

Statewatch bulletin

Vol 6 no 4, July-August 1996

IMMIGRATION & ASYLUM

SWEDEN

France admits wrong man named

The French Security Police have now admitted that the Algerian citizen Abdelkrim Deneche had been wrongly named as responsible for the bomb attack at the Paris Saint-Michel metro station 25 July last year. He had been mistaken for the another person, Ait Touchent, called Tarek.

When the French authorities asked for the extradition of Deneche in 1995, based on an eye-witness statement by a French policeman, the Swedish Supreme Court found that there was conclusive evidence that Deneche was innocent (see *Statewatch*, vol 5 no 6). Despite this decision the Swedish government, after a request from the Swedish Security Police, decided to put Deneche in custody and finally to expel him, under the Swedish anti-terrorist law.

The French police now admit their mistake, but the head of the Swedish Security Police, Anders Eriksson, says the decision to label Deneche as a terrorist as well as the decision to expel him as soon as they can find a country to send him to, remains. Neither the Swedish Security Police nor the Swedish government has ever admitted any mistake, when applying the anti-terrorist law.

NETHERLANDS

Leader of Philippino communists to be expelled

Professor Dr Jose Maria Sison (57), head of the Phillipines Communist Party (CPP), who sought political asylum in the Netherlands eight years ago and has been involved in legal proceedings ever since, is now to be expelled within weeks, not to the Phillipines but to a country of his choice. The Dutch government has tried everything to get rid of Dr Sison, whom it considers to be a dangerous terrorist leader, but so far he has always won his appeals and the Raad van State (the highest appeal council) twice recognized him officially as a refugee. It is widely believed that the government's campaign against Dr Sison is motivated by substantial economic interests

and strong pressure from the US government.

Philippino president, Mr Fidel Ramos, recently called upon Dr Sison to return to his country, promising that he would be safe there, but human rights organizations have warned that the communist leader would risk being killed at the hands of death squads. There is still an unofficial price on his head of one million pesos, dead or alive. Mr Ramos was responsible for the nine-year detention and repeated torture of Dr Sison under the Marcos government between 1977 and 1986.

Dutch legal experts have expressed their disbelief and criticism about the government's position, calling the present decision "insane" and "a text riddled with beginner's mistakes". They have pointed out that there is no solid ground for the accusation of "terrorist activities", an argument also put forward by the Raad van State, and that in the Phillipines itself, there is no outstanding warrant against Dr Sison. The government says its decision rests on a letter written by the Binnenlandse Veiligheidsdienst (BVD, the Dutch internal security service) in March 1993. This letter, based on confidential information, states that Dr Sison as the head of the CPP is directly responsible for the terrorist activities of the New People's Army, and alleges that meetings have been observed between Dr Sison and representatives of other terrorist organizations from around the world.

In 1991 a Dutch television crew filmed an attempt by a joint BVD-CIA team to lure another Philippino in Holland, Mr Nathan Quimpo, into a cooperation agreement to collect information on Dr Sison. The particularities of the Sison affair call to mind the fate of former CIA officer Philip Agee, who sought asylum in Holland in 1977 but was bluntly refused after the Americans brought substantial pressure to bear on the social-democrat Dutch government. The ending of the Cold War does not seem to have changed all that much in some ways: a Dutch progressive-liberal cabinet can still be bent to prevailing winds.

SPAIN: MELILLA

First mass expulsions by the Spanish State

The practice of mass expulsion, which is already becoming a routine procedure in other European states such as France, was seen for the first time in the Spanish State in June: some 103 immigrants and

asylum-seekers were expelled, using military aircraft, and according to the United Police Union, SUP, the deportees were given the sedative drug Haloperidol.

The immigrants, from Central Africa, had been living for many months in the courtyard of a former Red Cross hospital in Melilla, a Spanish enclave in north Africa. The absence of any sign of an early and satisfactory resolution of their situation, the poor living conditions, several arson attacks and the arrest and expulsion of some of their number by police gave rise to considerable tension. On 17 June, an argument between some of them, and a subsequent intervention by the police, ended in a major confrontation. Afterwards most of the immigrants went to the government headquarters in Melilla, demanding an immediate solution for their problems. They remained there, without food and finding it very difficult, because of the attitude of the police, to get water, until they were arrested on 20 June. They were taken in military planes to Malaga, where they were placed in the Capuchinos detention centre and in migrant hostels. Two days later, all 103 people had "disappeared". Official sources cynically justified their removal to an unknown destination by citing "the right of every immigrant to privacy" and "their protection against possible outbreaks of xenophobia".

The total silence as to the whereabouts of the 103 ended only after their expulsion, on 25 July, to several African countries.

The interior minister Mayor Oreja said that "Operation Melilla", as it was called, was carried out "discreetly and with respect for legal propriety", but it brought protests from human rights groups, from immigrant support organisations and from the Public Defender, or ombudsman. There are strong doubts as to the legality of the procedure. The ombudsman noted various anomalies, including the designation as legal adviser to each of the 103 of a lawyer who was also retained by the government headquarters in Melilla; the detention of 40 of them in two centres for foreigners in Malaga on foot of two detention orders covering groups of names, when the convention is that such orders are made individually; and the fact that more than half of them were not formally deported but simply returned to the country of origin, a procedure which is only applied to people who have previously been deported from Spain or refused entry at the border. Several NGOs claimed that there may have been a further irregularity in failing to inform

the immigrants and asylum-seekers of the grounds for their detention and in failing to have them attended by the UNHCR. Moreover, according to the Spanish Commission for Aid to Refugees (CEAR), 29 of them had applied for asylum and another 14 had applications pending, since the Melilla police would accept a maximum of two asylum requests per week. Although it was said that the individuals and their countries of origin were identified, there are considerable doubts about that: almost all had no identity documents, and even police sources presumed that the relevant embassies had not provided confirmation of the information. Of the expellees, 19 were sent to Mali, 24 to Senegal, 50 to Guinea Bissau and 10 to one of the poorest countries in Africa, Cameroon (where another 22 were refused entry after refusing for more than a week to leave the plane which brought them). The countries concerned were promised favourable treatment in their future relations with the Spanish State.

Withdrawal of legal aid for undocumented immigrants

In a joint initiative, 15 NGOs including SOS Racismo, Mugarik Gabe and Abogados Sin Fronteras denounced the new Law on Free Legal Aid, which extends to foreigners only if they are in the state legally. The law, which took effect on 12 July, leaves immigrants without residence papers undefended in the event of deportation procedures against them, unless they have the means to pay privately. The Spanish government, in the opinion of the NGOs, was thereby violating a fundamental human right enshrined in various international treaties to which it was party; they described the law as part of the tendency across Europe to seal off the borders. In May the Public Defender, or ombudsman, applied to have this provision declared unconstitutional, but until the Constitutional Court rules on the matter the law remains.

During 1995 the Spanish State deported 4,875 people for being in the country illegally, an increase of 721 on the previous year. Of these 1,608 were African nationals, 755 came from the Americas, 527 were from Europe other than the EU, and 191 were Asians.

Deaths in the Strait

Up to mid-July six intending immigrants were known to have drowned, and around 50 were unaccounted for, while attempting to cross the Strait of Gibraltar from Morocco. It is estimated that 1,500 people succeeded in entering Spain in this way.

The Human Rights Association, APDH, has denounced the practice of criminal gangs who charge vast sums to transport immigrants, and sometimes defraud them by sailing along the Moroccan coast at night and then persuading their passengers that they have arrived in Spain. They have also been known to throw people overboard some distance from the landing beaches.

POLAND

Refugees arrested

Twenty refugees from Macedonia who were caught by the German border police while they were trying to cross the Polish-German border have been arrested on their return to the "safe third-country" Poland and sentenced to several months imprisonment. The basis of the sentence is paragraph 288 which was used before the fall of the Iron Curtain to imprison Polish citizen: unauthorized leaving of the country is the name of the offence.

Usually, "illegal" refugees were given a stamp in their passport that required them to leave the country within three days or up to two weeks. However, many have tried time and again to cross the German-Polish border. This new practice has been criticized as a sign of the growing influence of Germany on the Polish authorities. The Forschungsgesellschaft Flucht und Migration (Berlin) has for some months received information that refugees are being held in prisons in north-west Poland. A further sign of a systematic tightening up is paragraph 276. In force since November 1995, it says that organised criminal conspiracy will be punishable with up to 10 years imprisonment. This includes organised help with "unauthorised leaving of the country".

Frankfurter Rundschau, 5.7.96; *FFM*, 1995 (see new material).

AUSTRIA

Turkish ruled to be citizens

The administrative tribunal has ruled that Turkish

citizens who have been living for at least five years in Austria enjoy the same freedom of movement as European Union nationals. The EU signed an Association Agreement with Turkey in 1963 which puts Turkish citizens by and large on an equal footing with EU nationals. The court has ruled that Austria has to fulfil this obligation now that it has joined the EU. This is especially good news for the spouses and children of Turkish workers who have not been allowed to work. However, the largest immigrant group from former Yugoslavia which makes up over 50% of migrant labour is not affected. Serbs and Macedonians are particularly affected. The Croats and Bosnians have still the support of the Austrian government because of Austria's stance during the war. Interior Minister Einem has declared that this ruling could be an "orientation" for the future treatment of other immigrant groups in Austria. The principle would be "improved integration, restrictive immigration policy".

Salzburger Nachrichten, 31.7.96, 1.8.96, 10.8.96; *Der Standard*, 7.8.96.

BELGIUM

Army plans war against migrant community

A leaked document has revealed that the Belgian army has prepared plans for making war against the black and migrant population in the country. The plans describe migrants, especially those from Africa, as posing a "clandestine threat with a permanent character". It also proposes that reserve army officers should spy on black communities.

The report claims that "many countries and nations wish to live following the "western model" yet at the same time "more and more foreigners wish to live in the EU, especially from Africa." It continues:

"numerous migrant communities have established themselves in the large conurbations, where the major centres of power as well as transport and industry can be found. If those population groups would come to disagree with Belgian government policy they could unleash activities to disrupt these policies or to indicate their displeasure".

The report therefore claims that migrant communities should be seen as a "clandestine threat of a permanent nature".

In order to deal with this "clandestine threat" the report proposes beefing up the Army reserve. The aim would be to create a network of 1,200 army reserve officers who would recruit friends and family into the units. The Army reservists would be expected to operate as a "police constable controlling his beat". They would get to know the local police force and other authorities, as well as gathering information on "subversive elements".

Reaction to the report has been intense. The ruling Socialist Party has condemned the report's major premise as racist and has demanded an explanation from the Minister of Defence, Jean-Pol Poncelet, who claimed no knowledge of the report. He in turn declared that "no trace of racism must be tolerated within the army." In a hastily called press conference the author of the report, Colonel De Vleeschouwer, defended the targeting of migrant communities claiming that "we were only trying to define a potential threat... it could just as easily have been Germans or Swedes". General Brunin, head of the Joint Chiefs of Staff, regretted the paragraph concerning migrants, claiming that he had only read the report hastily and had only learnt of the paragraph targeting migrants through press-cuttings.

Although the offending paragraph has now been removed from the report the basic idea of the creation of a secret army to counter subversion has also caused concern. The *De Morgen* newspaper has compared the idea to the "stay-behind" networks created in the post-war years as part of the Gladio project. The stay-behind groups were originally set up to act as guerilla units in the event of a Warsaw Pact invasion. However the networks very quickly turned their attention to internal subversion, recruiting activists from organisations such as the neo-nazi "Westland New Post". The stay-behind networks are alleged to have ended up providing weapons used by the infamous Nijvel gang to carry out the "Brabant massacres".

