reaching the age of majority. This proposal is seen as a compromise by the FDP as well as increasing sections of the SPD.

Parallel to this, the CDU/CSU have drawn up a seven point proposal which demands specific amendments of Schily's reform. Amongst others things, it demands the abolition of any possibility of dual nationality and proposes the automatic naturalisation of "third generation immigrants". They further oppose the proposed reduction of necessary years of residency before naturalisation. Instead of eight years (for adults) and five (for under-age children) years, the CDU is demanding 10 and seven years respectively. Further, they want to introduce "prior integration achievements"; some *Laender* specifically demand language tests and all CDU/CSU led *Laender* demand "loyalty to the constitution", both of which the CDU/CSU want to see monitored.

By demanding language tests and extending the required length of residency, the amended proposals seek to ensure that naturalisation is only possible after "Germanification"; the focus is, therefore, on "integration". For older immigrants, the planned amendments are no improvement, merely opening possibilities, if few, for the younger non-German generation. The CDU has therefore achieved its aim, which is to turn the proposal away from an attempt to introduce the soil principle to a general discussion on what it is to be "German". Another dangerous development is the provision to deny naturalisation when the applicant portrays "tendencies towards political extremism", which entered the discussion after the Ocalan crisis. Given the perceptions of the Kurdish population in Germany, the definition of "extremism" is likely to be applied to the majority of the Kurdish community, which is also one of the largest migrant groups.

ITALY

Turco-Napolitano law amended

On April 28, the regularisation of 250,000 immigrants announced in a government decree amending the Turco-Napolitano law which had fixed a maximum quota of 38,000 regularisations for irregular immigrants on February 9, is due to commence in Italy (see *Statewatch* vol 9 no 1). The decree resulted from the large number of requests (308,233) registered within the December 15 1998 deadline, with Albanians forming the most consistent national group (40,000), followed by Romanians and Moroccans.

This "more generous" measure has been accompanied by several others which have effectively introduced a tougher immigration regime. Among these special attention must be paid to those concerning the "assisted repatriation" of unaccompanied minors and the simplification of expulsion procedures. The measures adopted following the original text of the Turco-

Napolitano law resulted in the issuing of 54,000 expulsion orders, compared with figures of over 7,000 expulsions for the previous year.

The Turco-Napolitano law came in for severe criticism from the xenophobic *Lega Nord* (Northern League), which called for its abolition and published a counter proposal with tougher measures, including shorter appeal times and quicker expulsions. These included the absurd proposal that: "If citizens of a specific country are the object of a number of arrests on Italian territory which is superior to the total average of arrests for all foreigners, in the previous solar year, the quota [of entry permits] for that country will be cancelled." Such proposals would make entire communities liable to suffer for the acts of individuals.

Migrations Europe, January, February, March 1999; La Repubblica 9.2.99, 9.3.99; Lega Norde "The law proposal by popular initiative" (Referendum proposal).

Immigration - new material

Recent developments in immigration law, Jawaid Luqmani, Chris Randall & Rick Scannell. *Legal Action* March 1999, pp10-15. First of regular updates on developments in immigration legislation, practice and case law; includes an analysis of the UK Immigration and Asylum Bill 1999.

The end of the road, Amanda Sebastyen. *Red Pepper* March 1999, pp16-17. This article looks at Romany refugees who are attacked and frequently murdered by police and skinheads in the Czech and Slovak republics, then racially harassed on their arrival in the UK before being subjected to enforced deportation. Under the new White Paper on asylum and immigration, Sebastyen observes, this will "become law for all asylum seekers." The Roma Refugee Organisation for Czech and Slovak asylum seekers can be contacted on: 0171 272 9449.

Parliamentary debates

Immigration and Asylum Bill *Commons* 22.2.99. cols. 37-130

Kosovo Refugees (Humanitarian Assistance) *Commons* 31.3.99. cols. 1089-1102

LAW

UK

Pinochet round two

There was no euphoria when on 24 March the House of Lords reaffirmed its earlier decision that as a former head of state, Pinochet was not immune from prosecution or extradition for international crimes such as torture (see *Statewatch* Vol 8 no 6). Satisfaction that the advance in international human rights law represented by the previous decision had not been lost was tempered by the dramatic reduction in the number of charges surviving the Lords' judgement. The realisation that Pinochet could not be tried in Britain or Spain for the crimes he committed in the worst period of the repression, from 1973 to 1976, muted the celebrations over the fact that he could still be tried at all.

On 17 December 1998 an extraordinary panel of law Lords set aside the order of the House of Lords ruling that Pinochet was not immune from legal process. In their reasons, given on 15 January, they ruled that Lord Hoffmann, whose vote was decisive in the 3:2 split, was automatically disqualified from hearing the case under the principle that "a man may not be the judge in his own cause" by virtue of his directorship in Amnesty International Charity Ltd, a company wholly controlled by Amnesty International, which was an intervenor represented by counsel in the case, arguing for Pinochet's extradition. They

directed a rehearing before a differently constituted panel. Hoffmann was severely criticised and there were calls for his resignation, but there is a belief that he carried the can for the others, who knew about his directorship and discounted it as unimportant.

The rehearing started on 18 January before a panel of seven judges, including four of those who had overruled the previous decision, and lasted twelve days. The Crown Prosecution Service, on behalf of the Kingdom of Spain, perhaps unsurprisingly, lost confidence in the immunity argument and put at the front of their case a new argument, that Pinochet was responsible for many crimes committed before the coup, when the issue of immunity did not arise. They relied on new Spanish evidence. Pinochet's team were thus forced to come up with an argument other than immunity to defeat the new stratagem. What they came up with proved a winner. Pinochet's team presented arguments on extradition law asserting that Pinochet could not be extradited for something which was not a crime in the UK when he did it. Clare Montgomery QC argued that it was unfair that he should be extradited for something for which he could not now be prosecuted in the UK, since torture only became an extra-territorial offence (one punishable in the UK wherever committed) in 1988, when the Criminal Justice Act brought the Torture Convention into force in Britain. The Lords (with the exception of Lord Millett) were strongly attracted by this argument, and summarily rejected the counter-argument that crimes against humanity were universally punishable under common law before the 1984 Torture Convention, or that based on the plain words of the Extradition Act, which requires only that such behaviour would now constitute a crime under UK law.

The hasty, cursory way the counter-arguments on extradition were dealt with, and the evident gratitude with which, during the hearing, the Lords seized on and expanded Pinochet's arguments based on the date the offences were committed, led to widespread suspicion that the Lords were anxious to find a resolution to the case which let Pinochet out without doing any more damage to the prestige of the House of Lords as the world's senior common-law court. This resolution had the merit of retaining the ground-breaking human rights-based judgment of the previous panel, too. All the Lords urged home secretary Jack Straw to think again about the wisdom of granting a further authority to proceed, in the light of the vastly reduced charges (only one substantive torture charge, and parts of two conspiracy to torture charges, all post-1988). The argument that the murders committed at Pinochet's instigation should be considered crimes against humanity in the light of their scale and purpose went unacknowledged in the judgments, so the murder charges were all excluded as having nothing to do with international crimes.

It is to Jack Straw's credit that he maintained his original decision to grant authority to proceed in the face of an impressive mobilisation of support among persons who might be said to have a personal interest in the question of state immunity. Straw based his decision on the seriousness of the remaining offences and the fact that Chile, while asserting its own domestic jurisdiction over Pinochet, had still failed to request his extradition. The Spanish authorities have now come up with a further group of 30 to 50 charges of post-1988 torture for magistrates to consider.

ITALY/US

Cermis victims denied justice

The American airforce crew responsible for the disaster on the Cermis mountain near Cavalese, in the Italian Alps, caused by a US Army Prowler plane which severed the cable of a ski slope cable car on February 3 1998, have avoided prison sentences at their court martial in Camp Lejeune, North Carolina. The trial

was held in the US under Article 7 of NATO's London Convention (1951) because the crash was interpreted as resulting from "acts and omissions conducted while on official duty" (Para 3.ii), and therefore falls within the jurisdiction of the US military authorities. There was widespread criticism of the sentences, and anger at the fact that the trials were held in the US, not in Italy. Prime minister D'Alema stressed that the not guilty verdict received by pilot Richard Ashby was "a serious problem" between the two countries. He added that it would be necessary to discuss the 1951 treaty, because:

It will be necessary to see and understand whether this convention works or doesn't work, and if it effectively ensures the possibility of obtaining justice.

In February, pilot Richard Ashby, was found not guilty of causing the deaths of 20 people and a series of lesser indictments which could have brought him a combined sentence of up to 206 years in prison. His acquittal came despite the fact his Prowler was forbidden to engage in low flying exercises under NATO regulations and despite the fact that the pilot and his navigator had conspired to destroy the flight video, along with any evidence of misdemeanour it might have contained. Ashby had hidden the videotape and gave it to his navigator a few days later, with the advice; "Make it disappear, otherwise they'll eat us alive", which suggests that the accident was due to an irresponsible action on the part of the crew, rather than misfortune. A second trial, relating to the cover-up and destruction of evidence by navigator James Schweitzer, would be conducted with greater care and determination than the Americans promised. A month later Schweitzer was expelled from the marines for obstructing justice and destroying evidence after pleading guilty. His plea provided a verdict designed to prevent the court from falling into ridicule, while sparing the navigator any penal punishment.

On the day before the accident the Americans had submitted a list of aircraft, including Prowlers, requesting that they should be cleared for low flying exercises. The Italian authorities at the Aviano base should have corrected the irregular US application for clearance for exercises the Prowler was not allowed to carry out in Italian airspace. But authorisation was granted and then confirmed by the control centre in Martinafranca.

During their enquiries investigating magistrates from the attorney's office in Trento, Francantonio Granero and Bruno Giardina, pointed to another six authorisations which violated NATO agreements in the months leading up to the tragedy. This happened in spite of a 1997 telegram from Italian military aviation to NATO headquarters limiting the number of low altitude flights to be carried out. It explicitly prohibited training flights for aircraft which were in transit, such as the Prowler. The magistrates' conclusions stressed the chain of command responsibility of the 31st squadron, but were also critical of the Italian military authorities responsible for controlling US flight activities. They claimed that they were in awe of American military personnel and overlooked "the frequent violations of flying discipline, committed by pilots from the American squadrons". These violations were often followed by inconclusive investigations with no proceedings taken against Italian or American personnel.

The magistrates had asked for the prosecution of seven American servicemen involved in the Cermis incident, including the four members of the crew (Ashby, Schweitzer, William Rainey and Chandler Seagraves), the squadron leader, Richard Muegge, an officer, Marc Rogers, and Timothy Peppe, the US commander of the Aviano airbase. Commenting on Ashby's trial, Giardina said that he was not surprised by the verdict because:

Once the proceedings started to follow a path whereby they were leaving out certain figures, who were co-defendants in the trial, especially from the summit of the marines' hierarchy in Italy, the decision which was reached was the only possible solution.

Giardina and Granero also passed on documents to the Padua military attorney's office for them to investigate Italian responsibilities in the Cermis disaster, with the possibility of taking criminal proceedings against colonel Orfeo Durigon for failing to carry out his orders.

The picture which emerges from the magistrates' enquiry is that Italian and US Air Force personnel colluded in:

...blatantly and repeatedly violating the regulations, particularly with regards to the norms prohibiting low altitude flights, which appear to have been repeatedly ignored or circumvented by those concerned in the Italian [Durigon] and US command [Pepe].

These violations increased the risk to civilians and eventually led to the death of twenty people at Cermis. Under NATO convention the US military authorities at Cape Lejeune were then allowed to grant immunity to the personnel responsible. This outcome occurred despite evidence of the US airforce crew tampering with evidence in an attempt to obstruct the course of the inquiry and damning evidence of incompetence in the US/Italian military chain of command from magistrates working outside the military establishment. The president of the association of parents of the victims of the Cermis disaster, Klaus Stampfl, whose mother perished in the disaster, could not hide his disappointment at the outcome:

I don't believe in a justice that absolves pilots who are responsible for the twenty victims on the Cermis and then expels the navigator just for having destroyed a video tape. Like I don't believe that Schweitzer's destruction of the video tape was simply a stupid act. That burnt video tape contained the missing pieces of a puzzle that will now be impossible to piece together.

La Repubblica 3.2.99, 4, 5, 8 & 16.3.99, 3.4.99.

Law - new material

Parliamentary debates

Access to Justice Bill Lords 16.2.99. cols. 551-571

Access to Justice Bill Lords 16.2.99. cols. 580-619

Access to Justice Bill Lords 16.2.99. cols. 627-671

Youth Justice and Criminal Evidence Bill Lords 2.3.99. cols. 1576-1621

Youth Justice and Criminal Evidence Bill Lords 2.3.99. cols. 1633-1654

Youth Justice and Criminal Evidence Bill Lords 8.3.99. cols. 12-40

Youth Justice and Criminal Evidence Bill Lords 8.3.99. cols. 53-91

Access to Justice Bill Lords 16.3.99. cols. 611-627

Access to Justice Bill Lords 16.3.99. cols. 646-693

Youth Justice and Criminal Evidence Bill Lords 23.3.99. cols. 1148-1170

Youth Justice and Criminal Evidence Bill Lords 23.3.99. cols. 1183-1237

NORTHERN IRELAND

Northern Ireland - new material

UDR men acted as covert British death squad, Laura Friel. *An Phoblacht/Republican News* 25.2.99, pp10-11. Article on the Ulster Defence Regiment and its collusion with British Army special forces, RUC police officers and loyalist paramilitaries in covert sectarian operations, including assassinations and bombings, during the 1970s.

Dairmuid O'Neill: a case of shoot to kill. Justice for Dairmuid O'Neill

Campaign. This broadsheet outlines the questions that remain unanswered about the police killing of unarmed "IRA suspect" Dairmuid O'Neill in September 1996. The Campaign is calling for an independent public inquiry in light of a recording of the shooting and the lack of objectivity of the Police Complaints Authority. The Campaign can be contacted at BM Box D O'Neill, London WC1N 3XX.

Rosemary Nelson 1958-1999. *Just News* (Committee on the Administration of Justice) Vol 14, no 3 (March) 1999. Special edition of the bulletin is devoted to CAJ executive member and civil rights lawyer, Rosemary Nelson, who was killed in a loyalist sectarian attack in March. Widespread calls for an independent inquiry into her murder were quashed by RUC chief constable Ronnie Flanagan who announced instead that the investigation would be overseen by Kent chief constable David Phillips with the assistance of the FBI.

Fighting talk, Ronnie Flanagan. *Police Review* 22.1.99. pp20-21. Article by the RUC chief constable. He argues that on the one hand that it is appropriate that levels of policing and military activity are "adjusted" as a result of the peace process. On the other hand "the RUC's capability to protect people against the persisting terrorist threat" has to be maintained.

Statistics on the Operation of Prevention of Terrorism Legislation: Great Britain 1998. *Statistical Bulletin* (Home Office) Issue 3/99 (March) 1999, pp20.

Parliamentary debates

Northern Ireland Arms Decommissioning Act 1997 (Amnesty Period) Order 1999 Lords 16.2.99. cols. 619-627

Northern Ireland Commons 22.2.99. cols. 131-150

Royal Ulster Constabulary Commons 24.2.99. cols. 301-321

Belfast Agreement Lords 24.2.99. cols. 1109-1155

North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999 Lords 9.3.99 cols. 193-201

Prevention of Terrorism Act 1989 Order 1999 Lords 18.3.99. cols. 901-912

CIVIL LIBERTIES

Civil liberties - in brief

■ **Denmark: Internal surveillance in kindergarten:** A semi-private childminding facility in Copenhagen has installed surveillance cameras, linked to parents' workplaces via the Internet, so that the activities of the children and their teachers can be observed. The installations, it is claimed, will increase parental involvement in their children's lives. However, this one-way observation, which recalls Bentham's notion of the panopticon in Victorian British prisons, raises serious ethical and human rights questions over both children's and educationalists' right to privacy. It also begs the question of the effect of constant surveillance on children and on their interaction with one another and their teachers. There has been no discussion of how problems arising from the surveillance will be dealt with, discussed or resolved. The experiment has been welcomed enthusiastically by officials and parents and the model will be followed by other institutions. There have been few critical comments, although one observer remarked that the slogan "Big Brother is watching you" should be modified to "Big Mamma is watching you, kid".

Civil liberties - new material

How to end the great benefit fraud, Frank Field, *Times* 23.3.99. This

article, by Labour's former Minister for Welfare Reform, presents a "solution" to the "great benefit fraud": To "ensure that a person is who they claim to be...by DNA testing. Instead of issuing NHS and child benefit numbers at birth, a single national insurance number could be issued, linked to a person's DNA."

The hounding of the tinkers, Fisher Dilke. *Independent on Sunday magazine* 25.4.99, pp10-15. Account of Sweden's enforced sterilisation programme: "Sweden...had sterilised more than 63,000 people, 90 percent of whom were female. About 11,500 of the 63,000 were mentally disabled." Between 1935-1941 about 500 sterilisations were performed each year. In 1941 the law was changed, and it became legal for sterilisation to be performed on people who were deemed to have an "antisocial lifestyle"...this change in the law was used to target a particular sector of society - travellers.

Parliamentary debates

Human Rights (Women) *Commons* 10.2.99. cols. 256-278

Sexual Offences (Amendment) Bill *Lords* 13.4.99. cols. 647-764

MILITARY

UK

Police/MI5 operation nets "neo-nazi" soldiers

Within weeks of the *Express* leaking a story that Scotland Yard and MI5 were involved in covert operations against violent racist organisations, a joint action was carried out on March 5. A series of police raids, which also involved the military police and Special Branch, arrested three Combat 18 (C18) members in raids at 14 addresses in London, south Wales, Lancashire and Humberside. The raids are part of an investigation into neo-nazi links with the army and with loyalist paramilitary gangs in Northern Ireland. It was carried out under the Public Order Act (1986) which covers acts intended to stir up racial hatred. Two soldiers were arrested in Lancashire, one served with the Parachute regiment, the other is a private in the King's regiment. Police found live ammunition, knives, racist literature and computer discs which were removed for examination.

The use of the army as a training ground for aspiring nazis has been profusely documented over the years. In its March issue *Searchlight* magazine published an article, "Defending the Nation", in which it named a dozen soldiers who were members of C18 or other neo-nazi groups. Many of them were in the Parachute regiment, which has earned a particularly brutal reputation following the Bloody Sunday killing of 14 civil-rights demonstrators in Derry in January 1972. The regiment's new far-right recruits openly support loyalist paramilitary gangs active in Northern Ireland. Several were photographed with a fascist mob that attacked the annual Bloody Sunday commemoration march in London in January. Others had "stewarded" earlier Apprentice Boys marches in the capital.

Searchlight claims that in west London Darren Theron (Parachute regiment) was reported to work closely with Mark Atkinson and Will Browning the leaders of C18. Browning was in the Territorial Army in the mid-1990s and Atkinson was recently released from prison for publishing racist material. In east London, Gary Deathridge, a part-time soldier with the Territorial army, former British National Party election agent and prominent C18 activist with a conviction for attacking a black man, has been suspended from his job as a postman pending investigation of alleged connections with paramilitary loyalist groups according to local press reports. *Searchlight* also reported that in Lancashire a serving soldier, Carl Wilson, was

photographed with the gang that attacked a recent Bloody Sunday commemoration, which led to his being questioned by military police. His colleague Mark Taylor (King's regiment) is alleged to have also attended a number of C18 and loyalist functions.

Press reports have suggested that other military staff are being investigated. However, *Searchlight* has asked why the Ministry of Defence (MoD), which knew of the allegations a year ago, was so slow to take action and why it was "so keen to keep the issue out of the press". In February, Armed Forces minister, Doug Henderson, found "heartening" the MoD's desire to

promote racial equality practices throughout the Services, and to ensure real, meaningful and lasting progress is made. Efforts to recruit more ethnic minority personnel and to introduce a more inclusive culture which fully embraces racial diversity will not be relaxed.

Searchlight point out that neither of the arrested soldiers has been suspended from duty and ask if the army's anti-racist statements are "worth the paper they are written on?"

MoD press release 10.2.99; Searchlight March, April 1999;

Military - in brief

■ **EU: Push for rationalisation:** European Union (EU) institutions indicated that they would press ahead with actions aimed at encouraging rationalisation of the European defence industry. The European parliament prepared to approve the thrust of an Action Plan for the industry proposed in late 1997 by the EU's executive commission following a wave of US defence industry mergers. European industry commissioner Bangemann said the commission would this year propose a number of follow-up measures on standardisation, public procurement, European-wide competitive bidding and rules on intra-EU trade and exports. In a related development the German government, holding the EU presidency in early 1999, said one of its objectives would be to transform the recently adopted EU code of conduct on arms exports into a legally binding measure. *Jane's Defence Weekly* 10.2.99.

■ **UK/USA: BAe-GEC marriage a "bad move":** Senior US Department of Defence officials believe the proposed merger of British Aerospace (BAe) and GEC's Marconi defence electronic unit will damage the European defence industrial base by reducing competition. The deal would raise some of the same questions US officials faced when confronted by the proposed merger of Lockheed Martin and Northrop Grumman last year. That deal was scuttled after the government objected on the grounds that the new company would have to create a share in certain key market sectors. The BAe/GEC merger means that for all practical purposes 90 to 95% of all British production is by one company. *Jane's Defence Weekly* 10.2.99.

■ **Germany/US: MoD slams US collaboration:** The German Ministry of Defence (MoD) regards the transatlantic "two-way street" in armaments cooperation as largely negative. In a report to parliament the MoD wrote that the expected balance has not been met. In 1995 Germany bought defence equipment worth US \$400 million from the USA with the USA purchasing goods worth \$200 million from Germany. *Jane's Defence Weekly* 10.3.99

Military - new material

NATO: United we stand?. Clifford Beal. *Jane's Defence Weekly* 3.3.99, pp 22-23. The NATO Washington summit meeting could prove a contentious birthday party.

Balkan endgame? Richard Bessett. *Jane's Defence Weekly* 31.3.99, pp 22-25. What are the options for a settlement on the ground?

Will NATO go global?. Marc Rogers. *Jane's Defence Weekly* 14.4.99,

pp24-26. One of the biggest issues confronting NATO-members at the 50th anniversary summit is the possible geographic extension of its field of operations beyond the defence of its members borders.

Fusionsverhandlungen zwischen British Aerospace und DASA [Merger talks between British Aerospace and DASA]. *AMI* 1999/1, pp24-26.

Strategiedebatte in de NATO - von verteidigungs-zum Interventionsbuendnis [Debate on NATO strategy - from defence to intervention alliances], Jan Xurpan. *AMI* 1999/2 pp15-21.

Multinational Corps Northeast - Osterweiterung light? [Eastern expansion light?]. *AMI* 1999/3 pp15-20. In April the first common military staff of a German-Danish/Polish army corps will be established in Szczecin.

Eurofor und Euromarfor: NATO-Suedflanke auf Interventionskurs [NATO's southern flank on intervention course]. *AMI* 1999/3 pp10-20. France, Spain, Italy and Portugal have established common rapid deployment forces.

Ruestungszusammenarbeit mit Osteuropaeischen Staaten [Arms cooperation with east European states], Elmar Rauch. *Europaeische Wehrkunde* 1999/2 pp33-35. Military-industrial relations between Germany and her eastern neighbours.

La Force d'extraction de l'OTAN [The NATO extraction force], Yves Debay. *RAIDS* no 154 (March) 1999, pp9-21. On NATO troops in Macedonia ready to intervene in Kosovo.

Morality? Don't make me laugh, John Pilger. *Guardian* 20.4.99. On the "humanitarian" bombing of the former Yugoslavia. Pilger reminds us that the Blair/Clinton alliance has nothing to with "moral purpose" (Blair) nor "principles of humanity" (Clinton), but is a continuation and expansion of Thatcher's military industrial arms trade.

Parliamentary debates

Christopher Young *Commons* 24.2.99. cols. 347-354

Armed Forces *Lords* 24.2.99. cols 1188-1230

NATO *Lords* 3.3.99. cols. 1718-1742

Gulf War Illness *Lords* 24.3.99. cols 1381-1387

Gulf War Illness *Lords* 24.3.99. cols 1397-1412

Kosovo *Commons* 31.3.99. cols. 1204-1218

Kosovo *Lords* 13.4.99. cols. 633-647

EUROPE

NORWAY

Norway joins Schengen

On 9 June 1997 Norway, not a member of the EU, by parliamentary decision entered an agreement on collaboration with Schengen. The agreement stated that Norway would participate in all Schengen activities, including the vast Schengen Information System and Sirene. Norway would have the right to be present and participate in discussions at all decision-making levels, but would have no right to vote and no veto in case of disagreement. If an unsolvable disagreement occurred, Norway would, according to the agreement, be free to leave Schengen. Critics argued that this would in effect leave Norway in a powerless situation. They argued that the option to leave Schengen in case of lasting disagreement would not be a realistic alternative in view of the many Schengen functions that Norway would be involved in.

A minority in the Norwegian parliament, composed primarily of Center Party members, the Christian Democrats and the Liberals (in addition to two small socialist parties) opposed

Norwegian association with Schengen. The Center Party was particularly outspoken. The parliamentary majority favouring association were the Labour Party (Norway's largest party), which was in government (but not with a majority in parliament), and the two conservative parties.

Immediately following the Norwegian parliament's agreement to join Schengen, the Amsterdam summit on 16-17 June 1997 decided to incorporate Schengen into the EU structure. This necessitated a new agreement of association, now with the EU, and the Labour Party government started to prepare negotiations. However, in the national elections in September 1997, the Labour Party did not attain the proportion of voters it viewed as a minimum following (a rather strange, self-imposed criterion) and left office. Consequently, the three main "no-to-Schengen" parties (which are also "no-to-EU membership" parties) - the Center Party, the Christian Democrats and the Liberals - formed a new minority government. On this basis, one might have expected a turn of the tide concerning Schengen. No such turn occurred. Parliament's majority was still in favour of Schengen, and the three once critical parties soon became silent as far as any criticism of Schengen was concerned. The coalition government argued that a majority in parliament had already voted for a Schengen association, and that their task now would be to carry on and conclude what the parliamentary majority had decided.

The government argued that the new round of negotiations, now with the EU, concerned *the institutional arrangements* of the agreement, and not *its material content*, that is, not the many Schengen-duties that Norway would have to take on. The material content, it was contended, had already been agreed on by majority vote in parliament. In March 1999 a bill and a white paper were issued to that effect, and parliament's decision is expected parallel to the entry into force of the Amsterdam treaty.

There are three major and dangerous flaws in the government's position. Firstly, the institutional arrangements which now are on the table, give Norway less say in Schengen matters than before. To repeat, in the earlier agreement, Norway had secured full participation in discussions in all Schengen decision-making bodies. According to the new agreement, Norway will not be allowed to participate in discussions of Schengen matters in the EU bodies which now supplant the Schengen bodies. Instead Norway, and Iceland, which is in the same position, and has negotiated the same agreement, will participate in a Joint Committee outside the EU structure, comprising representatives of Norway and Iceland, the members of the Council and the Commission. Norway and Iceland may make proposals to the Joint Committee, but decisions are to be made by the competent EU bodies. This leaves Norway and Iceland in a vulnerable outsider position.

Secondly, though the new agreement supposedly only deals with institutional arrangements (such as the establishment of the Joint Committee), these arrangements will have a great effect on, and cannot be separated from, the material content of the Schengen obligations and duties which Norway and Iceland take on. The separation is entirely artificial: Norway's and Iceland's weakened position in the relevant decision-making bodies will have a strong impact on the obligations and duties of the two countries.

Thirdly, almost two years have passed since the first agreement to cooperate was entered, at that time with Schengen proper, in June 1997. Great changes have taken place in "the material content" of Schengen since then: the Schengen Information System is being updated and millions of registrations have been added in the system, the Sirene system has been developed further, the integration of Schengen with other registration and surveillance systems in Europe has moved rapidly ahead and so on. The Norwegian government's argument that parliament has already made its decision concerning "the material content" is obviously false.

Why has a government representing the three main “no-to-Schengen” parties in parliament succumbed so completely to the Schengen requirements and obligations? Facing a parliamentary majority favouring Norway's cooperation with Schengen, why has it not at least voiced criticism against the idea, and raised a debate in terms of principles? Clearly because it does not want to do anything which may rock the boat, and threaten its position as government. Criticism out of line with the parliamentary majority would presumably throw a shadow of doubt over its position as a responsible, lasting government. To remain securely in power is more important to the government than Schengen. Power corrupts.

Europe - new material

Policing in Europe - uniform in diversity, Bill Tupman and Alison Tupman, *intellect*, 1999. Reports on research on police functions, where they are common and different within fast-changing priorities.

Dossier Europol 2, Buro Jansen & Janssen and Stichting Eurowatch, 1999, 36 pages. Pamphlet with Chapters on the history of the development of Europol; where is Europol going; and on the concept of organised crime.

Parliamentary debates

European Commission *Lords* 16.3.99. cols. 628-639

Future Financing of the European Union: EEC Report *Lords* 22.3.99. cols. 1004-1066

Berlin European Council and Kosovo *Lords* 29.3.99. cols. 34-47; *Commons* 29.3.99. cols. 731-747

European Parliamentary Elections 1999 *Lords* 22.4.99. cols. 1297-1307

Tacis programme: ECC Report *Lords* 22.4.99. cols. 1307-1336

PRISONS

NORWAY

Juvenile prison custody criticised

The Norwegian Association for Prisons and Care in Freedom (NFF), who organise prison workers and are concerned with the care of offenders, have criticised the use of custodial sentences for those under 18 years of age. NFF leader, Roar Ovreb, said that no juvenile should be held in custody for more than six months; some young people have spent more than a year in prison on remand. Ovreb is also sending a complaint to The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

The CPT visited Norwegian Prisons in 1993 and in March 1997 and issued reports criticising the use of custody for violating Article 10 of The European Convention for Prevention of Torture and Inhuman or Degrading Treatment or Punishment. It focused on restrictions on correspondence with family members and friends, and controls on visits and access to newspapers. They resulted in the prisoner's isolation which, they said, was unnecessary to investigate crimes that they are suspected of. This isolation can mean that a prisoner can spend 23 hours a day in his/her cell. The committee also found that some prisoners suffered from insomnia, depression, headaches and loss of weight because of what is, in effect, solitary confinement. The CPT also condemned the length of time suspects spent on remand and conditions - in many cases prisoners were sleeping on a concrete floor. They also criticised the length of custodial sentences issued by the court. Many of the prisoners interviewed by the CPT

during their 1997 visit maintained that custody was used as a means of psychological pressure to make them confess.