The resulting scandal has since persuaded many Belgian MPs to call for an end to secret civilian armies. However the Socialist Senator Fred Erdman has pointed out that "some people look back nostalgically to these sort of networks". He has criticised the rewriting of the report, saying "the text should not just be rewritten, what we need is a whole new concept of defence."

De Morgen, 31.7.96.

Police Screens 500.000 Migrants

The Belgian "Rijkswacht" (gendarmerie) has secretly and illegally screened up to half a million Turkish migrants in the last two years Justice Minister de Clerk revealed in June. The exercise, codenamed "Operation Rebel", was designed to target heroin smugglers. It now appears to have involved everybody in the country who is of Turkish descent.

Operation Rebel was launched in 1994 by Corps Commander De Ridder of the Centraal Bureau van Opsporingen (COB- Central Investigation Bureau) of the Rijkswacht. Starting from the premise that over 80 percent of the heroin that entered Belgium passed through Turkish Mafia gangs, the decision was made to effectively check up on every person of Turkish descent in Belgium. The operation was only recently discovered by Justice Minister, de Clerk, who ordered it stopped.

The system used was highly methodical. The COB first went through the population register and identified everybody who conceivably might be Turkish. After that they went to the aliens registration service to obtain the addresses of any Turkish people who may have entered the country illegally. They then went through the judicial databank to pull out anybody who might have a criminal record. The search finally went through all other available databanks, including details of juvenile bank accounts.

This method is far from original, deriving as it did from the German police who had earlier used similar techniques to trace "Rote Armee Fraktion" suspects. However the German police did take the precaution of getting judicial approval. The Belgian police, on the other hand, told nobody either from the judiciary or the Ministry of Justice. The extent of this operation was finally revealed when the COB went to the national magistrate a year after the project was started in order to gain access to some state databanks.

The exposing of Operation Rebel has led to an outcry across the political spectrum. Senator Fred Erdman of the Socialist Party stated "when I first read about Operation Rebel I thought that I was living in the world of George Orwell's 1984". The Christian democratic Senator Vandenberghe observed that the convention of the Council of Europe strictly prohibited the use of ethnic origin as the basis for any

investigation and the Green party senator Eddie Boutmans pointed out that whilst condemning the specific enquiry the Belgian government was at the same time creating a legal framework for pro-active investigation like "Operation Rebel".

When challenged in the Senate Justice Minister de Clerck claimed that only 95,000 people were genuinely enquired into. All other details were gathered merely for sociological and "socio-demographic" research. He also claimed that the enquiry was launched before the 1995 privacy law - which would have outlawed such methods - had come into operation. He finally stated that he had never been informed about such operations, he would never have permitted such an operation if he had been informed about it, and that anyway responsibility for the operation lay with the National Magistrate.

The minister for internal affairs, Johan Vande Lanotte, has since called for an enquiry supported in both houses of the Belgian Parliament. However it has since emerged that responsibility for the Rijkwacht is divided between the Ministry for Home Affairs and the Ministry of Justice, which will complicate any enquiry. In the meantime the control commission for the police services, otherwise known as the "P" committee, has launched an investigation into all police methods of information gathering.

De Morgen, 24.6.96; 1.7.96; 4.7.96; *Official Report of the Belgian Senate*, 3.7.96.

New Asylum Bill passes Senate

The controversial new asylum bill proposed by the Belgian government which significantly diminishes rights of asylum-seekers has passed the Belgian senate virtually unscathed. It is now only a matter of time before the bill becomes law.

Many civil liberties activists and refugee charities were hoping that the Senate would introduce amendments "humanising" the bill. Their hopes were particularly centred on leading Christian Democratic senators such as Bea Cantillon, who had described the bill as a "one-sided, shortsighted and negative proposal that only emerged as a result of pressure from politically perverse organisations". At one stage it even appeared that both the governing Christian Democratic and Socialist groups in the senate were going to abstain, which would have put the bill in jeopardy. In the event only four senators from the

government coalition abstained and the bill was passed in its entirety.

The new law will hit refugees and asylum seekers in a number of new ways. It increases the length of time that an asylum seeker can be held in custody from two months to renewable periods of six months. At the same time it removes state benefits from those who have been granted temporary leave to remain, forcing them to live in open centres where only their basic needs will be provided for. The bill also removes the right of foreign students to remain in the country if they do not have the means to support themselves, whilst restricting the help that any Belgian citizen can provide to illegal immigrants.

De Morgen 29/6/96

Basque activist asks for Asylum

Another Basque activist has applied to the Belgian government for asylum. Enrique Pagoaga belongs to a group of about twenty Basques who were deported to Venezuela in the Eighties. The Spanish government denies all knowledge of Pagoaga and the Belgian government wants to deport him back to Venezuela.

Pagoaga's story begins in France in 1987, when he was deported to Algeria by the French government in an attempt to disperse and subdue Basque communities. From Algeria he was flown to South America, along with many other Basques, in a Spanish military aircraft. He was then dumped in Venezuela, where he was required to report to the police once a month to have his residence permit renewed. Facing increasing harassment from the Venezuelan government he decided to leave and eventually arrived in Zaventem airport without any papers. He has since asked for asylum in Belgium.

The Belgian government's first response was to attempt to deport him back to Venezuela. This was prevented by Pagoaga's asylum application and it has since been established that Pagoaga is a Schengen-country citizen which gives him automatic right of abode in Belgium. Pagoaga's request for political asylum has however been turned down after Spain denied any interest in him. Pagoaga is appealing against this decision. In the mean time Commissioner-General for Refugees Marc Bossuyt has now decided to prosecute him for possession of false papers.

Although there is now no real risk that Pagoaga will be deported his appeal for political asylum still has the potential to embarrass the Belgian government. Relations between Spain and Belgium, already tense after the Belgian supreme court rejected Spain's extradition application for a basque couple, would be severely strained if Belgium were to accept the asylum application of a Spanish citizen who has no warrants outstanding for him in Spain.

De Morgen, 2.7.96 & 3.7.96.

Immigration - new material

From refugee to terrorist. *CARF* No. 33 (August/September) 1996, pp5-8. Informative piece on the UK's call for anti-terrorist and emergency powers to be used against Europe's refugee communities.

Desperately seeking asylum, Sam Beale. *Squall* No. 13 (Summer) 1996, pp24-25. Looks at an alliance between church groups and squatters who are providing support for refugee and asylum seekers caught at the sharp end of recent asylum and immigration legislation.

Towards equality: actual and potential rights of third country nationals in the European Union, Steve Peers. *Common Market Law Review* February 1996, pp7-50. This article analyses the rights available to third-country nationals and their possible interpretation in three areas: the current and proposed internal legislation of the EC; "third pillar" EU measures and the EC's international agreements.

Free movement delayed indefinitely, Steve Peers. *European Law Review* April 1996, pp150-156. A brief critical summary and analysis of EC Regulation 2317/95, imposing visa requirements on nationals of over 100 states, in the context of free movement within the EC.

Behind the Razor Wire: Inside INS Detention Centres, Mark Dow. *CovertAction Quarterly*, no 57, Summer 1996, pp33-37. Looks at the conditions and treatment of migrants held in the US's detention centres.

Polen: Vor den Toren der Festung Europa [Poland:

Before the gates of Fortress Europe] Forschungsgesellschaft Flucht und Migration (ed), 1995, Berlin, no 1. 64pp, 14,-DM, ISBN 3-924737-26-6. Very little is known about the situation of migrants and refugees who have been deported from Germany to Poland under the 1993 readmission agreement. In early 1995, FFM conducted interviews in Poland to gather information on the Polish asylum system, living conditions of and prospects for migrants and refugees, most with an irregular status as only very few people apply for asylum.

Rumaenien: Vor den Toren der Festung Europa [Rumania: Before the gates of Fortress Europe] Forschungsgesellschaft Flucht und Migration (ed), 1995, Berlin, no 2. 14,-DM, ISBN 3-924737-28-2. Rumania, a transit country half way between the Middle East and Germany, has become the most important "deportation country" for Germany since the readmission agreement in 1992. An analysis of the repressive Rumanian minority and immigration policy is complemented by interviews and accounts of deportees and people who are about to migrate to Germany. FFM im Mehringhof, Gneisenaustraße 2a, D-10961 Berlin, fax:0049-30-6938318.

Bundesdeutsche Fluechtlingspolitik und ihre toedlichen Folgen [German refugee policy and its fatal consequences] Antirassistische Initiative, 1996, Berlin. 24pp, 3,-DM, fax: 0049-30-7869984. Chronology of arson and racist attacks from January 1993 to April 1996 as well as analysis of German refugee policy. Conclusion of the brochure: more people have been killed through the refugee policy of the FRG than through racist attacks.

Étranger et citoyen. Les immigrés et la démocratie locale [Foreigner and citizen. Immigrants and local democracy] Bernard Delemotte, Jaques Chevalier (eds), 1996, Paris, L'Harmattan. 174pp, FF96,-, ISBN 2-7384-4164-5. This book addresses the question: which form of political participation of immigrants is currently possible and desirable in the local community. Included are seven case studies of French towns with elected representatives of foreigners in the town councils and one chapter on Belgium.

Rapport d'une mission internationale d'enquete

de la FIDH sur la situation des étrangers et demandeurs d'asile en France [Report on an international investigation of the International Federation of Human Rights League on the situation of foreigners and asylum seekers in France] FIDH, June 1996, Paris. FF25,-, fax: 0033-1-43551880. The first part of the report deals with removal procedures of foreigners, the second part with the treatment of asylum seekers and accuses France of human rights violation regarding their protection. It concludes with 14 recommendations regarding asylum law, non-refoulement, refugee definition, treatment of detainees and fair hearings.

Parliamentary debates

Asylum & Immigration Bill *Lords* 20.6.96. cols 458-514 & cols 522-586; 24.6.96. cols 596-607, 620-657, 671-756

Asylum Seekers (Benefits) *Commons* 24.6.96. cols. 37-48

Asylum & Immigration Bill *Lords* 1.7.96. cols 1217-1279, 1284-1294; 2.7.96. cols. 1306-1379

Asylum & Immigration Bill *Commons* 15.7.96. cols. 807-893

Asylum & Immigration Bill *Lords* 22.7.96. cols. 1176-1216

CIVIL LIBERTIES

UK

Peace women cleared over Hawk attack

Four women peace campaigners walked free from Liverpool Crown Court in July after a jury found them not guilty of criminal charges despite their admission that they did more than £1.5 million worth of damage to a Hawk military aircraft. The fighter plane, which was housed at the British Aerospace (BA) plant at Warton, Lancashire, was destined for the western-backed military dictatorship in Indonesia, which is carrying out a campaign of genocide against the people of East Timor which was forcibly annexed in 1975.

The jury accepted the womens' argument that their actions were legal under British and international law, because they were using reasonable force to prevent a greater crime. While BA have stated that they operate

within the British government's guidelines there is video evidence that the Hawk's are used as ground attack aircraft to attack and kill Timorese civilians. Amnesty International has estimated that 200,000 East Timorese (about a third of the population) have died at the hands of the military junta, which seized power in 1965.

There are also reports that Indonesian security forces are using British riot control vehicles, Tactical armoured personnel carriers, built by Glover Webb which is part of the GKN Defence network, to suppress demonstrations in the capital Jakarta. The security forces are also believed to have been equipped with electric cattle-prod shock batons - frequently used as weapons of torture against those in detention - supplied by a South African associate of SDMS Security Products in London. Other, unconfirmed, reports claim that British-built Scorpion 90 tanks were seen on the streets of Jakarta after demonstrations in July.