Prisons - new material

Prison Privatisation Report International No 27 (February) 1999. This issue contains a feature on an internal audit of the contract between Wackenhut (UK) Ltd and the Home Office covering the 15 months when the private company took over the industrial functions of HM Prison Coldingley. The unpublished report “discovered mismanagement, inappropriate accounting and unauthorised loans and payments to the company” and recommended pursuing Wackenhut for the recovery of hundreds of thousands of pounds. The Prison Service has launched an inquiry into whether criminal proceedings should be undertaken.

World prison population list, Roy Walmsley. *Research Findings* (Home Office Research, Development and Statistics Directorate) No 88, 1998. Details the number of prisoners held in 180 countries and “dependent territories” and produces estimates of the “world prison population total.”

Parliamentary debates

Persistent Juvenile Offenders *Lords* 24.3.99. cols. 1343-1381

Chelmsford Prison *Commons* 31.3.99. cols. 1063-1070

POLICING

FRANCE

Government covered up police massacre

In March, convicted war criminal Maurice Papon lost his libel suit against Jean-Luc Einaudi who accused him of ordering the killings of 200 Algerians participating in a demonstration while he was Paris police chief in 1961. Papon, backed by the state prosecution service, was seeking 1 million francs in damages from Einaudi. In the course of the trial a former defence minister and the state public prosecutor admitted the deaths of “dozens” of Algerians at the hands of the Paris police, while witnesses described the slaughter. The scale of the atrocity had been denied by successive French governments, who supported police claims that only six people died in outbreaks of factional fighting among demonstrators, and rejected claims by human rights groups that at least 200 people were killed.

Maurice Papon was no stranger to murder. As the secretary-general of the “Service for Jewish Affairs” in Bordeaux between 1942-44 he was responsible for organising four convoys of Jews - about 1,600 people, including over 200 children - to Auschwitz. Most of them died. He went on to become a government minister in the collaborationist Vichy regime. In April 1984 he was convicted of crimes against humanity and sentenced to a symbolic 10 years imprisonment. He is appealing against the sentence.

Papon was also the Paris chief of police from 1958-1967 at a time when the French colonial regime was struggling to maintain a grip on its eight year occupation (1954-1962) of Algeria. From an Algerian people, subjected to a daily regime of imprisonment, torture and murder the *Front de Liberation Nationale* (FLN) emerged to engage the colonialists in a bloody war of independence that they took to the streets of Paris. According to prosecutor Lescloux, in 1961 the Paris police force was “submerged by a storm of hate” towards Algerians, a state encouraged by a memorandum issued by Papon prior to the Paris demonstration which instructed his officers that protestors engaged in criminal activities “should be shot on sight”.

The events of 17 October 1961 have been compared to the round-up of Jews by Paris police in 1942. Up to 25,000 Algerians took part in a peaceful demonstration to protest at a curfew on their movements. Accounts of the events are limited because many of the 11,500 Algerians who were tortured and beaten in holding centres after the march were part of a mass deportation to hastily dispose of potentially incriminating evidence. The events were described by one police officer who participated in the massacre who told *L'Express* magazine:

"We went to the upper floors of the buildings and we fired at anything that moved...It was horrible, horrible. The manhunt went on for two hours - it was terrible, terrible, terrible. We finally all went home because there was nothing left to fight"

Other witnesses described to the court how they had seen demonstrators assaulted, beaten and shot before being dumped into the River Seine by the police.

In court Papon denied these accounts:

I totally deny that the deaths resulted from policemen losing their control. Can you imagine a policeman strangling or castrating someone? This happens everyday in Algeria but not in France (Reuters 5.2.99)

His testimony was contested by the Defence minister at the time, Pierre Messmer, who attributed the police murders to revenge:

The deaths were a result of the hate of the security forces against the demonstrators...resulting from the deaths of several dozen policemen by the FLN that year. (Reuters 5.2.99)

Interior ministry documents, originally scheduled to appear in 2021 but released in May 1998, also confirm details of the atrocity. They disclose that bodies were found drowned in the Seine or the Paris sewers with their hands bound and with evidence of strangulation or bullet wounds. Corpses were recovered downriver from Paris for several days and it was likely that "dozens" (a precise figure is not given) of people died. Government archivist, Brigitte Laine, told the hearing that she was aware of 63 deaths, 23 of whom were never identified, but a third of police files covering the events were missing.

Exactly how many Algerian demonstrators were massacred by the Paris police on 17 October 1961 will probably never be known, but the weight of evidence supports the claims of the demonstrators and human rights organisations that it was in the hundreds. After nearly 40 years the truth of what Patrick Baudouin, the president of the Paris based International Human Rights Federation, has described as a "revolting" crime is beginning to unravel. The French government has been caught in a cover-up while demonstrators and human rights groups have had their allegations vindicated.

While a mass grave connected to the murders is being investigated, it should be recalled that Papon was honoured by president Charles de Gaulle for his actions. The victims and their relatives have had a long wait for the truth to emerge and a full and thorough independent investigation of the police massacre would go some way towards healing their wounds. Mouloud Aounit, of the Mouvement Against Racism (MRAP), pointed out that: "As long as silence reigns, we cannot make progress...". The recent anti-terrorist "Chalabi" show trial reveals, however, that the French authorities are unlikely to lose any sleep over the rights of their Algerian community, past or present.

BELGIUM

Arrests follow banning of anti-war protest

141 people were arrested following the banning of an anti-war demonstration in Brussels over Easter. According to participants police officers and gendarmerie used pepper-spray and CS gas

against demonstrators before they had reached the centre of Brussels. It later emerged that the ban was itself illegal. The decision by the mayor had ignored an injunction against the ban given by the Belgian supreme court.

The demonstration, organised by pacifist and left-wing groups to protest at the NATO bombing of the former Yugoslavia, was banned by the mayor of Brussels on the morning of April 3, following a general ban on all demonstrations. Most of those arrested were picked up whilst on their way to the assembly point. Police used tear gas as well as pepper-spray to drive people off the coaches they had hired to take them to the demonstration.

A *Solidair* journalist, Michel Collon, was so badly beaten that on arrival in hospital he was found to have four broken ribs, a collapsed lung, concussion and broken knees, as well as bruises around the stomach and genitalia. Other victims had injuries that included a broken shoulder while many people suffered from the effects of pepper-sprays and CS gas. A-13 year old girl, held on a coach on her way to the demonstration from Liege, was pepper-sprayed in the face then later strip-searched at the police station. *Solidair* 7.4.99.

UK

Officer faces murder charge over Hastings raid

Firearms officer PC Chris Sherwood has been charged with murder and manslaughter after shooting dead an unarmed man during a raid in January last year. Three of his superiors and another PC also face criminal charges. In an investigation which called into question the conduct of the highest echelons of the Sussex force, the chief constable and his deputy were also suspended with the latter to face disciplinary proceedings. However, a number of questions remain unanswered.

James Ashley was in bed with his girlfriend, naked and unarmed, when thirty officers raided his Hastings flat at 4am. As Mr Ashley stood up he was shot in the chest and died instantly. At a press conference after the raid, Sussex chief constable Paul Whitehouse said that he was "satisfied that the operation was properly and professionally planned [and] that the use of firearms was justified". He said that the victim was a dangerous man wanted in connection with cocaine trafficking and an attempted murder, and had no doubt that the decision to launch the armed raid was right. In fact intelligence reports were wildly inaccurate and it soon emerged that the attempted murder in question had been prevented, rather than perpetrated, by Mr Ashley (see *Stawatch* vol 8, no 3, 4 & 5).

A Police Complaints Authority (PCA) investigation into the shooting was conducted by Kent police and five officers from the raid were immediately suspended. April's news of Sherwood's murder charge was accompanied by charges of misfeasance in public office for superintendent Christopher Burton, acting detective chief inspector Kevin French, detective inspector Christopher Siggs and PC Robert Shoemith. The grounds of the charges relating to each individual are not yet known; misfeasance charges cover misconduct, neglect of duty or abuse of power. The four are to appear at Bow Street magistrates on May 21.

In late July last year a second PCA investigation was launched into the conduct of the chief constable and his senior colleagues. The report is said to allege that the chief constable had been informed that serious mistakes had been made during the raid and that he had then deliberately misled the public by going on television to praise his officers. In early March came the announcement that Whitehouse and his deputy, Mark Jordan, were to be suspended. The Crown Prosecution Service (CPS) has

since advised that there is insufficient evidence for any criminal charges to be brought against the two, and Mr Whitehouse is to return to work after receiving "strong written advice" from Sussex Police Authority. Jordan is to face disciplinary charges at an independent tribunal. If he is found guilty he may be dismissed, required to resign or reprimanded. Assistant chief constable (ACC) Nigel Yeo has also received written advice concerning his conduct, while another ACC, Maria Wallace, has been cleared.

The advice given to Paul Whitehouse and his assistant is to remain confidential. In the week when new regulations on transparency in police disciplinary proceedings came into force, Sussex Police Authority announced that it was in the public interest to keep secret what the highest ranking officer in the force had been found guilty of and how he had been reprimanded. Equally disturbing is that a raid, described as "flawed and shambolic" by Kent's chief constable, was launched on apparently false and misleading intelligence leading to the death of an unarmed man. Few questions have been asked about police methods relating to the acquisition of such information, and the decision-making processes that led to the operation being carried out. One can only hope that the forthcoming criminal proceedings will shed some light on the planning and conduct of the raid, providing a degree of the transparency implicit in the concept of accountability.

James Ashley's girlfriend, who suffered a breakdown following the raid, is suing Paul Whitehouse claiming "trauma, shock and distress", while a claim for damages has been made on behalf of Mr Ashley's son.

Police Review 9 & 30.4.99; Observer 14.3.99.

Policing - in brief

■ **UK: Police video "horrific" arrest:** A 26-year old black woman, Susanne Okoya, had charges of obstructing the police thrown out of a Highbury court after magistrates viewed a police video of her arrest. Ms Okoya was waiting for a friend in Islington, north London in November 1997, when six Metropolitan police officers, who apparently believed she was a drug dealer, ran at her and grabbed her by the neck. She was thrown to the floor and had her arm twisted behind her back while another officer pinned her to the ground with his leg. Ms Okoya was allegedly racially abused and strip searched before the police realised that they had arrested the wrong woman; instead of apologising they charged her with obstruction. Ms Okoya received an apology from the magistrates who informed her that "the police had misused their power." No action has been taken against any of the officers involved but Ms Okoya says that she will seek substantial damages for wrongful arrest, false imprisonment and assault. *Guardian 20.3.99.*

■ **Scotland: CS not "legitimate" for arrests:** The first Scottish court case involving the police use of CS spray brought a rebuke to Strathclyde police from Sheriff William Gayle, who also expressed concern over its use and its effects. The case arose from the arrest of two brothers, James and Charles McCallum, who were found guilty of a breach of the peace. Sheriff Gayle accused Strathclyde police officer, PC Martin McDonald, of being "too ready to use the disabling device to facilitate an arrest...he resorted to using the spray without any warning being given." The sheriff was also clear that the use of the spray in facilitating arrests was not a "proper or legitimate use." The Sheriff's comments were welcomed by the Scottish Human Rights Centre, who have been opposed to the use of the spray since its introduction last year. Director, Alan Miller, said that the comments had major implications for the future use of the spray in Scotland: "It is quite clear that the police will have to re-examine their approach to the use of this spray of which very little is known about its effects. We should now call upon police to

confirm that they will not be introducing CS spray as equipment for their officers." Strathclyde police will now face an action for damages. Scottish police are currently evaluating whether the spray should form part of their equipment after trials were suspended following the death of Ibrahima Sey in London. *Scottish Human Rights Centre press release 5.1.99; Rights April 1998*

■ **UK: PAVA to replace police CS spray:** A Lincolnshire company, Civil Defence Supply (CDS), has been awarded funding from the Department of Trade and Industry to research an alternative to CS spray. Tests on the synthetic, pepper, water-based PAVA follow concern about the toxicity of the solvent MIBK, used in CS spray, which was declared unsuitable for use in the medical journal *The Lancet* last year; two separate Home Office studies also questioned the toxicity of MIBK. According to CDS owner, Eran Bauer: "CS is a warfare chemical used by the military which only came to be used by the British police by default... Although its research is adequate for the military, no one really knows whether it is appropriate for use in police work". The chief constables of three police forces - Northamptonshire, Nottinghamshire and Sussex - evidently agree, having refused to issue the spray to their officers after expressing concerns over its safety. However, a spokesman for the Police Federation has warned that attempts to withdraw CS spray from officers on the street before a replacement is found will be met with "fierce resistance". Paul O'Brien supported tests undertaken by Hertfordshire constabulary into the new synthetic alternative which "will be the second generation incapacitant." However, he would not support the early withdrawal of CS: "The Federation supports work to be carried out by the PSDB [Police Scientific Development Branch] to look at these new substances to see if it will provide us with an alternative, but in the meantime if anyone tries to withdraw our CS, I for one will be screaming for weeks thereafter", he said. *Police Review 19.2.99, 9 & 16.4.99.*

■ **Spain: Protests at police brutality:** There have been protests at increasing levels of police brutality used to control demonstrations in Spain. They refer to events including a demonstration in Madrid in support of American political prisoner, Mumia Abu Jamal (and against the prison regime) which was violently broken up by riot police who beat more than 20 people on Saturday April 24. At the same time, police in Barcelona were attempting to stop a bicycle protest against evictions, when one of them pointed a gun at the demonstrators. There have been several occasions in which the police have used guns, including the killings of a youth from Dos Hermanas and another from Sabadell, shot by *Guardia Civil* and municipal police authorities. On Saturday April 11 a *Guardia Civil* killed Miriam Gomez Cuadrado, 21, in Seville after her friend failed to stop at a police roadblock because he was driving without a license. The police wanted to conduct a breathalyser test. During the car chase that ensued, brigadier Pedro Jimenez Monchon began shooting, killing Cuadrado. Monchon is presently suspended and claims he acted in self-defence. *Boletin Semanal de Centr@infos 28.4.99; Centr@infos no 41 (Barcelona) 12.4.99.*

Policing - new material

Wrong place, wrong time...wrong man, Keith Dovkants. *Evening Standard* 8.3.99. pp10-11. Article on Stephen Moncrieffe, a young black man stopped and searched by Metropolitan police officers investigating a robbery in north London in October 1998. It resulted in Moncreith being treated for a suspected fracture of his forearm which was in plaster for several weeks. Charges of using abusive and threatening behaviour were dismissed by a jury when witnesses described the police as using "excess force"; one of them told the jury, "a person could have died in that situation."

Stop and search powers: research and extension, Stephen Cragg.

Legal Action February 1999, pp6-7. This piece considers the Metropolitan police interim report "Stop and search: reviewing the tactic", two Home Office research papers "Entry into the criminal justice system: a survey of police arrests and their outcomes" and "Statistics on race and the criminal justice system" and the proposed revision of Code A of the Police and Criminal Evidence Act codes of practice.

Hungary's controversial plan to get tough on organised crime, Tamas Orszag-Land. *International Police Review* March/April 1999, pp20-21. This article looks at the introduction of "one of Europe's toughest law and order regimes" or the "Hungarian experiment". Noting that new legislation will "impose radical curbs on human rights", the author also observes that it "might well be followed by the rest of East Central Europe."