New Statesman 19.7.96; *Independent* 31.7.96, 2.8.96.

Civil liberties - new material

A question of ID, Adrian Beck & Kate Broadhurst. *Police Review* 2.8.96, pp16-18. This article examines the use of national identity cards in the EU and the debate between voluntary and compulsory systems.

From the dockyards to the Disney store: surveillance, risk and security in the Liverpool city centre, Ray Coleman & Joe Sim. Paper presented to the Law & Society Association Conference, University of Strathclyde, (July) 1996, pp38. This paper is a critique of Liverpool's CCTV camera network which was launched in July 1994. It is available from the authors, School of Social Science, Liverpool John Moore's University, Trueman Street, Liverpool L3 2ET.

Five years in jail for my art, Simon Sunderland. *Big Issue* 3.6.96, p10. Sunderland was jailed for 5 years - longer than many rapists - for his graffiti art, carried out on mainly derelict buildings, when he was 19 years old. In this piece he explains how he, and other working class youths, got involved with graffiti art.

Response by Justice to the Home Office Consultation Paper concerning the EC Data

Protection Directive (95/46/EC). Justice, July 1996, 20 pages, £3.00. The report criticises "the government's negative attitude of implementing the Directive only to the extent "absolutely necessary" to comply with European law."

Terrorism law is a major setback for civil liberties. *First Principles*, vol 20 no 2, June 1996, pp1-3. Summarises law signed by President Clinton on 24 April.

Report to and Responses of the Spanish government to the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on its visit to Spain 10-22 April 1994 and 10-14 June 1994. CPT/Inf (96) 9 & 10. Council of Europe, Strasbourg, 5 March 1996.

Final Response of the UK Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to the UK from 15 to 31 May 1994. CPT/Inf (96) 12. Council of Europe, Strasbourg, 5 March 1996.

Parliamentary debates

New Age Travellers (Tayside) *Commons* 20.6.96. cols. 1102-1110

Drugs strategy *Commons* 21.6.96. cols. 1111-1180

Science Policy and Human Genetics *Commons* 19.7.96. cols. 1409-1482

EUROPE

EU

Football fans taken off records

Gwilym and Rhys Boore, the two Welsh football fans, who have been fighting for six years to clear their names and get themselves removed from police records have succeeded (see *Statewatch* vol 3 no 2, vol 4 no 5, vol 5 no 5). The Belgian authorities say they are not on their records and the UK's National Criminal Intelligence Service (NCIS) said the same last year.

In a letter to their lawyer, Liberty's Philip Leach, the

European Commission said in a letter that:

"the Belgian authorities indicate that... they are in a position to confirm that no data concerning the identities of the Boore brothers are listed on either national or Schengen computerised systems."

The brothers had ended up on a series of computer systems after they were taken off a train and had their identity checked in Arlon, on the Belgium-Luxembourg border, in November 1990. The Luxembourg police had then sent a report to the NCIS in the UK saying they had, with others, "caused disorder en route" - which was quite erroneous. On 6 November 1992 the NCIS had supplied the Belgian police with a list of 151 names of "suspected" Welsh football fans and when the Belgian police "checked" a train at Kortrijk station on 16 November the Boore brothers were picked out. Rhys Boore was held for 16 hours, strip-searched and deported in handcuffs.

A complaint to the Belgian Police Complaints Authority was rejected in October 1995 but it did confirm that their names had been removed from police records. The latest letter confirms that they have been removed from all Belgian and Schengen records. However it has also transpired that their names found their way onto the UK Foreign Office Consular Department's "database" and it is not known to who they may have passed the names.

On behalf of the Boore brothers Liberty has also made a complaint against the European Commission to the European Ombudsman on the grounds that the Commission wanted to close the case before satisfactory replies had been received from the UK and Belgian governments.

The brothers six year campaign involved lobbying the Home Office, Foreign Office, NCIS, South Wales police, the Data Protection Registrar, the UK embassy in Brussels, the Belgian and Luxembourg embassies in London, the Belgian police, the Belgian Ministries of Justice and Interior and the European Commission. "We spent our lives going round in circles", commented Gwilym Boore who added on Europol: "God help anyone whose name gets put on it by mistake."

Letter from the European Commission, 9.7.96; *Comments by the Commission concerning a request for information by the European Ombudsman*, 21.5.96; *Comments by Liberty concerning the*

Commission's reply to the European Ombudsman, 1.7.96.

BELGIUM

British grandma who forgot passport deported

A British great-grandmother who was travelling to Brussels to see her son has been thrown out of Belgium after she forgot her passport. Enid Wilson, who is 76, was refused entry under the rules of the Schengen treaty, which Britain has not signed.

Mrs Wilson left her home in Yorkshire on Monday 17 June. Although she became aware that she had forgotten her passport when she arrived at Waterloo station, she had no time to make enquiries. She assumed that on arrival in Brussels she would have to fill in some forms but that they would let her into the country. She was therefore quite surprised when the Belgian border police put her in their holding cell at Brussels station and then deported her the next day.

The incident has irritated her son, Andrew Wilson an EU civil servant, who called the incident "a clear case of abuse of power by a low-level bureaucrat". However Colonel Van den Broeck of the Rijkswacht explained to the *De Morgen* newspaper that Schengen rules clearly state that in order to enter Belgium from borders external to the Schengen area a person must have a passport. Colonel Van en Broek stated: "I admit that when I look at the photo in the paper she doesn't look much like a gangster, but the rules are the rules." *De Morgen*, 21.6.96.

EU

Extradition Convention: "rolling ratification"

The UK Home Office announced on 27 June that agreement had finally been reached on the text of the "Convention on the improvement of extradition between the Member States of the European Union" and that it awaited formal approval by the Council of Ministers. A little-publicised change in the draft Convention, agreed at the Council of Justice and Home Affairs Ministers' meeting in Luxembourg on 4 June, was to allow any two Member States who have ratified it to put it into practice between them.

Article 15.3 says that the Convention will come into operation ninety days after the last Member States has formally ratified it. But Article 15.4 goes on to say that:

"any Member State may... declare that as far as it is concerned the Convention shall apply to its relations with Member States that have made the same declaration."

The effect of this change will be that national parliaments - who have to ratify all Conventions but may not amend them in any way - which are the least diligent can pass it on the nod and start to operate it. While national parliaments which seeks to conduct a proper and thorough scrutiny of the proposed Convention will be faced by their governments arguing that there is little point in a lengthy process as countries "X" and "Y" are already operating it. In the UK because of its archaic procedures it can be excepted to go through parliament without any debate or vote.

The EU Council of Ministers - representing all 15 EU governments - has been frustrated because the Dublin Convention, signed by them in June 1990, still awaited full ratification six years later. It was thought too contentious to try and by-pass national parliaments for the three Conventions signed in July 1995 - the Europol Convention, the Customs Information System and protection of financial interests. The concept of "rolling ratification" was first introduced in March 1995 when the Council of Justice and Home Affairs Ministers agreed the Convention on "Simplified extradition procedure between Member States of the EU". This was the so-called "voluntary" extradition Convention where the person to be extradited consents. Whereas this new, substantive, Convention on "involuntary" extradition has major legal and civil liberties implications (see *Statewatch* vol 6 no 1).

The "involuntary" Extradition Convention is intended to bypass provisions in the Council of Europe Convention on Extradition on several key areas. The first is the removal of the exceptions under the latter Convention on "political offences". The second is to explicitly cope with problems between Member States not just on suspected terrorist offences but also offences of "conspiracy and criminal association" to cover organised crime. The third area is the tricky issue of the extradition of nationals to stand trial in another EU state. Three of the countries in the Nordic Union - Denmark, Finland and Sweden - have agreed that they will not invoke their

declarations under the Council of Europe Convention on Extradition to refuse to extradite "residents".

Draft Convention on the improvement of extradition between the Member States of the European Union.

EU

Dublin Convention still waiting

The Dublin Convention, signed in June 1990, is still awaiting completion of ratification by the Netherlands and Ireland. The Convention will introduce the one-stop rule for immigrants and asylum-seekers (the decision of one EU state holding for all 15 states).

Although the ratification of the Convention was passed by the Dutch Second Chamber on 30 January 1996 it still has to be agreed by the Senate (the First Chamber). An initial demand that the European Court of Justice should be written into the Convention - which would have required all other EU states to ratify an additional Protocol - has been replaced by a proposal to add a Declaration. This Declaration, which is backed by the government, would state that decisions of the Executive Committee to be set up under the Convention would not be binding on Dutch courts. Despite this new agreement it is not expected to be agreed until late autumn.

In Ireland the Asylum Bill - which recognises the provisions of the Dublin Convention - became law on 26 June. But a series of regulations - covering an appeals body, conditions of detention, and the mechanism for applying the Dublin Convention - now have to be drawn up and agreed to put the new legislation into practice.

Migration Newssheet, August 1996.

GREECE

Schengen ratification

The Greek Foreign Minister has submitted a Bill concerning the Schengen Agreement to the Greek Parliament for ratification. There is no date yet for the completion of the parliamentary process and if there is a general election in the autumn it will be postponed. A data protection law - which has to be agreed prior to the ratification of Schengen - has also been put before parliament.

Europe - new material

East meets west, Bill Tupman. *Policing Today* Vol 2, No. 2 (July) 1996, pp30-36. Article, by the former director of Police Studies at Exeter University, on the growth of "organised crime" in east Europe and the necessity of west and east European police forces to "work together to fight organised crime within the EU".

The Southern and Eastern Enlargements of the European Union. Wilton Park papers no 102, July 1995 (Nicholas Hopkinson), HMSO, 50 pages, £5.00.

Accountability in the European Union, Dr Alan Butt Philip. John Stuart Mill Institute, 1 Whitehall Place, London SW1A 2HE. 1996, 50 pages, £6.00.

Parliamentary debates

Defence and Security (Europe) *Commons* 19.6.96. cols. 817-835

European Union *Commons* 20.6.96. cols. 1023-1101

MILITARY

EU

Strong lobby in EP for Eurobomb

The European Parliament's (EP) foreign and security commission, packed with senior European politicians, has argued for a "common defence policy and a common system of deterrence" in a report drafted at the end of May. In a public drafting session the commission made it clear that the deterrent envisaged would be nuclear. The intention was to take over weapons now used by Britain and France. "Without [them] the union will never be able to adopt a foreign and security policy," the document said. MEPs who voted in favour included Otto von Habsburg and Leo Tindemans. The chairman, Abel Matutes Juan recently became Spain's Foreign Minister.

In the plenary session of the EP the paragraph was amended so that the word "deterrence" was no longer mentioned and the importance of preventing conflicts and a European peace force stressed. However the amended version was only narrowly accepted. The episode in the commission was in the words of the eurosceptic Tory MP James Cran "an indication of the direction that very powerful forces in the EP wish us

to take."

In the meantime in another draft-report that is coming up for the commission, rapporteur Leo Tindemans writes that France and the UK should think in the future about putting their nuclear forces at disposal of the protection of the EU and should in the meantime consider already coordinating their nuclear submarine patrols.

Sunday Telegraph, 2.6.96; *Resolution of the European Parliament on the progress made in the implementation of the common foreign and security policy (January - December 1995)*, A4-0175/96, Leo Tindemans, Draft report on the security and defence policy of the European Union, 11.6.96

NATO

Far-Right Front in Nato HQ Linked to Gun Runners

An inquiry has been launched to investigate allegations that Nato officers have been involved in a gun-running ring. The affair has been linked to the existence of a far-right cell operating within the Nato headquarters at Evere.