Fair hearing? DCC Robert Ayling. *Policing Today* Vol 5 no 1, (March) 1999, pp18-25. In this article the police officer who led the Kent constabulary investigation into the racist killing of Stephen Lawrence, which failed to find any evidence of racial discrimination among the officers conducting the initial inquiry, explains why he believes that the Macpherson report "unfairly labelled front-line officers as institutionally racist."

Screen test, John Dean. *Policing Today* Vol 5 No 1 (March) 1999, pp30-31. Article on an ACPO-backed Gwent police project on a new hand held mobile camera system (Open Circuit Television) "which could revolutionise police surveillance techniques."

Deaths in police custody: reducing the risks. *Police Complaints Authority* 1999, pp18 ISBN 0 9533157 2X, £5. This PCA booklet summarises the conclusions of a conference held last year. It focuses on three "areas of concern", suicide and self-harm, drug or alcohol abuse and restraint methods, based on an analysis of 195 deaths in custody between 1994-1998. It concludes with 16 recommendations and calls for a "multi-agency" approach to reducing risks.

The Lawrence report. *Police Review* 26.2.99. This is a special issue covering the Stephen Lawrence (Macpherson) report and includes interviews with three of the senior detectives (Isley, Crampton and Weedon) who headed the investigation into Stephen's murder and with John Barker who led the review of the investigation. It concludes by interviewing Metropolitan police commissioner Paul Condon and head of Scotland Yard's race and violent crime task force, John Grieve, on the lessons learnt from the case.

The 1998 British Crime Survey, Catriona Mirrlees-Black, Tracey Budd, Sarah Partridge & Pat Mayhew. *Statistical Bulletin* 21/98 (Home Office) 1998, pp93.

Parliamentary debates

Police *Commons* 4.2.99. cols. 1095-1137

Police vehicles *Lords* 25.3.99. cols. 1524-1536

SECURITY & INTELLIGENCE

NETHERLANDS

Mosque suspended after BVD intervention

Plans to build a new mosque in Tilburg have been suspended after the *Binnenlands Veiligheids Dienst* (BVD, the Dutch security service) sent an internal memorandum to the local council claiming that extremist groups dominated the local community. The memorandum, jointly compiled by the BVD and the local police force, stated that existing mosques were controlled by the Grey Wolves or fundamentalist Islamic groups. Other local Turkish institutions such as the Turkish Youth Association and the Turkish Cultural House were also targeted as

being front organisations for far-right Turkish groups. As a consequence the council has decided to postpone any decision regarding a new mosque. Suggestions that threats from Dutch far-right groups against both the council and the local Turkish community were the real reason for the delay have been denied by the council. A spokesperson for the mayor did agree "that tensions could arise from this."

This is not the first time that the security services have attempted to link Dutch Muslims with extremist groups. The 1997 annual report of the BVD claimed that anti-western currents and opinions were gaining ground within Dutch Islamic circles whilst a supplemental report in May 1998, entitled "Political Islam in the Netherlands" stated that "Political Islam offers a religiously based universalism in which the individual is ranked below the collective interest, or absolute submission to the will of Allah." The BVD's obsession with Islam has been criticised by academics. Professor van Koningsveld called the 1997 report "demagogic" whilst Dr van der Valk of the University of Amsterdam suggests in a critique of "Political Islam in the Netherlands" that the BVD perspective "harks back to the view of Islam as warmongering aggressive all-destructive conquerors dominant during the crusades."

Alert March 1999.

ITALY

Andreotti faces murder charges

Giulio Andreotti, seven times Italian Prime Minister, is facing trial accused of being the linchpin in relations between the Mafia and the Italian political establishment following accusations by Mafia turncoats. Roberto Scarpinato, a Palermo prosecutor, has claimed that the *Cosa Nostra's* military power and Andreotti's political power constituted a "deadly war machine" maintained through force and intimidation. On April 8 he asked for a 15-year prison sentence and for the court to bar Andreotti, presently occupying a seat as senator for life, from public office, claiming "continued and aggravated Mafia association",

Andreotti is accused of taking an active part in the mob's criminal activities which include murders, bombings and extortion. The prosecutor stressed that he provided a "permanent", not "occasional" contribution, as part of an alliance in which he benefitted from *Cosa Nostra's* ability to influence Sicilian social and political life. Tommaso Buscetta, a former boss who became the first high-profile Mafia supergrass, answered judge Falcone's questions about the links between the Mafia and the political establishment by saying that if he spoke of these things he would be considered a madman and the judge would be killed. Falcone was killed when a tunnel was blown up in Capaci (Sicily) on May 23 1992, and Borsellino, another judge from the anti-Mafia pool, was killed outside his home by a car bomb in Palermo on July 19. It was only after these events that Buscetta revealed Andreotti's name.

The testimonies accusing Andreotti include eye witness accounts from Mafiosi, particularly Francesco Marino Mannoia and Balduccio Di Maggio who claim they saw Andreotti meeting Mafia bosses, and the latter added that Andreotti and Toto Riina even kissed each other. Andreotti's defence has vociferously questioned the reliability of these witnesses throughout the proceedings, adding that "It is easy for the *pubblico ministero* [Director of public prosecutions] to ask for sentences...when the contrary evidence is ignored...and facts which have been shown to be non-existent are considered certain, and statements which have been proved to be false are treated as truthful."

Andreotti's position has been further undermined by the trial in Perugia where the former Prime Minister is accused of ordering the murder of journalist Mino Pecorelli 20 years ago, to prevent him from releasing damaging information. Prosecutors are expected to ask for a life sentence for Andreotti after

claiming that he was the clear beneficiary of the murder, that the murder could not have been organised without his knowledge, and after Mafia collaborators' revelations that the shooting of Pecorelli was related to damaging information he had acquired concerning the kidnap and murder of Italian Prime Minister Aldo Moro in 1978. He allegedly hired two hitmen - Michelangelo La Barbera, a gangster, and Massimo Carminati, a right-wing extremist - with the collaboration of a politician, Claudio Vitalone and two Mafia bosses, to shoot Pecorelli as he left his office in Rome on May 20 1979.

La Repubblica 9.4.99; *Guardian* 9.4.99.

ITALY

Secret service link to “anarchist” bomb

Judge Antonio Lombardi, who is investigating the bomb which exploded in front of the Milan police headquarters in May 1973, killing four people and injuring 45, has dramatically reopened the trial, in spite of Gianfranco Bertoli's insistence that he planted the bomb on his own. The judge has acted on evidence linking Bertoli, the Italian “anarchist” serving a life sentence for the bombing, to the secret services, for whom he worked from 1954 to 1960 and between 1996 and 1971, with the codename “Negro”. Lombardi claims that Bertoli's anarchist guise was the final link in a chain which includes members of the armed forces, secret services and neo-fascist extremists.

The trial reopened on April 6 with seven defendants, including five who face a life sentence. Lombardi has accused them of preparing the attack, aimed at Mariano Rumor, then Minister of Interior who had formally disbanded the fascist *Ordine Nuovo* organisation by decree. The defendants include four neo-fascists from the Veneto region and colonel Amos Spiazzi, who is accused of giving the go-ahead for the bombing. Spiazzi is a leading figure in Italian extreme right politics and was investigated for the aborted “Rosa dei Venti” coup attempt in June 1973. It revealed the existence of a parallel secret service organisation, “the security organisation of the armed forces, which does not have a subversive purpose but aims to protect the institutions of the state against Marxism. This organisation is not the same as SID (Defense Information Service) but in large part coincides with it.” The other two defendants, Gian Adelio Maletti and Sandro Romagnoli, were secret service officers at the time, and are now accused of obstructing the law, destroying evidence and suppressing documents concerning the safety of the state.

Lombardi alleges that Bertoli spent the three years before the bombing meeting criminal and extreme right-wing groups in Italy, France and Israel after leaving Italy for Switzerland in 1970, helped by anarchist networks. Lombardi hints at Israeli secret service involvement, claiming Bertoli was in an Israeli kibbutz in 1971, where he trained in the use of firearms and bombs, and to a possible link to police superintendent Calabresi's murder in 1972, alleging that the latter was investigating him. The Milan bombing occurred during a ceremony to commemorate Calabresi.

La Repubblica 6.4.99; Paul Willan “Puppet masters” (*Constable*) 1991

Security & intelligence - in brief

■ **Sweden: Lund/McDonald Commission appointed.** The “Lund/McDonald commission” has been appointed. It will be chaired by Marshal of the Realm (*riksmarskalken*), Gunnar Brodin, (his predecessor, Mr Lagergren, was the Swedish judge whose deciding vote ensured that the Leander case - concerning surveillance and record-keeping (registration) by the state contravening the right to freedom of expression - was lost at the

European Court of Human Rights, see *Statewatch* vol 7 no 6). The other members are: Anders Knutsson (former chairman of the supreme court. In Sweden people are NOT elected to this post nor can they apply for it - the government appoints supreme court judges without consultation); Anita Klum (a former head of Swedish Amnesty International) and Ewonne Winblad (a former journalist, nowadays a mass media consultant). One more member, a historian, remains to be appointed. None of the members of the new commission have worked on issues connected to surveillance, personnel control, security police or military intelligence. This is a very, very Swedish solution (see *Statewatch* vol 6 no 3).

■ **Norway: POT electronic databases out of control.** In 1990 the Norwegian security police (POT, *Politiets etterretningstjeneste*) upgraded their surveillance capabilities by installing electronic databases. The files were kept secret not only from supervising bodies but also the chief of police and the National Police Board. This means their use has been unsupervised and effectively under no control whatsoever; POT even kept the registers secret from the Lund commission. It was the newly reformed Parliamentary Supervising Committee (SK, *Stortingets kontrolludvalg*) that uncovered the existence of the registers. There has been a major quarrel between the SK and the Norwegian military concerning the extent of the committee's oversight. According to Norwegian television, the argument concerns one of the committee, Stein Ornhi, who is a member of a socialist party (*Socialistisk Venstreparti*). Military intelligence officers apparently fear that intelligence organisations in other countries will limit sharing information with them if a socialist has a role in overseeing the their work. According to POT the secret registers were meant to be temporary and only used to look into specific events.

Security - new material

The encryption factor, Ken Hyder. *Police Review* 23.1.99. pp26-27. This article examines an ACPO-led working group which has been set up to re-examine legislation covering telephone and e-mail interception and surveillance and make proposals for changes in the law. It also looks at the Home Office internal review of the Interception of Communications Act which the police hope will “make telephone tapping easier.” The article finishes with a quotation from a senior police officer who admits that: “In the UK we do more interception than the FBI.”

RACISM & FASCISM

FRANCE/BELGIUM

Le Pen questioned about arms

MEP and president of the extreme right *Front National* (FN), Jean-Marie Le Pen, was detained in Brussels during March after Belgian police discovered an arsenal of weapons in his car. The possible lifting of his parliamentary immunity, to enable police to question him, will put further pressure on the FN leader as legal battles, financial emergencies, the desertion of key players and electoral collapse throw doubt on the party's credibility as a viable political force.

Le Pen was stopped in his car by police in Brussels leading to the discovery of the arsenal which included a pump-action shotgun, a handgun, an extendable police baton, teargas grenades, a canister of pepper-spray and ammunition. This “protection equipment”, as an FN press release described the weapons, was apparently covered by permits issued to Le Pen's chauffeur and to

members of the FN's paramilitary "security force". However, not all of them were valid in Belgium and at least one was out of date.

Le Pen was detained by police but later released because of his parliamentary immunity, which may yet be lifted to enable further investigation. It is not the first time that the MEP has been found in possession of firearms; he was stopped with a revolver ten years ago while in the United States. Le Pen claimed that he had been the victim of "set up", implying that police had been tipped-off by his rival in the acrimonious FN split, Bruno Megret.

The disintegration of the FN was reflected in the resignation of their mayor in Toulon, Jean-Marie Le Chevallier, who accused Le Pen of taking "damaging initiatives" and being unable to "share power", before walking out. Le Chevallier has declined joining Megret's *Front National-Mouvement National* (FN-MN) declaring that he will stand as an independent. Toulon was the largest town the FN had won and the mayor's defection leaves Le Pen in control of only one town hall (Orange in the Rhone Valley). Two other FN controlled towns have sided with Megret as have the majority of FN councillors.

The decline in the FN's electoral fortunes, indicated by opinion polls, was confirmed by the March by-election in the southern town of Aubagne. FN candidate, Joelle Melin, polled 12% of the vote, down from 22% last year. Former FN voters deserted to the *Democratie Liberale* (DL) candidate who took the seat following an intervention from Megret who declined to contest the election and called on FN-MN supporters to back the DL candidate. This tacit collaboration begs the question of whether there will be further cooperation between the DL and the FN-MN in future elections.

Liberation 24.3.99, 30.3.99; *Guardian* 30.3.99; *Independent* 31.3.99.

AUSTRIA

Bomber sentenced to life

Racist bomber, Franz Fuchs, was sentenced to life imprisonment in March after being found guilty at a Graz court of the murder of four Roma and more than a dozen instances of causing grievous bodily harm with bombs. Fuchs, who claimed to be a member of the Bavarian Liberation Front, was responsible for a four year bombing campaign between 1993-1997 involving nearly 30 attacks. His victims included four Roma killed by a booby-trapped bomb at Oberwart in February 1995. A number of prominent anti-racists were also injured by letter bombs (see *Statewatch* vol 3 no 6; vol 4 nos 1 & 6; vol 5 nos 1, 3, 5 & 6 and vol 6 no 1). Fuchs was arrested in 1997 in his hometown of Gralla, 240 km southwest of Vienna, and exploded a bomb that he was carrying causing him to lose his lower arms. On searching his house police discovered five pipe bombs and a booby-trapped device similar to the one used in the Roma murders. Fuchs, who was excluded from the courtroom for much of the trial after screaming racist slogans when he appeared in the dock, will serve his sentence in a psychiatric unit.

UK

Nail bomb campaign arrest

On May 2, David Copeland, a 22-year old engineer from Cove in Hampshire, was charged with murder and carrying out the bombings which left three people dead and over 100 injured in London during April. Combat 18 (C18) and the White Wolves (WW) were among several fascist groups who claimed responsibility for the attacks, although police have stated that Copeland is not involved with either group. Two bombs at Brixton, south London and Brick Lane, in east London, targeted

black and Asian communities while a third device exploded inside a public house at the heart of central London's gay scene. All were designed to inflict maximum injury and damage on communities that would be considered high profile targets by right wing extremists. The *modus operandi* of the bombings would appear to be the logical outcome of the C18 strategy of "leaderless resistance" in which an autonomous cell(s) carries out provocative terrorist attacks independently of any larger organisation in the hope of sparking a "race" war.

The first bomb exploded without warning in a crowded market in Brixton during rush hour on April 17 injuring 50 people including a baby who had a nail embedded in his head and two adults who suffered serious eye injuries. The timing of the attack, it occurred on the weekend closest to Hitler's birthdate, threw suspicion on the far right. Its location, in Brixton, an area with a large black community that had rioted against racist policing during the 1980s, also made it a high profile target. Nor had Brixton tolerated violence from racist organisations who had long ceased attempting to operate seriously in the area. After 48 hours police received a telephone call, from a man saying that C18 claimed responsibility for the outrage, made from the street in southeast London where Stephen Lawrence was killed in a racist attack in 1993. The WW also claimed the bomb and denied C18 involvement.