The affair first came to light when an Italian businessman, Francisco Elmo, was arrested during a routine border check. His papers turned out to have been forged. One of the people who were travelling with Elmo turned out to be a CIA agent.

In the course of the enquiry it soon emerged that the Elmo group had been involved in gun-running for many years. The Belgian public Prosecutor claims that the Elmo group operated as the link between buyers and sellers of arms, using CIA agents as go-betweens. Banks across Europe were used to launder the money, the Vatican bank being prominent amongst them. Clients for the group included Somali militias and the far-right Russian politician Vladimir Shirinovsky. The Nato connection consisted of a group of administrators who provided the weapons with approval certificates.

Finally, in what provides chilling echoes of the P2 scandal, a connection has also been established with a Spanish Archbishop who is alleged to have used his influence to launder over 100 million dollars through the Vatican bank. The *De Morgen* newspaper has suggested that there may be a link between this scandal and the far-right Templars group sect whose existence was revealed in June (see *Statewatch*, vol 6

no 3).

Further details have since emerged concerning the ideology behind this group, who were filmed by French television conducting a service attended by over three hundred people, amongst whom were high ranking Nato officers, politicians, police officers and civil servants from the UK, France Belgium and the US as well as a number of far-right activists from the French and Belgian Front National, in which "the chosen nature of the Celtic Race" was proclaimed.

According to *De Morgen* the "Templars Order" was based on the original Templars, who were an order of armed monks founded in the Middle Ages to conquer and then defend Palestine from Islam. Like their forbears the Templars Order has both a religious and a military wing. Its stated aim is promote atlanticism and to "fight against Islam and Communism". *De Morgen* claims the Templars form part of a chain of far-right quasi-religious sects that have a combined membership of over 600,000 people in France alone. *De Morgen*, 12.6.96 & 23.5.96.

Military - New Material

Industry rejects EC plan in favour of WEAG route. *Jane's Defence Weekly*, 19.6.96. The European Defence Industry Group (EDIG), the main defence lobby organization in Europe, has rejected a plan by the European Commission for the establishment of a unified armament market. EDIG is against the proposal to repeal the European Treaty Article 223 which protects national military industries from competition.

UK, Italy line up to join Franco-German agency. *Jane's Defence Weekly*, 26.6.96. The UK and Italy will apply to become members of the Franco-German armaments agency. This agency is seen as an alternative to the stalled Western European Armaments Group (WEAG).

EU group moves ahead on common arms policy. *Jane's Defence Weekly*, 3.7.96. As a follow-up to a European Commission staff proposal earlier this year a group called "Polarm" (armaments policy), including representatives of member states and the commission is investigating European armaments cooperation. The discussions are unusual since they have gone ahead without prior formal approval of the

Council of Ministers.

European dream becomes reality with Helios. *Jane's Defence Weekly*, 24.7.96. Europe has quietly begun receiving satellite monitoring photographs of the Bosnian region from its first spy-satellite Helios, launched in July last year.

KSK - Die Elitetruppe von "Eisernen Kreuz" [KSK - Elite Force of the "Iron Cross"]. *AMI* no 5, 1996. Barely noticed by outside observers the Bundeswehr has in April 1996 set up a Kommando Spezialstreitkräfte [Special Forces Command].

Europäische Rüstungszusammenarbeit [European Armaments Cooperation]. *Europäische Wehrkunde*, no 7, 1996. Matching the US efforts on defence technology will mean higher defence budgets for the EU countries.

Trouble over the Horizon. *International Defense Review*, no 6, 1996. Europe's common frigate program beset by delays.

Les troupes parachutistes d'Europe [European paratroopers]. *Raids* (French edition) no 123, August 1996. Articles on Swiss, Portuguese, Italian, French and Russian paratroop units.

Der Beitrag Spaniens zum Eurokorps [Spain's contribution to Eurocorps]. *Wehrtechnik*, no 6, 1996.

Allies look impotent without US, NATO says. *International Herald Tribune*, 30.7.96. With the Cold War over, Europe's armed forces start slipping in combat quality according to military experts and NATO officials.

Hawks and doves, Andrea Needham. *Squall* No. 13 (Summer) 1996, pp34-35. Article by one of four women who, in January, broke into a British Aerospace plant in Lancashire and disarmed a Hawk fighter aircraft destined for the military dictatorship in Indonesia. In August the four women were cleared of conspiracy and criminal damage charges by a jury.

Technology, Diffusion and Proliferation. Wilton Park papers no 114, February 1996 (Richard Latter), HMSO, 22 pages, £5.00.

Europe and NATO expansion, Frank Blackaby. Socialist Renewal/European Labour Forum, pamphlet no 9, 12 pages, £1.50. European Labour Forum, Bertrand Russell House, Gamble Street, Nottingham NG7 4ET.

Kirsten Sellars, **The killing fields.** *Arena* June 1996, pp70-75. Useful article on anti-personnel mines and the UN proposal to restrict the use and export of these indiscriminate weapons.

Robert Fisk, **Collateral damage.** *Independent on Sunday* 11.8.96. This is an account of the death of Raafat al-Ghossain, a civilian who was killed during the US bombing, by UK-based American F-111 planes, of Tripoli, Libya in April 1986. The Americans initially blamed Libyan anti-aircraft fire but eventually acknowledged that she might be a victim of "collateral damage".

Parliamentary debates

Armed Forces Bill *Lords* 3.6.96. cols. 1100-1150
Royal Air Force *Commons* 6.6.96. cols. 730-812
Armed Forces Bill *Lords* 18.6.96. cols. CWH 1-50
Armed Forces Bill *Lords* 2.7.96. cols. 1381-1402
Ministry of Defence Housing *Commons* cols. 956-1005
Armed Forces Bill *Lords* 18.7.96. cols. 1140-1162
British Forces (Bosnia) 18.7.96. *Commons* cols. 1318-1343

POLICING

UK

New powers for police and MI5

New legislation to put the National Criminal Intelligence Service (NCIS) onto a statutory footing and to create a new National Crime Squad (NCS) were announced by the Home Secretary, Mr Howard on 5 July. The NCIS was founded in 1992 and has been based on make-shift arrangement put together by the Home Office restricting NCIS's powers to gathering intelligence but excluding any operational involvement (see *Statewatch* vol 2 no 2 and vol 5 no 5).

Alongside NCIS will be the NCS covering England and Wales. It will be comprised of the existing six Regional Crime Squads and will carry out investigations into organised crime and serious offences.

Both of the new agencies will be headed by Chief Constables and so-called "service authorities" not police forces and any reference to them being effectively a US-style FBI is denied. Mr Howard said: "We are not establishing a British equivalent of the FBI. There will be no "federal crimes". The public will continue to report crimes to their local police." The logic of this argument is strange - all laws in the UK cover the whole country and various routed hotlines into the NCIS means that information can be logged centrally or locally then centrally. These "service authorities" are to be "modelled on police authorities", which is hardly a recommendation. The recent "reforms" of the police gave Chief Constables greater powers and allow the Home Office to appoint "independent" members to local police authorities.

While MI5 is to still get warrants to "bug and burgle" from the Home Secretary under the new Security Service Act 1996 all police forces - not just these new squads - will be able to exercise the same powers when authorised by their own Chief Constable. The Home Secretary has chosen to simply put on a statutory basis the present system of police entering and interfering with property under Home Office guidelines issued in 1984. An "independent Commissioner" will be appointed to "oversee arrangements and investigate complaints" - and if the precedent of the Commissioners, who oversee telephone-tapping and the security and intelligence services, is anything to go by this will simply be window-dressing to avoid contravening the European Convention on Human Rights.

The danger in this last measure is that Chief Constables who have until now exercised their powers under the 1984 guidelines sparingly will feel able to authorise more "bug and burgle" warrants if they are put on a statutory basis. Moreover, the figures for "authorisation" issued by Chief Constables since 1984 have never been published it will be interesting to see if the new statutory ones are.

Home Office, press release 18.7.96; *Fighting organised crime: Michael Howard outlines the next steps*, Home Office press release 2.7.96; *Guardian*, 7.5.96; *Police Review*, 5.7.96; *Guidelines on the use*

of equipment in police surveillance operations, Home Office, 19.12.84.

Bridgewater 4 win right to appeal after 18 year campaign

Michael Howard, the Home Secretary, has decided to refer the convictions of the Bridgewater 4 - Michael and Vincent Hickey, Patrick Molloy and James Robinson - to the Court of Appeal under the Criminal Appeal Act 1968. The four men were convicted in 1979 of the murder of schoolboy, Carl Bridgewater. They had a previous appeal rejected in 1989 and Mr Howard's predecessor as Home Secretary, Kenneth Clarke, pronounced the convictions safe and satisfactory during 1993.

The appeal follows an 18-year campaign by Michael Hickey's mother, Ann Whelan, and supporters to have the mens convictions overturned. Much of the evidence against the men derived from a statement made by one of the four, Patrick Molloy, who admitted that he was present when Carl was shot. Recently, language experts have thrown into question the integrity of his statement, which was taken after he was held illegally for 56 hours, without access to a lawyer. Molloy was given a reduced 12-year sentence after being found guilty of manslaughter. He died in prison in 1981.

Since December the lawyer in charge of the prosecution of the Bridgewater 4, Michael Chance, has written several times to the Home Secretary expressing concern at the convictions and admitting that undisclosed fingerprint evidence was prejudicial to the defence. Two members of the jury, including the foreman, have pronounced that they are now convinced of the men's innocence. It is expected that Staffordshire police, who were responsible for the investigation, will come under close scrutiny and it is likely that they will face allegations of misconduct.

Home Office press release 26.7.96.

Black deaths in custody - no justice

The outcome of recent inquiries into the deaths of black people in police custody have done nothing to alleviate concerns that they can expect precious little justice from the criminal justice system. The inquest verdict of misadventure on Brian Douglas, who died in police custody last May, came in the same week as

decisions by the Crown Prosecution Service (CPS) not to prosecute the police officers responsible for the deaths of Wayne Douglas and Shiji Lapite (see *Statewatch* Vol. 5, No. 1; Vol 5, No. 3; Vol. 6, no. 1)

The family of Brian Douglas, who was the first person to die after being beaten with the police's new US-style long-handled baton, condemned an inquest jury's verdict of misadventure as "a gross injustice". They are now considering taking a private prosecution and a judicial review following the majority verdict at Southwark crown court, south London, in August.

The inquest heard evidence from over forty witnesses including three pathologists who stated that Brian died from a fatal blow to the back, right-hand side of his head after being stopped by police. His friend, Stafford Scott, who received a broken arm in the same incident, described how Brian received the fatal blow as he attempted to walk away from baton wielding police. Eyewitness testimony corroborated Stafford's evidence that PC Tuffey had probably struck the lethal blow, although the officer claimed that he intended to hit his upper arm, and the blow slid over his shoulder and hit his neck. Following his arrest Douglas was left in a cell for fifteen hours before being taken to hospital where he slipped into a coma and died five days later.

The outcome of the inquest coincided with the publication of the Police Complaints Authorities (PCA) annual report (1995/96) which noted a lack of training among police officers using the new batons and an absence of "a national coherent strategy" which necessitated a close monitoring of their use.

While the Metropolitan police issued a public apology and praised the dignity of the Douglas family, their attitude was revealed to be little more than cosmetic by a clumsy attempt to covertly film the family and their supporters as they left a police consultative committee meeting in Brixton, south London. The objective of the meeting had been to defuse the tension caused by the controversial inquest verdict. These events led to an angry demonstration by the Douglas family and their supporters in Balham, south London and a left a simmering resentment in the black community at large.