The second attack, exactly one week later at another highly symbolic target, Brick Lane market, in London's east end, was also claimed by C18 and the WW. This explosion appears to have been smothered after a passer-by placed the device in the boot of his car; five people were treated for cuts. In terms of its timing the Brick Lane bomb coincided with the twentieth anniversary of the police killing of Blair Peach on an anti-fascist demonstration in west London; Peach did anti-racist work in Brick Lane during the 1970s. Brick Lane, with its large Bangladeshi community, has been part of a 20 year struggle to remove violent National Front (NF) and then British National Party (BNP) thugs from the area after the racist murder of Altab Ali in Whitechapel in the late 1970's. In 1993, a gang of fascists celebrating the election of the BNP councillor Derek Beackon, attacked residents and petrol bombed shops in Brick Lane. Lately, due to community vigilance and prompt anti-racist mobilisations, fascist groups have limited their activities to sporadic paper sales.

The third bomb, which exploded inside the Admiral Duncan pub in Old Compton Street on April 30, was an attack on the heart of central London's gay scene. This devastating blast has claimed three lives while four people remain critically injured; 65 people were wounded. Soho is also a significant location for far-right extremists who frequently engage in "queer-bashing" and harassment of the gay community.

Police arrested David Copeland in a raid on his flat at Cove, near Farnborough, Hampshire on May 1; he was charged with three murders and planting the three nail bombs two days later. Police statements said that Copeland did not belong to any organisation and had acted alone in planting the bombs.

At face value this would appear to rule out C18/WW claims of responsibility, but it fails to take into account the tenets of C18's "leaderless resistance" strategy. If C18 have proved singularly unsuccessful at making an impact on the streets themselves they have sought to broaden the scope of their activities by proxy, publishing hit lists and bomb making instructions in their publications. They encourage supporters to adopt an autonomous cell structure in order to unleash attacks in the hope of provoking a "race" war. However hyperbolic and implausible the strategy sounds it does, of course, allow the C18/WW leaders' to put distance between themselves and the mayhem that they promote.

NETHERLANDS

New Nationalist Party

Another far-right organisation has emerged from the ruins of the *Centrum Partij '86* (CP'86). The *Nieuw Nationalistisch Partij* (NNP), has been cobbled together from CP'86 supporters, together with disaffected *Centrum-Demokraten* (CD) members and a few veterans from the 1970s neo-nazi group the *Nederlands Volks Unie*. It has put itself forward for regional elections in Breda with a programme that opposes "multiculturalism" and aims to defend the Dutch nation from "unfolkish influences". It also wishes to ban cars from the centre of Breda, whilst at the same time opposing "environmental neurotics". However new this party may be, it has continued what is now an old far-right tradition in the Netherlands, namely the purchase of nominations for local elections. NNP activists are apparently offering homeless people in Breda 40 guilders to sign their nomination papers.

The *Centrum-Demokraten* have also been accused of attempting to buy nominees for their candidates in Arnhem. According to the *Gelders centrum voor Verslavingszorg* (GVC, Gelderland Centre for Addiction) Arnhem CD activist Hennie Selhorst has been offering heroin addicts 25 guilders in return for nominating CD candidates. Unfortunately for Selhorst he has not been having much luck. A worker within the GCV stated: "All addicts desperately need money, but nominating CD candidates is too much even for them." Selhorst has made a habit of attempting to support other peoples' habits. Last year he was sentenced to three months in prison after being found guilty of supplying wraps of heroin in return for CD nominations.

Alert March 1999

ITALY

LN steps up racist crusade

The *Lega Nord* (LN, Northern League) leader, Umberto Bossi, continued his xenophobic crusade following the launch of a petition to force a referendum on the modification of the Russo-Jervolino law on immigration. He is calling for tougher anti-immigrant measures despite the fact that 54,000 expulsions were carried out in 1998 as a result of the law. With declarations ranging from the paranoid to the anti-Semitic, he claimed that "They want to import 20 million third country nationals", and:

They want to destroy the very concept of Europe by guaranteeing their interests through the worldwide economy of Jewish bankers and through a multiracial society.

Bossi also expressed his conviction that the LN campaign to collect the 600,000 signatures required for the formal proposal of a referendum would be a success, claiming that 100,000 signatures had been collected on the first day of the initiative.

Francesca Calvo, LN mayor of Alessandria, has continued to provoke migrant communities: after her decree requiring health certificates for foreign children wishing to enrol for primary school she has shut down the local mosque using the event to express her "shock" at the ritual slaughter of animals by Muslims. On March 7 she attended the anti-immigrant mass which she organised with Mario Borghezio (see *Statewatch* vol 9 no 1) in Porta Palazzo in Turin. The mass was celebrated by a Lefebvrian minister, Luigi Moncalero, who spoke of the Crusaders' famous battle against the Moors in Lepanto in 1571, and the lifting of the Turkish siege of Vienna in 1683. Borghezio explained the mass as merely a symbolic gesture, "a gesture of reappropriation of an area which has been taken from its legitimate inhabitants...", a clear reference to the Turin imam's celebration for the end of Ramadan in the same square. The imam of Turin explained that "Here, there is immigration of people who want to improve their economic conditions. It is

certainly not a Muslim invasion", as he observed the event featuring green posters announcing, "Stop illegal immigrants, area controlled by green volunteers", as the LN militants like to call themselves.

The League's racism grows increasingly alarming as other LN mayors follow in Calvo's footsteps. The mayor of Varese has announced his intention to close the mosque due to its lack of a car park. In Acqui Terme the LN mayor was re-elected following his offer of a 1,000,000 Lira reward for people who report illegal immigrants in his municipality. It appears that it is becoming politically fruitful to express notions in the north of Italy which would not have been tolerated until very recently.

La Repubblica 5-9.3.99.

Racism and fascism - in brief

■ **Austria: "Yuppie fascist" elected governor:** Jorg Haider, the leader of the far-right *Freiheitliche Parti Osterreichs* (FPO, Freedom Party), won 42% of the vote in provincial elections in March to claim his first outright victory in an Austrian election. He was elected in Klagenfurt as governor of his southern power base of Carinthia in April. In 1991 he had been forced to resign as governor of the province after expressing his admiration for the employment policies of the Third Reich. Haider ran a racist campaign in which he promised to expel all jobless immigrants. He also warned against the EU's expansion into central and eastern Europe. The elections, in three of Austria's nine states, saw the FPO make gains in the Tyrol and maintain their vote in Salzburg. The FPO will now be able to count on the votes of 16 members in the 36-member regional parliament, making his party the largest force. In the 1995 general election the FPO gained 22% of the national vote to become Austria's third largest party.

■ **Germany: US nazi deported:** The American leader of the nazi National Socialist Workers Party, Gary Lauck, was deported from Germany in March, after completing a four-year prison term for distributing racist and fascist material. Lauck was arrested in Denmark in 1995 and extradited at the request of the German government later the same year. He was jailed by a Hamburg court after being found guilty of exporting vast quantities of racist propaganda from his base in Nebraska, USA, over the last 20 years. A Court of Appeal rejected an application for early release in 1998 because Lauck was unrepentant. A spokesman for Hamburg city authority said that the nazi leader had been flown to Chicago via Paris. He is expected to continue distributing his propaganda on his return to the USA.

■ **Netherlands: "Own People First" slogan approved by Dutch judge:** A Dutch judge has declared that, although the slogan "Our own people first" was potentially racist, this was outweighed by the right to free speech. His decision follows a demonstration by neo-nazi groups outside an asylum detention centre in Alphen aan den Rijn. Two demonstrators, one of whom was long-time fascist activist Olav Schollaardt, were arrested for using the slogan. Supporters of Schollaardt, including veteran nazi Joop Glimmerveen of the *Nederlands Volks Unie* and *Aktie Front Nationale Socialisten* fuhrer, Eite Homan, cheered when the decision was announced. Schollaardt is well known in Dutch far-right politics. In 1995 he was named as a member of both the *Centrum Partij '86* as well as the *Nederlands Blok*, a potentially embarrassing event as the two outfits were feuding at the time. More recently Schollaardt was arrested together with members of the *FAP-Arbeiders Partij* while on their way to a banned Rudolf Hess commemoration. *Alert March 1999*

■ **UK: No Blair Peach inquiry:** Shortly before the twentieth anniversary of Blair Peach's death, Home Office minister Paul Boateng, ruled out an inquiry into the killing of Blair Peach,

claiming that too much time had elapsed since his death. Blair died after receiving a baton blow to the head from a police officer during a protest against a National Front election meeting in Southall, west London, in April 1979 (see *Statewatch* vol 9 no 1). The Conservative Home Secretary refused an inquiry and an inquest into his death was derided as a blatant cover-up. Among those demanding an inquiry in 1979 was Jack Straw, now Home Secretary. Peach's partner at the time, Celia Stubbs, has campaigned to gain access to the unpublished police report on events and called for a public inquiry to investigate the killing. The Blair Peach Anniversary Committee held a march and rally attended by hundreds of people in Southall on April 24. The Committee is at 86 Bow Road, London E3 4DL.

■ **UK: BNP to contest Euro-elections:** The fascist British National Party (BNP) has announced that it will be contesting regions in England in the European elections in June. The party will also contest seats in Scotland. Their election team, for what it has described as the "biggest electoral effort in the history of British nationalism", consists of party leader John Tyndall, national organiser Richard Edmonds, director of publicity Nick Griffin, *British Nationalist* editor Tony Lecomber and press officer Michael Newland. While they have sorted out their organisers they seem to be having more trouble finding potential candidates. An advertisement in the March issue of *Spearhead* unimaginatively headed "Wanted: good candidates" reports that they have 50 candidates but still require another 45 "in order to allow for any last minute hitches". The criteria for candidates is that they are over 21 and "are not under any kind of suspended sentence or bankruptcy order". It is not surprising that the party of "law and order" are having problems filling these criteria if their election team is anything to go by - all but one have convictions for bombings, firearms offences, brutal racist attacks and distributing racist material.

■ **Germany: Algerian asylum-seeker chased to his death:** In February a 28-year old Algerian asylum-seeker, Omar Ben Nui, died while attempting to escape a racist gang who pursued him chanting racist slogans. Omar died after severing an artery when he jumped, terrified, through a glass door while seeking refuge in a block of flats to escape. Two teenagers from the gang that pursued him have been detained in youth custody and police are seeking two others for questioning. Several hundred people held a rally in protest at the murder. *Guardian* 15.2.99.

■ **Turkey: Electoral breakthrough for far-right** In April, with nearly 70% of votes counted, the far-right Nationalist Movement Party (MHP) had won 18.6% of the votes, which placed it as the second largest party in the Turkish political arena. The Democratic Left Party of Prime Minister Bulevit Ecevit received 21.7% of the vote and the Islamic Virtue Party around 16%. The MHP result is striking because in the last election they failed to reach the 10% threshold necessary to enter parliament. It is likely that the Democratic Left Party will need MHP support to form the new government marking a shift to the right in domestic and foreign policy. A tougher nationalist line in the international arena is to be expected, when dealing with the principal international actors, such as the USA, Russia and the European Union. As far as domestic policy is concerned, the far-right success at the polls is likely to impede any dialogue around the Kurdish question. The MHP, as well as the Democratic Left Party, is opposed to making any concessions to Kurdish autonomy seeing it as a threat to national unity. They maintain that there is no independent Kurdish identity and therefore no Kurdish problem, only a problem of terrorism fomented by foreign powers. Another outcome of the election is to increase concern over the fate of the PKK leader, Abdullah Ocalan, who may face the death penalty with the support of the newly elected government after his trial. *Independent* 20.4.99; *International Herald Tribune* 20.4.99; *La Repubblica* 30.4.99.

■ **Austria: Nigerian asylum seeker dies during forced deportation:** 25 year old Marcus O., a Nigerian arrived in Austria requesting asylum in September 1998. On 1 May, handcuffed and with tape over his mouth, he was unconscious when the plane landed in Sofia and pronounced dead. Three Austrian police were detained. *UNITED*, 5.5.99.

Racism & fascism - new material

Institutionalised racism and human rights abuses: A special investigation into 45 deaths in Europe in 1998. *Campaign Against Racism and Fascism & United* 1999, pp14. This report investigates 45 deaths across Europe of which nearly 65% "were of asylum-seekers or undocumented workers whose deaths...arose as a direct consequence of immigration and asylum policies which deny individual human rights." Institutionalised racism played a role in the remaining 16 cases: seven of these were Roma killed either by the police or in racially motivated incidents, another seven were EU citizens "killed in racially motivated incidents" and "two were EU citizens of immigrant descent killed by the police." The report contains a table and an analysis that calls for "European governments to address the institutionalised racism of their criminal justice and educational systems which amounts to an abuse of ethnic minorities' human rights." Available on the web: <http://www.carf.demon.co.uk/deaths98/> or from CARF, BM Box 8784, London WC1N 3XX and UNITED, Postbus 413, NL1000, AK Amsterdam, Netherlands.

London Update. Institute of Race Relations No 7 (Spring) 1998, pp4. Latest issue of the redesigned *Monitor* focuses on "policing and black deaths in custody" and expresses well-founded concern about the introduction of experimental equipment such as US-style batons and CS gas, the policing of immigration, inquest verdicts and the role of the Crown Prosecution Service. It has a table of black deaths in London 1991-1999 and a survey of racist attacks. Available from IRR, 2-6 Leeke Street, London WC1X 9HS; Tel. 0171 837 0041.

The Stephen Lawrence Inquiry: implications for racial equality. Commission for Racial Equality, March 1999. This is a summary of the CRE's evidence to the Stephen Lawrence (MacPherson) inquiry. Copies can be obtained from the CRE, 10/12 Allington Street, London SW1E 5EH, Tel. 0171 932 5437.

Seize the time, A Sivanandan. *CARF* No 48 (February/March) 1999, p2. Sivanandan considers the repercussions of the Stephen Lawrence murder "which has put the question of institutionalised racism back on the agenda." He astutely warns, however, that: "We are in danger of being side-tracked... not so-much by a refusal to define institutional racism as a move to define it out of existence, as when, for example, Commissioner Condon interprets it to mean the collective guilt of all his officers, which he can then go on to show is a nonsense." Sivanandan goes on to applaud the way the case "mobilised so many people from so many walks of life" and reminds us that the "life-blood of any movement is its grass-roots campaigns."

Racism and the press in Blair's Britain. *CARF* No 48, (February/March) 1999, pp8-10. Prompted by the racist press campaign against the arrival of Roma refugees, fleeing persecution and death in the Czech and Slovak Republics, CARF urges anti-racists "to make campaigns against press racism a priority." The article also examines how the press "has sharpened its race reportage to reflect the cool "inclusive" nationalism of Blair's Middle England" while "beneath the surface the old hatreds remain..."

The London Monitor. The Monitoring Group, Issue 2 (Autumn) 1998. This issue contains articles on the racist killing of Michael Menson, the Stephen Lawrence inquiry, racial violence in west London and victims of domestic violence and racist immigration laws. Available from TMG, 14 Featherstone Road, Southall, Middlesex UB2 5AA.

Evidence from the Institute of Race Relations to the Lawrence inquiry. *Race and Class* Vol 40 no 4 1995, pp65-74.

Stephen Lawrence Inquiry Commons 29.3.99. cols. 760-831

Stephen Lawrence Inquiry Lords 15.4.99. cols. 845-909

Immigration and Asylum Bill: a nasty piece of work

The Immigration and Asylum Bill, introduced in the House of Commons in February and now in Committee stage, is a nasty piece of work. It is not just the segregating of asylum-seekers in a cashless sub-subsistence world of vouchers in isolated ghettos; it is also the automatic penalties for lorry-drivers found carrying clandestine entrants unless they plead duress, a defence judged not by a court but by an official; the removal of appeal rights from deportees; the imposition of a duty on carriers to provide information on non-EEA passengers, on registrars to report suspicious marriages and on postal authorities to disclose redirection notices; the powers of entry, search and arrest given to immigration officers, and the retreat from manifesto commitments on employer sanctions.

The theme of abuse runs through the whole Bill, which with ten parts, 138 sections and 14 schedules, does not make easy reading. It is often impossible to know how the Bill's provisions will work in practice, since it contains 50 separate rule-making powers, and it will be in the rules, mostly subject to negative resolution only, that flesh will be put on vague statutory powers.

Preventing asylum-seekers' arrival

In the first part, headed "General", the function of giving or refusing leave to enter the UK, up to now exercised by immigration officers when passengers arrive, is made exercisable before they arrive. Airlines will also be under a duty to send passenger lists and "such information regarding passengers as may be specified" to the immigration service, and to notify them of any non-EEA passengers they are bringing to Britain. This would enable airline liaison officers to examine and refuse passengers as they board, and is likely to be aimed at asylum-seekers who use false documents to get on to aircraft overseas, just as the sanctions for carrying clandestine entrants are designed to prevent the smuggling in of those who are unable to obtain such documents. But false documents and clandestine entry are the only ways asylum-seekers can get to the UK. The imposition of visa controls on nationals of refugee-producing countries together with carrier sanctions penalising carriers who bring in inadequately documented passengers has created the market in false or forged documents and the refugee-smuggling industry. In committee, Mike O'Brien makes no bones about it: "Our obligations under the Geneva Convention do not require us to facilitate the arrival of asylum-seekers", a disingenuous way of getting round the international law obligation created by the Universal Declaration of Human Rights, Article 14 of which declares that "Everyone has the right to seek and enjoy asylum".

Carrying "clandestine entrants"

The new provisions for lorry-drivers (and private car drivers) carrying clandestine entrants will penalise owners, drivers and hirers of vehicles containing clandestine entrants who either get out (or are detected) and claim asylum at the port or who don't emerge until they are in the country. There will be a fixed penalty of £2,000 per person carried. The only defences are having an effective system of prevention in operation and duress, which will be for the owner, driver or hirer to prove to the satisfaction of the Secretary of State (not a court); ignorance of the stowaways' presence will be no defence. Immigration officers will have power to detain the vehicle and to sell it if the penalty notice is not complied with. There will be no compensation for detention of a vehicle which subsequently turns out to be unjustified, if there were "reasonable grounds" for holding the vehicle. Small carriers with only a few lorries could thus have

their livelihood destroyed by a decision to detain a vehicle. The only recourse to a court provided for is against the proposed sale of a vehicle if the penalty notice remains unpaid.

Carrier sanctions

Carrier sanctions (penalties on passenger carriers such as ships and airlines) are also extended by the Bill to include trains, buses and coaches, and there is a power to detain not just the transporter carrying the inadequately documented passengers but any transporter in the fleet, pending payment of the penalty. In committee it was revealed that British Airways was levied £4.5 million in fines (which are £2,000 per passenger) in 1998, but £250,000 was taken off for those passengers who were granted refugee status, and another £2 million was knocked off after negotiation (it was not clear why). When it was argued in committee that fines for lorry-drivers should be remitted if those who were carried were granted asylum, the minister refused. The point was, he said, to stop the traffic entirely. Asylum-seekers arriving as stowaways in lorries had travelled through safe countries to get to the UK. It was pointed out that many lorries are sealed and impossible to open from the inside, and that many asylum-seekers had in fact died of suffocation inside the lorries. The idea that they could get out en route to claim asylum was untrue. Geoff Hoon, the Lord Chancellor's minister, sitting in for O'Brien for part of the all-night session, dismissed the accounts of suffocation of asylum-seekers as "tedious". During the 24-hour committee debate on clandestine entrants, no-one pointed out that so-called "safe" countries are not safe for certain groups. As Mike O'Brien knows, Algerians and Somalis don't claim in France but come to the UK because France does not recognise refugees from non-State persecution; Albanians from Kosovo were being returned by Germany until the NATO bombing raids and so were trying to get to the UK, where they were recognised as refugees.

"Safe" third countries

The Home Office still sends asylum-seekers back to "safe" countries which simply return them, directly or by "chain deportation" to the country of persecution. In opposition, Labour pledged to reinstate suspensive appeal rights against such removals, but the Bill retains instead the after-departure appeal which replaced in-country appeal rights in 1996 when too many asylum-seekers (over half) were winning the right to have their asylum claim decided in the UK. Since 1996 there have been virtually no takers for the after-departure appeal; there has been a rise in challenges to removal by judicial review instead, since the Home Office cannot remove those who have a judicial review pending. This category will now be starved out by the new support provisions. Unless they have children they will be ineligible for any support or accommodation after their claim is rejected, since they have no statutory appeal.

Apartheid "support"

The support provisions are clearly designed to deter by providing minimal levels of support in a no-choice, cashless system. Only those asylum-seekers deemed by the Home Office destitute or likely to become so (within a period to be specified by rules) will be eligible for support, and that will be provided in a hermetically sealed system completely separate from mainstream provision. Asylum-seekers and their dependants with no other means of support or accommodation will be shipped off to "reception

zones" to form "clusters" in local authority, social or private housing. Local authorities are under a duty to notify the Home Office of all empty social housing and, if they refuse to accept asylum-seekers to fill it, can be compelled. Any preference asylum-seekers express for location is to be disregarded. Asylum-seekers with relatives in a particular place, or whose medical condition requires ground-floor accommodation, will not be able to have these "preferences" taken into account - it will be unlawful for the provider to do so. Provision for "essential living needs" is to be mainly cashless and not to exceed a proportion (to be specified; some say 70%) of ordinary income support levels. There has been no attempt to ensure adequacy of medical and legal support in the areas asylum-seekers will be dispersed to. Anyone leaving designated accommodation ceases to be eligible for "essential living needs" support.

The Home Office will have powers to require postal authorities to disclose mail redirection notices, and powers to enter accommodation to check on occupancy. Disputes as to whether someone is destitute or not, or whether support should have been withdrawn or not, will be resolved by the Asylum Support Adjudicator on appeal, but (unlike the fast-track procedures to deal with ill-founded asylum claims) there are no statutory time limits for dealing with these appeals, and meanwhile there is no support. There are provisions to claw back support which should not have been given, and criminal offences are created of false representations, obstruction, failing to notify of change of circumstances. It also becomes a criminal offence for a sponsor to fail to maintain an asylum-seeker or dependant who then becomes eligible for support under the scheme.

Removal of asylum-seekers from the mainstream means an end to any community health or social services support for children, for the elderly, physically or mentally ill. Not just for asylum-seekers either: no one subject to immigration control will be able to call on any community care services, from meals on wheels, day centres, occupational therapy, to residential accommodation or assistance.

Asylum-seekers are not allowed to work for the first six months after they claim asylum. They cannot therefore provide for themselves. The government has been warned that the provisions which deny or withdraw any support are likely to contravene Articles 3 and 8 of the European Convention on Human Rights. It concedes that the system is more expensive than benefits (until 1996 asylum-seekers were eligible for 90% of normal income support, and passported benefits), and requires the setting up of a whole new bureaucracy with 200 staff within the Immigration Service, who could instead deal with 40,000 asylum claims a year. Many groups giving evidence to the Special Standing Committee on the Bill made the point that it is the backlog of unresolved claims which results in asylum-seekers waiting for five or six years for claims to be dealt with and make removal of failed applicants more difficult because of the building of relationships and ties with the UK during that time. It is these delays which cause accusations of abuse of the system. The Home Office's refusal to admit the force of these arguments and its insistence on the punitive and degrading system of asylum support strongly suggests that it is not acting in good faith but is pandering to tabloid bigotry about "asylum scroungers" - and incorporating it into law. The Home Office had clear evidence from the Refugee Council about the effect of withdrawing cash benefits: of 200 asylum-seekers recently surveyed, three-quarters were utterly penniless and had to walk everywhere, and 60 percent did not have enough to eat on a daily basis.

O'Brien says asylum-seekers will only be in this regime for six months: the target, to be achieved by April 2001, is two months for dealing with claims, and another four months for appeals. Given that current times are 81 months for pre-1993

cases and 20 months for post-1993 cases, and that the target date for full computerisation of the Immigration Service has recently been pushed back from December 1997 to January 2000, it is likely that asylum-seekers will be forced into conditions of hunger and degradation for much longer than six months.

Criminal claims

The Bill does not address the difficulties of making and pursuing asylum claims in these circumstances. In fact, it does not address the determination procedure at all. It does, however, make the submission of a false asylum claim a criminal offence. The difficulty here is the equation of a "rejected" claim with a "false" one. Asylum-seekers are frequently rejected on "credibility" grounds, but decisions are often absurdly or unfairly reasoned. Thus, while possession of a false passport or no passport sends a claimant on to the "fast-track" procedure by statute, possession of a genuine one betokens "no interest" by the state of persecution and so undermines credibility. Failure to claim asylum in countries passed through inevitably undermine credibility despite excellent reasons for not claiming in those countries. The fact that an asylum-seeker has escaped or been released from detention is invariably interpreted by the Home Office as being either implausible or showing the state is not interested in persecuting them, all adversely affecting credibility. The new clause truly adds insult to injury: the asylum-seeker is not only rejected but faces trial and imprisonment too.

Detention

The lack of judicial oversight into the detention of asylum-seekers has been addressed in Part III of the Bill, dealing with routine bail hearings for detainees. The routine bail hearings - one to be held within 10 days of detention, the second within 38 days - then stop, so the longer the detention, the less judicial scrutiny. The main problem, however, is that the bail hearings are not designed to test the legality of the detention. The Bill contains no provisions for that and asylum-seekers will have to resort to *habeas corpus* hearings in the High Court. Worse, there is no presumption of liberty for asylum-seekers, unlike those accused of crime, and no statutory criteria for detention or bail. Bail must be on the recognisance of the asylum-seeker, and immigration officers are to have powers of entry and search, including the use of force, to arrest someone they believe is likely to abscond. They can re-detain without further recourse to the bail court. There is no legal aid for bail hearings, although grants are payable to voluntary organisations to provide representation. In these respects the provisions do not comply with Article 5 ECHR (right to liberty). Provisions for video links between courts and detention centres, so that asylum-seekers do not have to be brought to court, compromise confidentiality between them and their legal advisers.

HM Inspector of Prisons, Sir David Ramsbotham, revealed in his damning report on the detention of asylum-seekers at Campsfield (see *Statewatch* Vol 8 no 3/4) that there were no statutory rules for detention centres, no contract monitoring and no internal rules for staff or detainees. Part VIII of the Bill remedies this. Part V regulates immigration advice and service providers.

Appeal rights curtailed

The emphasis on stopping abuse leads to the severe curtailment of appeal rights. While many advisers have welcomed the idea of the "one-stop appeal" in Part IV, there are dangers that some asylum-seekers and others with good reasons for staying will lose all rights of appeal, if they do not get decent advice at the time their claim is rejected: anything not raised then will be ruled out of court later. Even a claim based on the Human Rights Act or a late asylum claim will attract no appeal rights if the Secretary of State certifies that the application was made to delay

removal, and there is no provision for a challenge to his assessment.

The Bill also abolishes the right of overstayers to appeal against deportation. Illegal entrants and those who come to the country legally and overstay are all to be treated the same, which means removal from the country with no suspensive appeal. A non-suspensive appeal gives the retrospective right to challenge removal on legal grounds but not on the merits. The most common situation is the overstayer or illegal entrant who has been here for several years and has a partner and children here. They will be removed and told to apply from abroad to return to their families. But previous removal itself can be a ground of refusal of entry, as Mike O'Brien confirmed in committee. There is a new appeal right against decisions in breach of the Human Rights Act, but this will not cover many situations where humanity demands that a person be allowed to stay.

Family visitors

Labour pledged to restore appeal rights to family visitors and has done so, although non-family visitors and would-be students are still precluded from appealing refusal of a visa. There is also new provision for family visitors to lodge a bond with the visa officer as a condition of coming to the UK; if they try to stay here as dependants of UK-based adult children, or on compassionate grounds, it can be forfeited. In committee Mike O'Brien said the bond was a way of allowing more family visitors to come, as it would be used in borderline cases where leave was currently refused. He refused to allow the amount of the bond to be proportionate to the applicant's income, saying that would make it too mechanical and inflexible. He declined to indicate the level at which the bond would be fixed, but ILPA indicated their belief that it would be set at £5-£10,000 which, if correct, would be prohibitive for most families.

"Primary purpose" rule reborn?

Currently, marriage registrars report 500 marriages a year as suspicious, but the Bill imposes a duty on registrars to report any marriage between an EEA or British national or someone settled here and a non-EEA national which is suspected as a sham marriage. Registrars may demand proof from couples of name, age, nationality and marital status, and may refuse to issue a marriage certificate. There are no statutory criteria for suspicion, but the minister's answers in committee cause grave concern that the infamous primary purpose rule is being reborn. Factors such as age difference, parties' apparent lack of familiarity with each other and inability to speak each other's language were cited - features, MPs complained, often present in genuine arranged marriages.

New powers for immigration officers

The Bill creates a number of new offences with which immigrants and asylum-seekers can be charged to add to the already fairly comprehensive list of criminal offences under the 1971 Act and the 1996 Asylum and Immigration Act. The new offences include the use of deception or making false statements in any application to stay in the UK, or to avoid or postpone removal, or to obtain support; failure to notify a change of circumstances (in relation to support) and obstruction of those performing monitoring functions in relation to support. There are new offences for others, including immigration service providers and sponsors. To deal with these and the 1971 and 1996 Act offences, immigration officers are to be given wide new powers of arrest and entry and search of premises under Part VII. Powers of arrest without warrant, of breaking into premises, of searching arrested persons both on the street and (including strip-search) in custody, and powers to seize material. They will be entitled to use reasonable force. Powers to be vested in immigration officers are used by police only in respect of serious

offences; immigration officers can use them for summary offences, deemed too trivial for trial by a Crown court. Unlike the police, the immigration service is not covered by PACE Codes of Practice, and the Bill does not contain any provision either to extend PACE Codes or for its own Codes.

Information exchange

The exchange of information provisions are also drawn too widely to comply with Article 8 ECHR (privacy) provisions. The immigration service will be able to exchange information with police, NCIS, NCS, Customs & Excise and other agencies "to be specified". The precise purposes of such exchanges are not specified; the nature of the information to be exchanged is not specified, nor the circumstances in which such information exchange can take place. The Data Protection Registrar was not formally consulted on the Bill and the minister has already had to introduce amendments in committee specifying the duration of airlines' duties to pass on passenger information. It is likely that these exchange provisions will need far more precision to comply with data protection and privacy requirements. The Bill assumes but does not state that information exchanged with police agencies will end up on the Europol database and perhaps, too, the Schengen Information System. There are no safeguards providing for the consent of the subject or the subject's right to check information exchanged and stored.