This anger was further fuelled by a statement by the Crown Prosecution Service (CPS) that no police officer will be charged over the death of another black man, Wayne Douglas, who died only a few

hundred yards from Brian Douglas, in December 1995. Wayne Douglas was also beaten with the new long handled baton and his death led to violent clashes with the police. The CPS have decided that there is "insufficient evidence" to prosecute.

The CPS reached a similar conclusion in the case of Shiji Lapite who, an inquest ruled, was unlawfully killed during his arrest by two plain-clothes policemen in Stoke Newington, north London in December 1994. Mr Lapite died from asphyxiation after being put in a neck hold when he was arrested for suspected possession of drugs. The inquest jury's finding, in January, prompted the CPS to re-investigate their original decision not to prosecute the officers involved in his death. Their confirmation of their original decision, that there was not enough evidence to prosecute the officers, leaves the policemen suspended from duty until the Police Complaints Authority decide whether to take disciplinary action.

Police Complaints Authority Annual Report 1995/96; South London Press 19.7.96, 9.8.96, 20.8.96; Independent 9.8.96; Guardian 6.8.96, 10.8.96;

"Safe" CS gas splits police forces

The Home Secretary, Michael Howard, has given the go ahead for police forces in England and Wales to be armed with CS gas canisters. The decision follows trials by sixteen of the 43 police forces over the past 6 months. During these "successful" trials one person - Ibrahima Sey - died and two police forces, Hertfordshire and Surrey, dropped out after expressing concerns about the safety of the incapacitants. The civil liberties organisation, Liberty, has called for a halt to the use of the spray.

During the tests the sprays were used 582 times and there were a further 350 instances where the spray was drawn but not used. It was estimated to have been effective in 90% of cases. During the course of the trials Hertfordshire and Surrey police forces dropped out expressing concerns over safety, and several police officers were injured. Following their approval these forces said that they would not be using them. Peter Sharpe, Chief Constable of Hertfordshire constabulary, said: "I still have concerns over the safety of the delivery agent and the issue of cross contamination with the use of the CS spray."

Reservations were also expressed by Liberty who condemned the decision and noted that the "Results of a six month pilot study by ACPO will remain secret, despite widespread fears about the safety of the spray". Liberty's principal concerns are

- * the long term medical effects of the spray
- * breaches of ACPO guidelines during tests
- * the drift towards policing by coercion

The decision to arm police with the spray was also condemned by the family of Ibrahima Sey, who died at Ilford police station after CS spray was used on him. They pointed out that the decision was premature; they are still awaiting the outcome of an independent autopsy on Mr Sey and a date for his inquest has not even been set and probably won't take place until next year. The Police Complaints Authority are still in the process of conducting an investigation into his death. The family and friends of Mr Sey protested outside the Home Office following the announcement.

Liberty press release 21.8.96; Guardian 22.8.96.

NCIS annual report

Twelve thousand informants were logged on the National Informants' Database by last year according to the 1995/6 annual report of the National Criminal Intelligence Service (NCIS). These figures represent part of the picture as they only are from 21 of the 52 police forces in England, Wales, Scotland and Northern Ireland and the 6 Regional Crime Squads (RCS).

The NCIS has a staff of 536 and an annual budget of £29 million. It is the UK contact point for liaison with the Europol Drugs Unit in the Hague and with other EU police forces. Two further NCIS office in the UK were agreed in 1995: one in Scotland to work alongside the Scottish Criminal Intelligence Office and another in Northern Ireland. Another initiative is the newly created Europol Project and Policy Unit.

The European Drug Liaison Officer (DLO) network in Europe (15 staff) has had its remit extended to "cover all aspects of serious crime" - previously they dealt with drugs and associated money-laundering. During the 12 month period covered by this report the UK - via this DLO network too part in or proposed 60 "controlled deliveries".

National Criminal Intelligence Service (NCIS), annual report 1995/6.

BELGIUM

Police Racism leads to Demo

Allegations of police racism against migrant youth resulted in a 500 strong demonstration in the Flemish town of Molenbeek. Accusations from youth clubs focused on intimidation and physical abuse from the local police force to the youth. A representative of the Molenbeek-West youth club told the *De Morgen* newspaper: "The police have become a lot more aggressive. Every day kids come and tell us about how they were locked up for a night without any reason. They no longer even bother to tell us when they are beaten." The demonstration led to further allegations against the Molenbeek police after a Pakistani youth required six stitches after having been arrested after the demonstration.

Solidaire 12.6.96 De Morgen 21.5.96

Policing - in brief

Switzerland: Drug computer: The federal police authority has already stored 250,000 items of data on 50,000 persons in the drug data bank DOSIS since its start two years ago in only eight cantons. More cantons are going to join this data bank now. The target group are people suspected of drug dealing, drug consumers are not included. DOSIS has been criticized for its lack of data protection. There is no right of access to information for the persons concerned. Data can be stored for up to ten years, the internal control procedure is seen as a farce with only four people responsible for checking whether the data fulfils the legal criteria for inclusion. *WoZ*, 12.7.1996; see feature in this issue.

British police 33% less effective: An answer to a parliamentary question in the House of Commons has revealed that the clear-up rate of notifiable offences by the police in England and Wales has fallen from 45% in 1980, just after the present government came into power, to 30% in 1995. The question from Labour MP Paul Flynn also showed that if Wales was left out of the equation the clear-up rate drop to only 26%. *Hansard*, parliamentary question, 25.6.96.

New Chief Inspector of Constabulary: David O'Dowd has been approved as the new Chief Inspector of Constabulary. O'Dowd, who began his career 30 years ago with the Leicestershire police, served as a Superintendent with the notorious West Midlands force, before serving two years as Deputy Assistant Commissioner with the Metropolitan police. Following his spell at the Met. he became Assistant Chief Constable with Northamptonshire. O'Dowd also served on the directing staff at the Police Staff College at Bramshill. He succeeds Sir Trefor Morris who retires at the end of August. O'Dowd's position as one of Her Majesty's Inspectors of Constabulary will be taken over by John Stevens, Chief Constable of Northumbria police force. As Deputy Chief Constable of Cambridgeshire in 1989 Stevens was appointed to conduct an inquiry, widely criticised as a cover-up, into security force-loyalist paramilitary collusion in the assassination of members of the nationalist community in northern Ireland. *Home Office press release* 6.6.96, 24.7.96.

Policing - new material

Police: Revised code of practice, *Data Protection News*, issue no 26 Summer 1996, pp22-33. Review the police code of practice regarding access to data held by them and accessible to them. Copies of the Code itself are available from: IT Security and Data Protection Manager, Essex Police Headquarters, PO Box 2, Springfield, Chelmsford, Essex CM2 6DA. Cost: £5.00.

Lessons from Tragedies: a report on deaths in custody in the Metropolitan police district 1986-95. *Deaths in Custody Working Group of the Community-Police Consultative Group (CP10/96)* 4.6.96. This is a preliminary report that came out of the deaths in police custody of two young black men, Brian Douglas and Wayne Douglas. An appendix lists 213 deaths in police custody between 1986-1995.

Substance abuse: Dr Corson's and Dr Stoughton's hand-held hazard, Shaun Trevisick. *Squall* No. 13 (Summer) 1996, pp26-27. This piece investigates the "dubious history" of CS gas sprays, which are currently being tested by British police.

Listening in to crime, David Pickover. *Police*

Review 19.7.96. pp22-23. This article welcomes a recent House of Lords decision that covert listening devices are admissible as evidence in court.

Anti-roads protests, the community and the police, Superintendent Daniel Donnelly. *Police Journal* Vol. LXIX, no. 3 (July-September) 1996. This piece provides a particularly bland overview of anti-roads protests in general and the M77 protest in Strathclyde, Scotland, in particular. Donnelly concludes: "A final analysis reveals that community police relations are back to normal and the events of 1995 are now in the past."

Cardiac arrest, Raju Bhatt. *Red Pepper* (June) 1996, pp18-20. This piece examines some recent deaths in police custody and argues that the issue of CS gas sprays and the long-handled baton have exacerbated an alarming lack of police accountability.

The boy they couldn't hang, Bob Woffinden. *Guardian weekend* 8.6.96. pp34-39. Article on Philip English that throws doubt on his conviction for the murder of a police sergeant in March 1993. English is the youngest person to be convicted of the murder of a British police officer and his case has been compared to that of Derek Bentley, who was executed in 1953.

Hand-held computers look set to replace police radios. *Police Science & Technology*, Issue 5, July 1995, p5. Hand-held computers by the police officer on the beat able to transmit voice and images and access the Police National Computer are on the horizon.

Beating the JR trap, Alan Beckley. *Policing Today*, vol 2 issue 2, July 1996, pp14-18. On how senior police officers can cope with judicial review.

East meets West, Bill Tupman. *Policing Today*, vol 2 issue 2, July 1996. pp30-36. Looks at west European Union aid to police forces in central and eastern Europe. The starting point was "an informal division of labour in the EU - the Germans concentrated on Poland, the Dutch on Hungary, the French on Romania and the Italians took their anti-Mafia expertise to Russia. The British, however, were everywhere. ACPO apparently divided Eastern

Europe up among the constabularies - Devon and Cornwall, for example, received Romania and Strathclyde, Estonia."

Bugs in the system, Nick Taylor and Clive Walker. *Journal of Civil Liberties*, vol 1 no 2, July 1996, pp105-124. The police use of surveillance equipment and the lack of controls are examined.

RACISM & FASCISM

BNSP launched

A new far-right political group, the British National Socialist Party (BNSP), announced its formation in July when it sent out its manifesto and an invitation to a launch meeting. Initial questions about which disaffected group of nazis was behind the new group faded as a number of even more disturbing queries concerning its origins, and intentions, came to the fore.

The story of the BNSP begins in 1995 when a British National Party (BNP) office worker, Alf Waite, had a number of computers stolen from his home. Immediately following the theft the BNP issued statements blaming "the reds" despite strong rumours suggesting the involvement of a rival fascist organisation, Combat 18. The BNP also made unequivocal assurances to their members that, due to their stringent security measures, no information such as names and addresses had gone missing.

In the July issue of their journal *Spearhead* the BNP were forced to retract their earlier, self-serving, statement lauding their foolproof security precautions. They now admit that subscription information did indeed go astray and hinted strongly at Combat 18 involvement.

Whoever was responsible for the theft of membership details they appear to have ended up in the hands of the embryonic BNSP, who used it to mail potential new recruits - most of them members of the BNP. The incompetence of the BNP's leadership is further compounded by their admission that the only identified person known from the new organisation is a former BNP member who was expelled from the party after having a sex change.

A final twist to the story has been added by the anti-fascist magazine, *Searchlight*, who have suggested that the British security services (MI5) might be

involved in the dissemination of the mailing list. Whoever is responsible the one thing that is clear is that the BNSP is not the genuine article.

Left bookshops under legal attack by the right

Two right-wing activists, Alexander Baron and Mark Taha, have issued libel writs against the printers, distributors and stockist of the anti-fascist magazine *Searchlight*. The writs, including one against *Searchlight's* editor, Gerry Gable, pose a severe financial threat to bookshops supporting the anti-fascist movement.

Several bookshops have felt compelled to settle out of court to avoid ruinous legal costs. This includes Centerprise, in north London, which reached a settlement despite the fact that it had not stocked the offending issue of *Searchlight*.