Employer sanctions

The employer sanctions (criminal penalties for employing those without permission to work) which were strongly condemned by Labour in opposition as racist in effect if not by design, have been retained. Instead of ditching them employers will be obliged to abide by a Code of Practice, which will ensure that they do not discriminate on racial grounds to avoid employing people without permission to work under the immigration laws. Mike O'Brien readily acknowledged in committee that "some employers may be making more checks than required by the legislation or making checks on individuals not applied to others, ie: discrimination", but said the sanctions were necessary to curb abuse and exploitation of undocumented workers by employers. Countering the tales of long-settled Jamaicans suddenly sacked or refused jobs because they "didn't have a work permit", he told horror-stories of hundreds of east Europeans being brought in illegally by gang-masters to work in agriculture in East Anglia or the building trade as "lump labour" elsewhere.

Conclusion

Amendments so far accepted by the government are minor. The Bill is profoundly destructive of civil liberties, hugely increasing surveillance, monitoring and compulsion, removing safeguards, destroying dignity and damaging rights to privacy, to family and private life, in the name of deterrence. It is a wholesale betrayal of values of trust, solidarity and decency. But protest is fragmented. Most protest has focused on the asylum support provisions. It will, alas, take time for the pernicious nature of the other parts to seep into popular awareness, and given the timetable for the Bill, which the government aims to get through all its parliamentary stages by October, time is running out.

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EU-FBI telecommunications surveillance system moves two steps nearer

The EU-FBI telecommunications surveillance system is developing apace through two separate, but intrinsically intertwined, initiatives (see *Statewatch*, vol 7 no 1 & 4 & 5; vol 8 nos 5 & 6). First, the Council has proposed a new draft Council Resolution to extend the 1995 "Requirements" Resolution to cover "new technologies" - the Internet and satellite-based telecommunications. Second, the Council is on the brink of agreeing a formula to provide a legal base for "remote" access to the Iridium satellite "ground station" in Italy - through new clauses in the draft Convention on Mutual Legal Assistance in criminal matters. This draft Convention will provide the legal framework for the interception of all forms of telecommunications in the EU required to put into effect the EU-FBI surveillance system. Both measures are expected to be agreed at the 27-28 May meeting of the Justice and Home Affairs Council.

Background

The 1995 Council Resolution on the lawful interception of telecommunications setting out the "Requirements" was slipped through the EU by what is known as "written procedure" on 17 January 1995. "Written procedure" is a decision-making process whereby a measure is sent out to EU member states for agreement between meetings of the Council of Ministers. In October 1994 the US Congress had adopted its version of the "Requirements" drawn up by the FBI. Not wishing to wait three months until the next meeting of the Justice and Home Affairs Council the German Presidency took the initiative to use "written procedure" (all Member States are obliged to reply though they may add statements to be included in the Council minutes). Using the "written procedure" process had another effect, the "Requirements" Resolution remained hidden from view until November 1996 when it was published in the EU's *Official Journal*. In the USA civil liberties groups have campaigned against the new surveillance powers since 1993, however the EU end of the EU-FBI axis only became apparent when *Statewatch* published its first report in February 1997.

The "new technologies"

In July 1998 the Austrian Presidency of the EU put forward a proposal for a "Draft Joint Action on the interception of telecommunications" which was discussed by the Police Cooperation Working Party (Experts' meeting - Interception of telecommunications) at its meeting on 3-4 September in Brussels. This draft Joint Action was intended to extend the 1995 "Requirements" to "new technologies" (the Internet and satellite-based telecommunications) and to place on network operators and service providers an *obligation* to provide information and assistance in the interception of telecommunications. The idea of a Joint Action was dropped by the end of July as a number of EU member states were not prepared, or ready, to adopt a binding commitment to place an "obligation" on network and service providers at national level.

However, the same meeting of the Police Cooperation Working Party was also considering reports drawn up by three "expert groups": the IUR (International User Requirements) and the STC (Standing Technical Committee) from their meeting in Rome on 14-16 July 1998 plus the conclusions of an earlier meeting of ILETS (International Law Enforcement Telecommunications Seminar). The role of these non-EU

working groups is made explicit in ENFOPOL 98 which had "been drafted by the technical groups ILET, STC and IUR."

There were further meetings of IUR, 20-22 October in Vienna and 27-28 October in Madrid. By November 1998 meetings of ILETS, IUR and STC concluded that "adjustments" to the 1995 "Requirements" to cope with the "new technologies" was "an urgent necessity".

The key group is ILETS, revealed by *Statewatch* in February 1997 (vol 7 no 1) and pinned down by Duncan Campbell in an article in the *Guardian's Online*. ILETS was founded by the FBI in 1993 and is comprised of: the US, Canada, Norway, Australia, New Zealand and Hong Kong (it is not known if Hong Kong is still participating) plus the 15 EU states. Those attending these meetings are from the "law enforcement agencies".

The core of the ILETS group are the US, Canada, Australia, New Zealand and the UK - the UKUSA group, started in 1946, which runs up a global surveillance system to service the military and overseas intelligence agencies (ECHELON). There are thus two global systems: ECHELON serving the "military and intelligence community" (external, eg: GCHQ and MI6 in UK) and the EU-FBI telecommunications surveillance system to serve the "law enforcement community" (police, internal security, customs and immigration).

The new draft Resolution

The European Parliament was consulted (that is, its views are sought but they can be ignored) on the second revision of ENFOPOL 98, dated 3 December 1998. A later version of the same report, now renamed ENFOPOL 19, dated 15 March 1999 contains two significant differences to the version given to the European Parliament.

1) In the version discussed by the European Parliament the "General explanations" seek to amend the 1995 requirements to include identifier data on internet users by including:

IP address (electronic address assigned to a party connected to the Internet), account number and E-mail address (ENFOPOL 98 REV 2)

In the new version it says:

*IP address (electronic address assigned to a party connected to the Internet), **credit card number** and E-mail address (ENFOPOL 19) (our emphasis)*

An earlier document makes clear that the "account number" is not needed because this data comes with the "IP address".

2) The second difference is either slight of hand or a deliberate mistake. In the section on the "Explanations of the Requirements" describing the changes to be made to the 1995 requirements it says that concerning access to "fixed and switch connections":

IP connections are not included (ENFOPOL 98 REV 2)

In the new version it says:

*IP connections are not **excluded** (ENFOPOL 19) (our emphasis)*

Moreover, the first revision of ENFOPOL 98 (ENFOPOL 98 REV 1, dated 10 November 1998), not considered by the European Parliament, also says "not **excluded**".

The general concerns over the contents of ENFOPOL 19 are:

a) under the heading "Interception interface", the inclusion of: "In newer technologies the interception interface may be a virtual interface within the network". This would involve

specialised software being installed at Internet Service Providers which would be remotely ("virtual") controlled by the law enforcement agencies. The effect would be to automate the transmission of messages etc.

b) many of the detailed requirements of the law enforcement agencies expressed through ILETS and the EU's Police Cooperation Working Party present in ENFOPOL 98 - but not in ENFOPOL 19 which is limited to amending the 1995 "Requirements" - are likely to be placed in an operational manual which will not be subject to public debate or parliamentary scrutiny.

EP discusses the EU-FBI surveillance system

As noted above the European Parliament was "consulted" on the proposal in ENFOPOL 98 REV 2. This is the first opportunity that the European Parliament had to formally comment on the EU-FBI telecommunications surveillance system.

The main committee considering the Council proposal was the Civil Liberties and Internal Affairs Committee and its report by Gerhard Schmid (PSE, Socialist group, rapporteur) "approves the Council proposal" and was adopted unanimously at its meeting on 20 April. It proposes minor amendments to the opening "Recitals" and suggest that the Council report back by July 2000 on how many EU states have effected the amended 1995 "Requirements" Resolution into national law.

The five-paragraph "Explanatory Statement" says that the "resolution is not binding" (which is correct) and that it is simply intended to make clear that the 1995 "Requirements" Resolution "apply to both existing and new communications technologies, e.g. satellite and Internet communications." The report simply concludes that: "It does not, therefore, affect the tension between fundamental rights and internal security."

The "Opinion" of the Legal Affairs and Citizens' Rights Committee, attached to the main report, was adopted on 25 March by 7 votes to 4. Its conclusion was that the Committee: "rejects the Council proposal."

The report notes that the 1995 "Requirements" are not binding and that "national legislation applies". It goes on to say: "The Registrar's office of the European Court of Human Rights has told the rapporteur that the ECHR has not yet ruled on the violation of the secrecy of correspondence in respect of electronic mail."

Neither report used the wealth of information now available on the EU-FBI surveillance system (which is not mentioned). The report was adopted at the European Parliament plenary session on Thursday 6 May.

In this context it should be observed: a) that most national legislation does not cover the interception of the Internet and e-mails nor satellite telecommunications and that most EU countries are likely to have new measures before their parliaments over the next two years; b) although the amended 1995 "Requirements" Resolution is not legally binding on EU member states network operators and service providers will not be granted new/extended operating licences at national level unless they comply due to international agreements reached in non-EU bodies - the STC, IUR and ILETS.

The "remote approach"

Alongside the plans on the EU-FBI telecommunications surveillance system within the EU are the parallel discussions taking place over the provisions on interception to be included in the draft Convention on Mutual Legal Assistance in criminal matters which will give EU states the legal powers to carry out cross-border interceptions.

Statewatch vol 8 no 5 reported how the EU was planning to take advantage of the offer by Iridium of "remote" access to telecommunications passing through its global network, which is: "from a technical point of view, a convenient option". It

transpires that it is also "convenient" from a legal/political point of view as well.

Two questions have been taxing the EU working parties, first, to what extent should the EU member state in which Iridium's ground station is located - Italy - have any involvement or responsibility for "remote interception" and second, should the draft Convention expressly provide for the "remote approach". The answer to the second question is yes, provisions should cover the "remote approach" both to cover Iridium and future network providers.

The first question divided the EU member states. 13 member states think the "remote approach" does not infringe the rights of the "host" member state. Italy, the "host", takes a different point of view and Germany thinks the draft Convention should expressly refer to the "remote approach" being applied "for the purpose of criminal investigation".

The majority of EU member states take the view that the "host" state does not have a substantial role and it does not have legal responsibility for the interception of telecommunications made via the "ground station".

The crux of the discussion is set out in a Note from the Italian delegation at the end of February. Two options were on the table. First, the "centralised" option, based on present practice, would involve each interception to be authorised through "International Letters of Request". For the "host", Italy, this means single authorisations being granted by the Italian authorities "following Letters of Request from member states". The "centralised" option meant pursuing the present system where each, *single*, interception has to be authorised by the competent authorities. This was seen as too slow and cumbersome and it was "impossible" for the EU member states to reach agreement on a text. Instead they have opted for, in the words of the Italian delegation's report, the "remote approach" which would mean:

a single, general, "order", given by Italy to its ground station to adjust its structures in order to allow the autonomous activation of interception by the national service providers and the automatic transmission thereto of the conversations intercepted.

This "general" order granted to member states would cover both communications between satellite handsets (air/air), which the "ground station" would, in technical jargon, "hock into" then "duplicate" and between satellite handsets and fixed terminals, or GSM, mobile phones (air/ground), when the "ground station" would simply "listen to.. the communication already in transit within its own structure."

The Italian concerns are that the interception is on "Italian territory", that the "remote approach" means limiting Italian sovereignty, and that by issuing a "single order" which will once and for all replace all single authorisations granted by the competent Italian authorities it will need to be given some "guarantees". Under its constitution its President, the President of the Council of Ministers and members of the Italian parliament cannot be the "object of investigations" except under very specific conditions. As for "national security" there were responsibilities to parliament if part of its sovereignty were to be relinquished "without having guaranteed the fundamental interests of the State".

The response, two weeks later, of the majority group of 13 EU member states was not sympathetic:

The member state hosting the ground station cannot export its constitutional principles to other member states.

To which the Italian delegation responded by saying they should be entitled to make: "a declaration.. specifying certain limits for interception via the ground station by remote control which other member states must respect."

The issues raised by Italy's constitutional objections are wider than their position makes apparent. It is proposed to move from the current system whereby *every* interception request to

Italy from another EU member state requires a Letter of Request and an order from the Italian authorities to a system which through one *general order* automatic authorisation will be granted to all interceptions *without any review as to their legitimacy or legality (either before or after the event)* under Italian law. It is therefore possible that 14 EU member states will each be granted a single, general, order to use the "remote" interception facility made available by Iridium from Italy and that the same may happen with the Globalstar "ground station" located in France (which is going online soon).

Iridium sales failure

Iridium, of "Iridium is God manifesting himself through us" fame, lost \$440 million in the last quarter of 1998. This follows substantial problems with the production of handsets and has led to a substantial shortfall in Iridium subscriptions. The company had expected to have 40,000 subscribers by the end of 1998, in the event they only had 3,000 and most of these were to the US government and military. Iridium hopes to have 500,000 plus subscribers by the end of 1999.

Figures like these go some way to explain why Iridium is so anxious to please EU member states by facilitating the interception of telecommunications from its ground station in Italy. Commentators say that Iridium has to make major inroads into the "wireless" market in the EU because the US is dominated by a solid single "wired" network created by AT&T.

This may explain why it has met all the costs of ensuring that its Italian ground station can provide a "remote" interception service for law enforcement agencies.

STOA report

A special report just completed for the Science and Technology Options Assessment Panel of the European Parliament (STOA) by Duncan Campbell entitled: *Interception capabilities 2000* observes that:

It should be noted that technically, legally and organisationally, law enforcement requirements for communications interception differ fundamentally from communications intelligence [eg: ECHELON]. Law enforcement agencies (LEA) will normally wish to intercept a specific line or group of lines, and must normally justify their requests to a judicial or administrative authority before proceeding. In contrast, Comint [communications intelligence] agencies conduct broad international communications "trawling" activities, and operate under general warrants. Such operations do not require or even suppose that the parties they intercept are criminals. Such distinctions are vital to civil liberty, but risk being eroded if the boundaries between law enforcement and communications intelligence become blurred in future.

The "law enforcement agencies" in the EU are to be issued with

general warrants to intercept the new generation of satellite communications services offered by Iridium in Italy and Globalstar in France. In addition, the provisions of the amended 1995 "Requirements" Resolution, when combined with the EU legal framework in the draft Convention on Mutual Assistance in criminal matters, provide for *real-time* (as a communication is happening) interception which will require instantaneous authorisation by a police officer or official. Moreover, police analysis software, such as the *Harlequin* system, is already widely used in the EU to "map" a target's business, political and friendship networks from data provided by telecommunications operators. The EU-FBI telecommunications surveillance system may not yet have the ability to "trawl" the ether but it will certainly be able to cast a very wide net.

Report on the draft Council Resolution on the lawful interception of telecommunications in relation to new technologies, Committee on Civil Liberties and Internal Affairs, Rapporteur: Gerhard Schmid, and Opinion from the Legal Affairs and Citizens' Rights Committee, PE 229.986, fin, 20.4.99; Draft Convention on Mutual Assistance in Criminal Matters between Member States of the European Union - Interception of telecommunications, Presidency to COREPER/Council, ref: 11173/98, Limite, JUSTPEN 87, 15.9.98; Draft Convention on Mutual Assistance in Criminal Matters between Member States of the European Union - Interception of subjects on national territory using national service providers ("remote approach"), Presidency to Working Party on Mutual Assistance in Criminal Matters, ref: 7196/99, Limite, JUSTPEN 22, 7.4.99; Draft Convention on Mutual Assistance in Criminal Matters between Member States of the European Union - application of the remote approach regarding interception of satellite telecommunications, Italian delegation to Working Party on Mutual Assistance in Criminal Matters, ref: 6284/99, Limite, JUSTPEN 9, 25.2.99; Draft Convention on Mutual Assistance in Criminal Matters between Member States of the European Union - application of the remote approach regarding interception of satellite telecommunications, Working Party on Mutual Legal Assistance in Criminal Matters, ref: 6195/99, Limite, JUSTPEN 7, 19.2.99 and COREPER to Council, ref: 6195/1/99, Limite, JUSTPEN 7 REV 1, 9.3.99; Draft Convention on Mutual Assistance in Criminal Matters between Member States of the European Union, Working Party on Mutual Assistance in Criminal Matters to COREPER/COUNCIL, ref: 13144/98, Limite, JUSTPEN 108, 19.11.98; Interception of telecommunications - Draft Council Resolution on new technologies, Presidency to Police Cooperation Working Party, ref: 6715/99, Limite, ENFOPOL 19, 15.3.99; Interception of telecommunications - Council Draft Resolution in relation to new technologies, Presidency to Police Cooperation Working Party, ref: 10951/98, Limite, ENFOPOL 98, 3.9.98 and ref: 10951/1/98, Limite, ENFOPOL 98 REV 1, 10.11.98 and ref: 10951/2/98, Limite, ENFOPOL 98 REV 2, 3.12.98; PC Magazine, May 1999; Duncan Campbell, "Intercepting the Internet", Guardian Online and on the telepolis site: <http://www.heise.de/tp/english/special/enfo/6397/1.html>; Interception Capabilities 2000, report by Duncan Campbell for the Science and Technology Options Assessment Panel of the European Parliament, 6.5.99.

EU

UK to join Schengen & JHA Council, 12 March 1999

The UK announced, at the meeting of the Justice and Home Affairs Council in Brussels on 12 March, that it intended to apply to "opt-in" to parts of the Schengen *acquis* (in the Treaty of European Union, TEU) and parts of the Free Movement Chapter (Title IV, Visas, Asylum, Immigration in the Treaty establishing the European Communities, TEC). It is expected that Ireland will follow the UK.

Under the Schengen Protocol in the Amsterdam Treaty, which incorporates the Schengen *acquis*, the UK and Ireland:

which are not bound by the Schengen acquis, may at any time request to take part in some or all of the provisions of this acquis. The Council shall decide on the request with the unanimity of its members referred

to in Article 1.." (Article 4 of the Schengen Protocol)

The "members" in Article 1 are the 13 EU states who were members of the Schengen Agreement (from 1 May 1999 with the Amsterdam Treaty coming into effect Schengen is incorporated). It is thus open to the UK and Ireland to apply to join all or parts of the Schengen *acquis*. However, it should be noted that acceptance of their applications is dependent on a unanimous decision by the 13 "Schengen" states which could pose a problem if Spain pursues its claims over Gibraltar or if other states do not appreciate the "pick-and-mix" application.

The breakdown of which parts of the Schengen *acquis* the UK will be applying to join is as follows:

External frontiers:	NO
Internal borders:	NO
Visas:	NO
Schengen Information System (SIS) :	YES
Police Cooperation:	YES
Drugs:	YES
Judicial cooperation:	YES

All but one of the Schengen provisions on asylum have been provisionally declared obsolete, most have been supplanted by the EU-wide Dublin Convention. The UK says the visa provisions are to be linked to the abolition of internal controls (which runs against the maintenance of its border control regime) and the strengthening of external frontiers to enforce visa policies.

When the Home Secretary announced that the UK was to apply to join the Schengen *acquis*, especially the SIS (and the complimentary SIRENE network), no reference was made as to whether the UK parliament would be asked to agree. During the brief debates on the ratification of the Amsterdam Treaty it was made clear that the Schengen Protocol incorporating the Schengen *acquis* into the TEC and TEU did not apply to the UK.

The areas of Title IV of the TEC that the UK wants to join are those covering asylum and civil judicial cooperation, the UK government does not want to join the provisions on external frontier controls or those on visa policy. The UK Home Secretary Jack Straw said the UK will "maintain its frontier controls" which is specifically covered in a Protocol in the Amsterdam Treaty. The UK's position is that the: "maintenance of strong frontier controls.. is the most effective way for the UK, with its island geography, to control immigration." The UK and Ireland are not bound by the measures in Title IV except where they choose to be so.

SIS to stay in the "third pillar"

In the last week of April, the last week of the Maastricht Treaty, two important meetings took place - the General Affairs Council on 26-27 April and the last meeting of the Schengen Executive Committee on 27-28 April.

The central issue was the incorporation of the Schengen *acquis* into either the TEU or TEC. There were two sets of reports, the first defining what was actually in the *acquis*, the second allocating each provision to specific Articles in the two Treaties. The sticking point proved to be the allocation of the Articles 92 to 119 of the Schengen Agreement covering the Schengen Information System and the national SIRENE bureaux as it covers both "third" and "first" pillar - policing and immigration. The General Affairs Council agreed that the third pillar "fallback", provided for in Article 2.1 of the Schengen Protocol, should apply. This means that the legal base for these Articles will be in the TEU until such time as agreement can be reached.

Council to run SIS and face staff strike

The Council has taken over the contracts to run the Schengen Information System and to take in the 57 staff of the Schengen Secretariat. This latter decision has led to a strike by Council staff who argue that all jobs should be subject to normal recruitment procedures under the Staff Regulations. The decision to integrate the Schengen staff was taken by qualified majority, with France opposing, using "written procedure" which expired on 1 May.

Irish Times, 11.3.99; *Home Office press release and statement*, 12.3.99; *Union Syndicale press release on the integration of the Schengen staff*, 22.3.99; *other sources*.

Little was decided at the first Justice and Home Affairs

Council (JHA) under the German Presidency. Europol's operational start was being delayed, discussions over the Eurodac Convention's Protocol were agreed then "frozen" and agreement on the draft Convention on Mutual Legal Assistance in criminal matters held up (see feature).

Europol

The Europol Convention entered into force on 1 October 1998 but Europol cannot actually take up its activities until a number of other measures are in place. At the time of this meeting France and Italy still had to complete ratification of the "Protocol on the privileges and immunities of Europol officials". Also outstanding, by half the EU member states, was ratification of the bilateral Protocol on the privileges and immunities of national Liaison Officers and their families with the Netherlands (which hosts the Europol HQ in the Hague). The substantial outstanding issue were the draft Rules of procedure for the Joint Supervisory Body (JSB) centring around a dispute between Germany and France over its legal form. Agreement was reached by the Body would be *sui generis*, neither a court nor a purely administrative body.

EURODAC

The draft Eurodac Convention and its Protocol have been "frozen" until the Commission puts forward a new legal instrument under the Amsterdam Treaty provisions. Under the draft Convention the fingerprints of all asylum seekers, over the age of 14 years old, will be taken and sent to the Central Unit to be set up within the Commission, to check whether they have previously applied for asylum and been rejected or removed from the EU.

The Protocol extends fingerprinting to "certain other aliens", namely "illegal immigrants", in two situations. First, those apprehended in an "irregular" border crossing and detained. These are to be sent to the Eurodac Central Unit and held for up to 2 years. Second, those found to be "illegally present" in member states will have their fingerprints sent to the Central Unit for checking but the data will not be stored.

Amsterdam

Apart from the Schengen *acquis* (see feature above) the main issues for the Council were two Conventions - the 1998 Convention on jurisdiction, recognition and enforcement of judgements in matrimonial matters ("Brussels II") and the 1997 Convention on the service of judicial and extra-judicial documents in civil or commercial matters - which have not yet been ratified by national parliaments in the member states. Under the Amsterdam Treaty "civil cooperation" moves from the "third pillar" to the "first pillar", from the Treaty on European Union (TEU) to the Treaty establishing the European Communities (TEC). The Commission now has put forward proposals on these two areas. However, one problem is that the Conventions were agreed by 15 EU member states but under the Amsterdam Treaty Denmark, Ireland and UK would not be legally bound unless they chose to be so. The decision was to proceed with the ratification process.

Visa Regulation

The meeting adopted a "Council Resolution determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States". This replaces visa Regulation no 2317/95 which was rescinded by the Court of Justice. The list covers 77 states plus Taiwan and is the same as the 1995 one (except for geographical renaming eg: Hong Kong becoming part of China). The agreed text did not take on board the amendments proposed by the European Parliament in its opinion of 10 February 1999.

EU: Secrecy: The “dinosaurs” are on the march again.. excluding citizens and civil society

an embargo could be imposed.. to delay access to certain documents to avoid any interference in the decision-making process and to prevent premature publication of a document from giving rise to "misunderstandings" or jeopardising the interest of the institution (eg: granting access to preparatory documents only after the formal adoption of a decision..

Discussion paper on public access to Commission documents, 23 April 1999 and summarising the discussions held between "officials" from the European Parliament, Council and Commission

The proposal coming out of the discussions of the officials of the Secretaries-General of the Council, Commission and European Parliament is one that would exclude citizens and civil society from any role in the decision-making process in the EU. The line of reasoning runs as follows.

The 1993 Decision

The 1993 Decision (20.12.93) by the Council and the Code of Conduct (6.12.93) under which the Commission operates its policy of public access to documents came out of Declaration no 17 attached to the Maastricht Treaty. The current 1993 Council Decision (and the equivalent Commission one) says in Article 1:

1. *The public shall have access to Council documents under the conditions laid down in the Decision.*

2. *"Council document" means any written text, whatever its medium, containing existing data and held by the Council, subject to Article 2(2) [which refers to documents originating in another institution].*

The essential principle of the 1993 Decision, which will continue in operation until replaced by the new Regulation, is that a citizen can apply for **any** document held by the Council subject only to the exceptions in Article 4 (see below). Expressed another way the citizen can apply for **any** document but can be refused access on specific written grounds.

Under the proposed system this principle is removed. Documents would be divided into two categories:

1. *"accessible" documents concerning legislative measures;*
2. *and non-accessible internal "working documents".*

By basing "accessible" documents on the concept of *legislative* measures the proposal perversely exploits a phrase in the Amsterdam Treaty amending the Council's Rules of Procedure (Article 207.3, TEC) which reads: "the Council shall define the cases in which it is to be regarded as acting in its *legislative* capacity, with a view to allowing greater access to documents in those cases..". Of course it could be argued that this phrase does not necessarily imply that the Council should *not* allow access to documents where they do not concern the legislative process, nor is this term necessarily applicable to the Commission and European Parliament. Indeed, under the present practice many documents are released which do not concern the legislative process.

However, the present proposal has sought to exploit this wording to automatically exclude from access documents which do not relate to the legislative process - around 60% of the documents currently released do *not* concern the legislative process but rather ongoing practices resulting from measures already agreed.

An earlier, "leaked", version, refers to the "hard core" of Article 255 (the Treaty provision setting out the right of access) and the possibility of "going beyond the strict provisions" (interpreted as strictly *legislative*) and, in paternalistic fashion,

giving out "certain documents.. without granting a formal right of access".

The introduction of an "embargo" system "until after the formal adoption of a decision.." would deny civil society and citizens the chance to participate in the decision-making process - a process which is meant to be "democratic". This concept of "democracy" means that governments and parliaments take decisions and civil society and citizen are then informed after the fact. This would be achieved by delaying "access to certain documents". The proposals says in a footnote (later deleted) that the European Parliament and national administrations would get "privileged access".

Why is this "delay" necessary?

Three reasons are given. First, "to avoid any interference in the decision-making process". The clear implication is that if citizens, voluntary groups and civil society get access to documents concerning planned measures/legislation they might try to influence or oppose what EU governments, through the Council, or the Commission staff have developed in secret, closed working parties.

Second, "to prevent premature publication of a document from giving rise to "misunderstandings"". This again seeks to exclude discussion in civil society by cutting off coverage of planned measures in the media, journals or magazines.

As to the third reason, to prevent "jeopardising the interest of the institution", this suggests that policy-making, and the practices that flows from the measures/legislation once adopted, if exposed to normal, open, democratic debate would be jeopardised.

Taken together these proposals describe the traditional "lobby system" under the control of "spin doctors". That is the point of an "embargo system", it leaves officials in control of releasing information to "trustworthy" sources who become dependent on the "favours" bestowed upon them.

As usual it is important to read the "Technical annex" at the back. One of the major complaints taken to the European Ombudsman by *Statewatch* was the Council's interpretation of the term "repeat applications" in the 1993 Decision. The Council used this to refuse access where requests for documents regular concerned justice and home affairs. When challenged they argued that perhaps the French term "répétitiv" was more accurate. The Ombudsman supported *Statewatch* and the Council had to hand over the documents. The annex suggests that the term "repeat applications" be replaced with "repetitive requests".

Whether the "dinosaurs" for secrecy will succeed is open to question. Access to documents has moved a long way since December 1993, citizens have successfully challenged secrecy through the Court of Justice and the European Ombudsman, and national parliaments have far more access too. A number of EU member states are firmly in favour of proper access to documents, the new European Parliament may decide this is several bridges too far, and civil society may find an effective voice.

The followings documents will be on Statewatch's website (<http://www.statewatch.org>): Draft Communication to the Commission from the President on public access to Commission documents, Brussels, 22 January 1999, SG.C.2/VJ.CD/D(98)12 (Statewatch translation); Discussion paper on public access to Commission documents, Brussels, 23 April 1999, SG.C.2/VJ/CD D(99)83; Statewatch press release: "EU plans undermine citizens' right of access to documents", Brussels, 26 April 1999.

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Web database

Statewatch has a searchable database on the World Wide Web. The new url is:

<http://www.statewatch.org>

[the old url will be automatically linked to the new address]

Contributors

Statewatch, was founded in 1991, and is an independent group of journalists, researchers, lawyers, lecturers and community activists.

Statewatch's European network of contributors is drawn from 12 countries.

Editor: Tony Bunyan. Deputy Editor: Trevor Hemmings. Reviews Editor: Nadine Finch. Lee Bridges, Phil Collins, Katrin McGauran, Paddy Hillyard, Ben Hayes, Steve Peak, Phil Scraton, Joe Sim, Ann Singleton, Mike Tomlinson, Frances Webber, Stef Janssen, Ida Koch, Catherine Weber, Dennis Töllborg, Francine Mestrum, Kees Kalkman, Helle Hagenau, Christian Busold, Barbara Forbes, Heiner Busch, Pedro Airbe, Sandra Schmidt, Mads Bruun Pedersen, Ciáran Ó Maoláin, Vassilis Karydis, Cristiano Codagnone, Steve Peers, Sonia Routledge, Ragnhild Sollund, Barbara Melis, Yasha Maccanico. The Centre for Studies in Crime and Social Justice (Edge Hill College, Lancashire), Liberty, the Northern European Nuclear Information Group (NENIG), CILIP (Berlin), Demos (Copenhagen), Omega Foundation, AMOK (Utrecht, Netherlands), Jansen & Jansen (Amsterdam), Kommitee Schluss mit dem Schnuffelstaat (Bern).
In this issue: Thomas Mathieson

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Statewatch,

PO Box 1516, London N16 0EW, UK.

Tel: (00 44) 0181 802 1882.

Fax: (00 44) 0181 880 1727

e-mail: office@statewatch.org