Two other well known north London shops, Houseman's (closely linked to the peace movement) and Bookmarks (the official bookseller to the Trades Union Congress) are particularly threatened as they have refused to settle out of court. They have set up a Bookshop Libel Fund which has wide ranging support from MPs, the TUC, barristers, novelists and film makers. They are calling on supporters to raise the issue in their organisation, trade union or college. The Bookshop Libel Fund can be contacted with donations at Houseman's Bookshop, 5 Caledonian Road, London N1 9DX.

FRANCE

Four arrested

After six years of confused investigations, conflicts between police and judicial authorities in charge of the case, four neo-nazis who are suspected of desecrating the Jewish cemetery in Carpentras (south France) on 10 May 1990 were arrested on 31 July. The suspects are skinheads who are associated with the extreme-right Parti Nationaliste Francais et Europeen (PNFE). Yannick Garnier, 26, has admitted the offence and named his accomplices as Patrick Leonegro, 31, Bertrand Nouveau, 27, Olivier Fimbry, 27. The group has been known to the police for several years for its membership in the neo-nazi movement. The presumed head of the group, Jean-Claude Gros, died in an accident in 1992. He was questioned by the police the day after the desecration

as well as Laonegro, Gos and Fimbry but all were released because of lack of evidence. That they also happened to be the sons of local notables only adds to the embarrassment in Carpentras.

Le Monde, 2.8.1996; *Liberation*, 2.8.&3.8.1996; *CRIDA*, Rapport 1996; Glyn Ford, 1992, *Fascist Europe*, Pluto Press.

Racism & fascism - new material

Institute of Race Relations *London Update: monitoring racism in London*, no 2 (Summer) 1996. Latest edition of a new broadsheet from the IRR which monitors racism in London. Available from the IRR, 2-6 Leeke Street, London WC1X 9HS.

Institute of Race Relations *European Race Audit*, no 19 (August) 1996. Bi-monthly digest of developments across Europe.

Oranges and lemons. *Fighting Talk*, no 14 (July) 1996, pp6-7. Looks at the loyalist-fascist alliance that considers the role of the Progressive Unionist Party.

Newham Monitoring Project, **An attack on one is an attack on all!: annual report 1995/1996.** NMP 1996, pp44. The latest NMP annual report maintains the consistent high level seen in previous years, and continues to serve as an example for other monitoring groups around the country. It covers the Project's response to racist and police harassment and fighting fascism; it also presents an overview of the Project's casework. It also gives extensive coverage to the deaths - in police custody - of Shiji Lapite and Ibrahima Sey.

LAW

Law - new material

Prosecutors' code, Sharon Grace & Deborah Crisp. *Policing Today* Vol. 2 No. 2 (July) 1996, pp37-41. Looks at the police response -general approval according to the Crown Prosecution Service - to the revised code for Crown Prosecutors.

The secret state's faithful servant, Nick Cohen. *Red Pepper* July 1996, pp24-25. Biographical sketch of

Lord Chief Justice, Sir Thomas Bingham, which critically considers his reputation as a "liberal".

Public Order review, Jo Cooper. *Legal Action* August 1996, pp16-17. Bi-annual roundup covering trends and significant developments in public order and arrest cases.

Parliamentary debates

The Judiciary: Public Controversy *Lords* 5.6.96. cols 1254-1313

Sentencing Proposals *Commons* 19.6.96. cols. 885-940

NORTHERN IRELAND

Northern Ireland - new material

Uncovering the Irish Republican Army - Part 1. Jane's Intelligence Review July 1996. Article assesses current structure, capabilities and strategy of the IRA.

In the line of fire: Derry July 1996. *Pat Finucane Centre* 1996, pp32. First comprehensive coverage of the human rights abuses committed by British security forces during disturbances in Derry following the decision by the RUC to force through an Orange Order march in Portadown in July. Available from the PFC, 1 West End Park, Derry BT48 9JF, Ireland.

Parliamentary debates

Northern Ireland *Commons* 19.6.96. cols 941-976

Northern Ireland Act 1974 (Interim Period Extension) Order 1976 *Lords* 28.6.96. cols 1176-1193

Northern Ireland *Commons* 15.7.96, cols 787-806

PRISONS

Prisons - in brief

Holloway prison: cut remand numbers

The new Chief Inspector of Prisons, sir David Ramsbotham, has called for a sharp reduction in the number of women held on remand at Holloway prison, north London. Ramsbotham made his remarks as part of an official report into the prison.

Last December Rowbotham led an inspection team walk-out at the prison in protest at unsanitary conditions and draconian security measures. Then, his team complained that inmates, half of whom were on remand, were locked in their cells for 23 hours a day and that the jail was infested with rats and cockroaches.

In June he received a dressing down from Home Secretary, Michael Howard who is reported to have instructed Rowbotham not to comment on matters of policy. At a second, "acrimonious" meeting at the end of June the Inspector was warned not to issue statements to the media. As a result of the Home Secretary's intervention the Inspector's latest comments were largely limited to noting improvements in conditions at the squalid women's prison.

Bodybelt death: family calls for inquiry

The family of Dennis Stevens, a black prisoner who died after being forced to spend 24 hours in a bodybelt while in Dartmoor prison, has called for an independent public inquiry into his death. The family made the demand after receiving - some seven months after Steven's death - postmortem results that established that "pressure and restriction of the blood supply during restraint caused or contributed to muscle damage which resulted in [his] death" (see *Statewatch*, vol 5, no 6).

Devon and Cornwall police and the Prison Service have carried out inquiries into the death, and the incident is under consideration by the Crown Prosecution Service. The organisation Inquest, which campaigns against deaths in custody, and the Bristol Racial Equality Council have supported the family's call for an independent investigation.

Within days of the family's demands the Prison Service announced that it is planning to evaluate a remote electric stun belt, which delivers a powerful shock that can result in unconsciousness. The belt has been condemned as "cruel, inhumane and degrading" by Amnesty International.

The Big Issue 1.7.96; *Guardian* 4.7.96.

Prisons - new material

The prison population in 1995. *Home Office Statistical Bulletin* Issue 14/96 (July) 1996, pp24. This bulletin notes a continuing rise in the prison population and records the highest ever average prison population (51,000) for 1995 and the highest ever female prison population (1,980). There were 8,800 "ethnic minority" prisoners in June 1995.

Prison Watch press releases 175-177. *Prison Watch* (July) 1996. These press releases cover the inquests of Mark Waldren (died 4.12.95. at HMP Doncaster) and Fred West (died 1.1.95. at Hmp Birmingham). No. 176 covers the suicide of Brett Hay, at Lincoln prison, on 8 July; it expresses grave concern about management and medical care following a probable nine deaths from suicide at the prison since 1993.

Prison Watch press releases 178-179. *Prison Watch* (July) 1996. These press releases discuss the HM Inspector of Prisons reports into HMP Manchester and Low Norton remand centre.

Penal Affairs Consortium "**Protecting the public**". *PAC* (July) 1996, pp12. This report considers the government White Paper "Protecting the Public" and concludes that the Home Secretary's plans to introduce mandatory sentences and scrap parole could increase the prison population

Imprisonment for fine default, David Moxon & Claire Whittaker *Home Office Research and Statistics Directorate Research Findings* No. 35 (June) 1996. This study considers the circumstances of people who are imprisoned for default and finds that 75% of defaulters were unemployed and in receipt of benefit. Five of the eleven women interviewed in the survey had children prior to imprisonment.

Prison Reform Trust *Prison Privatisation Report International*. No. 3 (August) 1996. This useful broadsheet monitors worldwide developments in the privatised prison industry. Available from PRT, 15 Northburgh Street, London EC1V 0AH.

Howard turns the screws, Keith Mann & Andy Johnson. *Squall* No. 13 (Summer) 1996. Interview

with animal rights campaigner Keith Mann, who was jailed for 11 years, who describes the increasingly strict and harsh regime in Full Sutton maximum security prison.

Prisons in Eastern Europe: Some Reflections on Prison Reform in Romania, Roy D King. *Howard Journal*, vol 35 no 3, August 1996, pp215-231.

Introduction to the European Prison Rules: historical background, development, main contents, Helmut Gonsa. *Penological Information Bulletin*, nos 19 and 20, December 1994-1995, pp24-33.

Parliamentary debates

HM Prison, Wandsworth *Lords* 10.6.96. cols. 1550-1564

Cornton Vale Prison (Suicides) *Commons* 17.6.96. cols. 659-666

SECURITY & INTELLIGENCE

NETHERLANDS

BVD "Criminalises Turkish Activists"

A Turkish group has criticised an apparent attempt by the Dutch Binnenlandse Veiligheids Dienst (BVD, Internal Security Service) to "criminalise" its activities in the Netherlands. The Annual Report of the BVD singled out the DHKC (Revolutionary Peoples Liberation Front) as the probable owners of a large haul of semtex explosives that was found in a Turkish bank in Amsterdam. The DHKC has condemned the accusation as "intolerable".

The DHKC is a left wing group that admits to being involved in an armed struggle against the Turkish government. However they state that their main activity in the Netherlands is the spreading of information against the Turkish government and about the activities of the DHKC. They emphasise that they have no intention or desire to carry out violent activities on Dutch soil.

The explosives caused a great deal of commotion in Holland when they were originally found. No one has been arrested in connection with the semtex. The DHKC points the finger at the Turkish government,

claiming that "the Turkish state is using this as a means to force the Dutch government to attack organisations such as ours that are uncomfortable to it".

Ravage, 31.5.96.

BELGIUM

Appeal court condemns new Intelligence Bill

The Raad van State, the highest Belgian appeal court, has criticised draft legislation that aims to provide a new legal framework for the intelligence services. According to legal advice obtained on 27 March but until recently kept secret by the Belgian government, the Raad van State condemns the new legislation for "not conforming to any standard of legality, legitimacy, necessity or evenhandedness."

The section of the legislation that drew this intense level of criticism concerns the definition of the aims of the intelligence services. Article 4 of the bill states: "The state security services carries out its tasks through the intervention of the Ministry of Justice in accordance with the guidelines of the Ministerial Committee. In carrying out its task the state security services will guard over and contribute to the protection of individual rights and liberties, as well as the democratic development of society". The Raad van State has since taken the view that this definition is rather vague. Or, as the critique written by the Raad van State puts it, "the bill has no clear and detailed rules regarding the gathering and use of information... it is as if the text would allow any form of general surveillance no matter what... therefore the draft legislation rests on the wrong assumption that any method of investigation that is not specifically banned would automatically respect the privacy of the individual".

De Morgen, 1.8.96.

Security & Intelligence - new material

Unleashing the spies, Jim Carey. *Squall*, no 13 (Summer) 1996, pp16-17. This article investigates the Security Services movement into the arena of "serious crime" and how this redefinition will include animal rights activists.

The international Confederation of Free Trade Unionists in Exile, Peter E. Newell. *Lobster*

[Ramsey] 31 (June) 1996, pp12-16. Interesting piece on the cold war CIA labour front, the Confederation of Free Trade Unionists in Exile, which was formed in Paris in October 1948 and functioned until the 1960s.

Jewel in the mud award, Seamus O'Conner. *Squall*, no 13 (Summer) 1996, pp58-59. This piece reviews allegations, made in a recent Channel 4 *Dispatches* report, that the security services were involved in the shooting dead of WPC Yvonne Fletcher outside the Libyan Embassy in 1984.

Seeking the truth, Keith Potter. *Police Review*, 31.5.96. pp22-23. Article on *Dispatches* programme, by Fulcrum Productions, that points to the involvement of the security service - or the CIA - in the killing of WPC Yvonne Fletcher.

Reasserting Control: Recent Changes in the Oversight of the UK Intelligence Community, Peter Gill. *Intelligence and National Security*, vol 11 no 2, April 1996, pp313-331.

Are the Feds Sniffing your Re-Mail? John Dillon. *CovertAction Quarterly*, no 57, Summer 1996, pp52-55. Looks at surveillance of the Internet.

Parliamentary debates

Security Service Bill *Lords* 10.6.96. cols. 1491-1539
Security Service Bill *Lords* 27.6.96. cols. 1025-1059
Security Service Bill *Lords* 8.7.96. cols. 76-83

EU

EURODAC:

finger-printing asylum-seekers

The compulsory finger-printing of asylum-seekers as young as 14 years old is included in the draft Convention on the proposed EURODAC EU-wide asylum-seeker computer system. Article 4 says:

"The Member States shall record the fingerprints of every foreign national of at least 14 years of age who applies for asylum and shall promptly transmit to the Eurodac data file the images of the fingerprints together with [other] data.." (underline in original)

The fingerprint "image" is to comprise either "ten fingerprints or the prints of [two fingers], together with the codes for the ten fingers." The "images" will be accompanied by information on the "country, place and date of the application for asylum" (Article 5).

The fingerprints sent to the "Eurodac Central Unit" will be checked against the central database and a response sent back "forthwith" (also underlined) where: "the fingerprints of any persons.., in the technical opinion of the Central Unit, are identical to those under examination." The draft Convention says that "a European central data file of fingerprints of asylum seekers, called Eurodac, managed by an automatic fingerprint recognition system" shall be established.

The draft Convention on EURODAC gives effect to Article 15 of the Dublin Convention on asylum which introduced the "one-stop" rule whereby a person can only apply to one EU state. The purpose of the EURODAC computer system, like the Schengen Information System, is to track down applicants who have been refused asylum by another EU state or who have been removed/deported from a EU state.

The preamble to the draft Convention says that it does not create situations "in which applicants for asylum are made to wait too long before learning the outcome of their applications.." The rationale that the EURODAC fingerprinting system is, by some perverse logic, being introduced to help the asylum seeker is taken to its logical conclusion by UK Home Secretary Michael Howard in an Explanatory Memorandum. Mr Howard says:

"It is.. likely that Eurodac would substantially reduce the Immigration and Nationality Department's existing running costs relating to fingerprinting... Eurodac, in helping to give effect to the Dublin Convention, would serve to identify asylum applications made on-entry at UK ports to which the UK was not obliged to give substantive consideration and which offered the possibility of effecting a swift return to the Member State having responsibility. There would, in any such instance, be potential savings in benefit."

The asylum-seeker picked up by EURODAC could, of course, be returned forthwith not just to another EU country but to a so-called safe third country.

Article 7, "Right of information, correction and deletion", says a refused asylum applicant can try to find out the information held on them and to have it corrected or deleted if it is "inaccurate" in "the Member State in which such rights are invoked". As it appears EURODAC will have no legal identity the "the information stored in Eurodac shall be considered to be a national data file subject." The ability of the removed asylum-seeker to exercise such rights, together with meeting the costs involved, begs another question.

It is not at all clear what role the European Court of Justice is to have - exactly the same problems currently arise in this draft Convention as those which held up the Europol Convention for a year (see story in this issue).

In addition, like the recently signed Extradition Convention, this draft Convention also includes in Article 15.4 the concept of "rolling ratification" enabling EU states ratifying the Convention to put it into practice before all 15 national parliaments have completed the ratification process.

The consultant's report

The draft Convention was preceded by a lengthy process of selecting "consultants" to look into the feasibility of EURODAC.

Their 115-page final report shows no understanding of the issues involved and has no references or bibliography. It concludes, under the heading "Key Success Factors", by saying: "It must be ensured that current and future national legislation cannot stop the EURODAC system from operating (fingerprinting, etc)" and "The legal problems should be solved quickly, because they could slow up the whole process." Two aspects of the report are worth noting. First, the adoption of 14 years old in the draft Convention as the minimum age for fingerprinting is the lowest common denominator - only Germany, Austria and Denmark use or favour 14 years. France uses 16 years, Belgium and Italy 18, and the rest give no answer.

The report includes a survey, based on official information provided on EU states, which demonstrates the current and widespread interface of police and asylum fingerprint systems. (The draft Convention is silent on the exchange of information).

Germany: has a common police/asylum applicant fingerprinting system; "Asylum applicants are initially checked against the police data base"

Austria: is exactly the same as Germany

Belgium: has an "independent electronic fingerprinting system for asylum applicants" but wants to be able to get "identification matches by Eurodac and bilateral data exchange."

Denmark: also has a common police-asylum applicants fingerprinting system, "electronic system based with the police."

Spain: "no separate electronic fingerprinting system for asylum applicants.. the police's forensic system is involved in the system to process applications."

Finland: "Automated fingerprinting system based with the police, but kept separately from that for those persons who are wanted and/or who have committed a crime."

France: "Automatic independent fingerprinting system for refugees, not linked with the police system."

Greece: "Non-automated police-based fingerprinting system (common asylum applicants - police data base)".

Ireland: "No electronic fingerprinting system for asylum applicants.. No taking of fingerprints."

Italy: "No automated fingerprinting system: manual system based with police."

Luxembourg: "No electronic fingerprinting system for asylum seekers.. No systematic fingerprinting.. Asylum applicant/criminal system is one and the same."

Netherlands: "automated fingerprinting system based with the police. The search is carried out in both the asylum applicants + criminal data base."

Portugal: "No electronic fingerprinting system specifically for asylum applicants."

UK: "Dedicated fingerprinting system for asylum applicants which is also separate from the police."

Sweden: "asylum fingerprinting system based with the national police."

Ten EU states already have in place the automated fingerprinting of asylum applicants, and nine have admitted their systems are linked in some way to police data or run by the police. Five EU states at present have no automated system for recording asylum applicants fingerprints. All EU states will be expected to put in place computerised systems

capable of transmitting "images" of asylum seekers' fingerprints.

The question, raised by groups such as the "Omega Foundation" which monitors the violations of human rights by multinationals, is who is going to be given the job of setting up EURODAC? The successful bidders for the tender will no doubt take note of the consultant's opinion that "incompatible systems" should be avoided - especially in a potentially lucrative global market. *Draft Convention concerning the establishment of the "EURODAC" system for the identification of applications for asylum in compliance with Article 15 of the Dublin Convention*, ref 6545/96; *Explanatory memorandum from the Home Secretary*, 6.6.96; *EURODAC: Report on the selection of a consultant*, report from K4 Committee to COREPER, 7057/1/94, REV 1, Restricted, 2.6.94; *The EURODAC system for recording asylum seekers' fingerprints - Final Report*, 10686/95, Paris, 11.10.95, by Consortium: Bossard Consultants, Organotecnica, Team Consult; additional material provided by the Omega Foundation, Manchester.

EU

The "third pillar" and the 1996 IGC

The arguments and alternative outcomes from the 1996 Intergovernmental Conference are beginning to become clearer as the timetable for final decisions get closer. A special meeting of the European Council in Turin in March was followed by another session in Florence in June. Ireland took over the Presidency of the EU from Italy in July and they will be followed by Netherlands (January-June 1997) and Luxembourg (July-December 1997). The Irish government wants to get a draft ready for discussion before Xmas which would be followed by final adoption by June 1997.

Two issues have been on the table from the outset: 1) whether to transfer the "third pillar" to the "first pillar", that is to abandon the intergovernmental approach to justice and home affairs and bring it within the "community methods" - giving the initiative to the European Commission to present draft directives and the European Parliament a say in what is adopted. A compromise would be to transfer some of the areas of Article K of the Maastricht Treaty to the first pillar, like immigration and asylum.

2) reforming the structure - the K4 Committee, the steering groups and their working parties - and instruments - recommendations and declaration, Joint Actions and Conventions - of justice and home affairs.

In the background to the discussions it was, correctly, assumed that the UK government would only accept very limited change - perhaps to simplifying the K4 structure under the Council of Justice and Home Affairs Ministers - and as any changes have to be unanimous amongst the 15 EU governments the idea of a "twin-track" or "Schengen" approach began to surface early this year. It also became clear that the UK was not the only government with reservations about "communitarianising" all or part of the "third pillar". For quite different reasons France and Spain, Denmark and Sweden have expressed reservations.

The IGC debate over a "twin-track" approach is not of course limited to the "third pillar", the UK opt-out from the Social Chapter is already there and the European monetary union (EMU) raises the same questions - as could a common defence policy though the strengthening of the Western European Union (WEU)/NATO link offer a way out.

"Enhanced cooperation"

The emerging approach, as set out in the Conclusions of the meeting in Florence in June, is that of "enhanced cooperation" - which in layperson's language means the "twin-track" approach across a number of IGC areas. One proposal is to have a "general clause" inserted in the Treaty of European Union, the other is to have "a clause for each pillar". Enhanced cooperation, which allows "flexibility", has a number of problems. How are "the interests of non-participant Member States" to be "safeguarded"? Is "enhanced cooperation" to be undertaken only as "a last resort"? Should there be a minimum number of participant Member States in the "fast-track" so "as to preclude the risk of competing circles developing or loss of the Union's true identity"? Should MEPs who are nationals of "Member States not participating in enhanced cooperation.. retain all their responsibilities on relation to that activity?" Should EU governments who are "not participating in enhanced cooperation.. be entitled to vote in that connection?"

Justice and home affairs

The Florence "progress report" says on the "third pillar", under the Council of Justice and Home Affairs Ministers, "needs to be made more effective." The options being considered are: a) the "partial incorporation" of some areas, like visas, asylum and immigration, into "the Community sphere" (first pillar). b) the creation of a "new third pillar" by introducing "certain Community methods" such as the "non-exclusive right of initiative for the Commission" to introduce proposals and the "greater involvement of the European Parliament".

On the structure under the Council of Justice and Home Affairs Ministers the removal of the Steering Groups and/or the K4 Committee is supported by some, others favour just losing the three Steering Groups and increasing the efficiency of the K4 Committee - with its members permanently based in Brussels instead of just coming together for meetings. The K4 Committee is comprised of senior interior ministry officials from each of the 15 EU states.

There appears to be a greater consensus on the decision-making instruments under the "third pillar" (Title VI, Article K of the Maastricht Treaty). At the moment most decisions taken by the Council of Justice and Home Affairs Ministers are Recommendations and Declarations which set policy guidelines to be followed by each member states. Legally binding legislation by the Council is either through Conventions or Joint Actions/Joint Positions. The latter are in the view of some member states, like the UK, only binding if expressly stated in the texts. Conventions are signed by EU governments but then have to be ratified by national parliaments - which is proving, in the view of most EU governments, to be much too lengthy a process. The Dublin Convention on asylum applications signed in June 1990 still awaits ratification by two member states over six years later. There is a consensus that lengthy, democratic, consideration of Conventions by national parliaments - who often set up special committees to consider them in detail - has to be changed if not abandoned for all but the most exceptional cases.

The "progress report" says:

"The legal instruments provided for in Title VI... are not well suited to the essentially legislative nature of JHA action. The idea of creating a new legal

instrument (which might be called a "common measure") has been generally welcomed. A "common measure", like a Community Directive, would commit Member States to achieve certain results, leaving it to national authorities to decide on the ways and means..."

"Various forms of enhanced cooperation have been considered" the "progress report" says:

"In particular:

(a) an enabling clause opening the door to closer cooperation between Member States, the object and procedures of which would be defined at a later date. On the understanding that it would always be open to any Member State to join in the closer cooperation;

(b) incorporation of the "Schengen" system into the Treaty of European Union [TEU] institutional system."

Schengen: the way forward?

The formal incorporation of the "Schengen" system is particularly attractive to a number of governments. Thirteen of the 15 EU states either are or will be members of the Schengen Agreement leaving only the UK and Ireland outside.

A report, a "non-paper", by the Dutch Delegation to the IGC in July directly takes up the option of incorporating the Schengen Agreement into the TEU. The report says "The Schengen Agreement has never been thought of as existing outside the political and institutional framework of the EU.. [and] For the majority of the member states, the integration of Schengen into the EU is a priority."

The Dutch report says that three issues stand in the way of "incorporation": 1) agreement on the External Frontiers Convention and hence the European Information System, which would take over the Schengen Information System, held up by the disagreement between the UK and Spain over the status of Gibraltar; 2) agreement over "common regulations for the entry of third country nationals" and on "the rights and duties of non-EU citizens" with permanent residence permits; and 3) changes in the decision-making of the "third pillar" so that it is compatible with Schengen - the Schengen Executive

Committee has, in the view of the governments, binding and straightforward powers of decision-making which do not require national ratification.

The report suggests that as a first step the Schengen Secretariat should be amalgamated with the EU Secretariat and the Schengen Executive Committee and the EU's Council of Justice and Home Affairs Ministers should meet one after the other in the same place and on the same day.

One option already available to the Schengen countries in Title VI, Article K.7 of the Maastricht Treaty is to agree *within* the Council of Justice and Home Affairs Ministers on "the establishment.. of closer cooperation between two or more Member States in so far as such cooperation does not conflict with, or impede, that provided for in this Title", thus by-passing UK opposition.

COREPER refines the options

The Committee of Permanent Representatives of EU governments (COREPER) discussed at its meeting on 16-17 July several draft amendments to Title VI, Article K, "Cooperation in the fields of justice and home affairs" of the Maastricht Treaty.

The amendments include redefining the list of "matters of common interest" set out in Article K.1.1-9. The revised list would delete some existing areas (here in **bold**) and add others (here in *italics*):

Article K.1

- 1) **asylum**
- 2) **external border control**
- 3) **immigration policy** leaving policy regarding national of third countries
- 4) the fight against drug addiction (**delete:** "in so far as this area is not covered by nos. 7, 8 and 9)
- 5) fight against fraud (**delete:** "in so far as this area is not covered by nos. 7, 8 and 9)
- 6) civil judicial cooperation
- 7) criminal judicial cooperation
- 8) customs cooperation
- 9) police cooperation *particularly* to fight terrorism, illegal drug trafficking and other serious forms of international crime, including the development of a Union wide system to exchange information within the framework of a European police authority (Europol) *in connection* with certain aspects of

customs cooperation

10) fight against illegal drug trafficking

11) harmonisation of policies and regulations to fight crime

12) harmonisation of regulations, "overlapping" legislation and conflict of authority

COREPER also looked at proposals to "redefine Article K.3.2" changing the "instruments" of decision-making for the Council of Justice and Home Affairs Ministers - Conventions (Article K.3.2.c), Joint Actions (Article K.3.2.b) and Recommendations and Declarations.

Conventions, as currently set out in Article K.3.2.c, which require ratification by each of the 15 national parliaments of the EU, disappear.

Here again there is reference to "the introduction of a new legal instrument" like a EC directive which is binding on Member States.

The report sets out three decision-making instruments:

a) a "**common position.. or operational activity.. These decisions are binding for the bodies of the Union and the member states**". It is noted that there is "possible flexibility" here, implying "enhanced cooperation". Comment: An important, new, distinction is drawn between a "common position", a policy decision, and "operational activity", implying a different status requiring greater secrecy. This distinction is hard to justify. An examination of the reports considered by the Council of Justice and Home Affairs Ministers over the past three years shows that very, very few reports are "operational", perhaps half a dozen on terrorism. Moreover, the distinction between "policy" and "operational" decisions is often used by governments to remove from democratic debate issues which would be politically embarrassing.

b) "**decisions.. whose aim is the harmonisation of legal provisions.. These decisions are binding for the member states regarding the objectives but leave the choice of form and means to the national governments**" Comment: this instrument would make existing Recommendations adopted *binding* on member states.

c) "**agreements which it recommends the member states to adopt in accordance with their constitutional provisions; the member states to**

initiate an adequate procedure within a time limit set by the Council. This agreement can include a provision that stipulates that it will come into force as soon as it has been adopted by a certain number of member states are written down in the agreement." Comment: these "agreements" are clearly intended to replace "Conventions" where the timetable for ratification is determined by each member states' constitution and parliamentary procedures (which can be lengthy and diligent and therefore inconvenient for governments). This measure would impose a timetable on national parliaments and would formally introduce the concept of "rolling ratification" whereby two or more member states could begin to operate the measure once ratified.

UK report on the "third pillar"

A report presented to the K4 Committee last October by the UK suggests few changes to the structure. The principal change suggested is the removal of Steering Groups I (immigration and asylum) and III (judicial cooperation) to simplify the decision-making structure. Another is support for the distinction between "policy decisions" and "operations" with the UK hankering after more informal and flexible "Trevi traditions". For example, by

"providing a forum for high-level liaison between law enforcement practitioners... This needs to be done separately from the working structure that is focused on preparing proposals and documents for the Council.. there might well be a case for creating a new high-level group (especially in the police area) to provide an occasional forum for the traditional scope of cooperation and liaison."

The UK report is more interesting not for what it proposes but for what it reveals on how the K4 structure has been working. It contains observations, which should be read in the light of "British understatement" as a style of argument, such as:

"the present structure acts against effective decision making."

"A situation can easily arise where it is very difficult to establish the facts of what has happened at

different levels or to get up to date with papers."

"there is a tendency at all levels to re-open settled points and for Steering Groups and Working Groups to go their own way or to re-state positions and then pass papers upward or downwards. The work is not really being managed."

"there appears to have been occasions when Steering Groups and their Working Groups have not accepted the authority of the more senior level and gone their own way."

Turin European Council, 29 March 1996, Presidency Conclusions, SN 100/96; A Partnership of Nations: the British Approach to the European Union Intergovernmental Conference 1996, Cm 3181, HMSO, £10.75, 40 pages; Conference of the representatives of the governments of the member states: Progress Report on the Intergovernmental Conference, CONF 3660/96, Limité, 12.6.96; Report from the Dutch Delegation to Conference of the representatives of the governments of the member states on Third pillar: Schengen and the European Union, CONF 3872/96, Limité, 15.7.96; Conference of the representatives of the governments of the member states: Justice and Home Affairs, CONF 3866/96, Limité, 9.7.96; Third Pillar procedure - structural questions and working methods, note from the UK delegation to the K4 Committee, 10808/95, CK4 50, Limité, 18.10.95.

EU

Europol: "Compromise" protocol agreed

The when text of the Europol Convention was agreed on 26 July 1995 fourteen EU governments signed a declaration saying that where disputes between Member States on the interpretation or application of the Convention occurred and were not resolved within six months they would "systematically submit the dispute in question to the Court of Justice of the European Communities."

This declaration by 14 EU governments left the role of the European Court of Justice (ECJ) undecided with the UK government resolutely opposed to the ECJ having any role at all. When the Convention was signed in July 1995 it was decided that the role of the

ECJ had to be resolved by the end of the Italian Presidency of the EU in June this year. Finally on 24 July COREPER, the Committee of Permanent Representatives of the EU member governments, signed a Protocol to be attached to the Convention on the jurisdiction of the ECJ. This move cleared the way for the Convention to be put before national parliaments for ratification. The UK has already virtually completed the ratification process of the Convention, without any debate or vote, but will now have to put the Protocol through the same unopposed process (see *Statewatch*).

What the Protocol says

The Protocol has eight short Articles and a Declaration. Article 1 says the ECJ "shall have jurisdiction.. to give preliminary rulings on the interpretation of the Convention.." Article 2.1 says that any member state can make a declaration to "accept the jurisdiction of the Court of Justice of the European Communities to give preliminary rulings on the interpretation of the Europol Convention.." Article 2.2 states in full that a Member State making a declaration under Article 1 may specify either:

"(a) any court or tribunal of that State against whose decisions there is *no judicial remedy under national law* may request the Court of Justice of the European Communities to give a preliminary ruling on a question raised in a case pending before it and concerning the interpretation of the Europol Convention if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment,

or

(b) any court or tribunal of that State may request the Court of Justice of the European Communities to give a preliminary ruling on a question pending before it and concerning the interpretation of the Europol Convention if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment." (Italics added)

Article 3 states that, as the Rules of Procedure of the ECJ apply then:

"any Member State, whether or not it has made a declaration pursuant to Article 2, shall be entitled to

submit statements of case or written observations to the Court of Justice of the European Communities in cases which arise under Article 1."

In effect this would mean that the UK government, although not accepting the jurisdiction of the ECJ in relation to its national courts, will be able to put its views on cases arising in the other 14 Member States.

Agreement on ECJ, what agreement?

After a year long battle to get the UK government to accept the jurisdiction of the ECJ the other 14 EU governments have had to accept that the former was not going to change in any way. The UK, for its part, has accepted the right of the other 14 states to recognise the ECJ's role in the legal interpretation of the Europol Convention.

However, this is all the Protocol does. *It leaves completely unresolved the issue of disputes between Member States or between Europol and a Member State* - the very issues referred to in the Declaration by the 14 EU governments in July 1995. They are still committed to refer such disputes to the ECJ the UK still believes the Council of Ministers should decide such disputes behind closed doors. The Protocol can only be seen as a means of "papering over the cracks" which could be exposed if a dispute were to arise between the UK and another EU member state or between the UK and Europol.

It is now very hard to see why this "Protocol" could not have signed in December 1995 at the end of the Spanish Presidency. A report prepared by the Council's Legal Service in November 1995 for COREPER is virtually word-for-word the same as the one adopted on 24 July 1996. The only change between the two versions is that the implications of the Rules of Procedure of the ECJ in Article 3 are spelt out - namely that any member state could submit its views to the Court.

Who won the argument on the ECJ?

The real argument over the role of the ECJ took place between November 1994 and April 1995. One of the issues in November 1994 was indeed that of the ECJ's role in give a preliminary ruling - as covered by the new Protocol to the Europol Convention. But there were a number of other important issues on the table

at that time.

The first was ensuring that Europol is under the political control of the Council of Ministers. In the November 1994 draft version of the Convention one of the options was that if a dispute arose between the Member States and Europol and "if Europol has not remedied the situation" within a six month period then the dispute would be sent to the ECJ whose decision would be binding.

The second issue was to give the ECJ jurisdiction "in all disputes between Europol and its employees."

The third concerned the obligation of "discretion and secrecy" placed on Europol staff of having to get "permission" from the Director of Europol to give evidence in court. The option under discussion would have given the ECJ the power to rule on the appearance in court of a Europol employee where permission had been refused by the Director. The decision of the ECJ would have been binding on the individual, on Europol and on any Member States involved. Such a dispute could easily arise if a national court "summoned" a Europol employee - who could be a police officer, a customs or immigration official - who was then refused permission by Europol to give evidence.

The Protocol to the Europol Convention does nothing to resolve the questions raised by these last two points.

Protocol drawn up on the basis of Article K.3 of the Treaty of European Union, on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the establishment of a European Police Office, 8113/1/96, REV 1, Limité, 8.7.96; Competence of the ECJ regarding the interpretation of the Convention creating a European Police Authority (Europol), report from the Legal Service to COREPER, 11680/95, Limité, 15.11.95; Revised version of the Convention on the establishment of Europol, report from the Chair of the Working Party to the Europol Working Party, 10324/2/94, REV 2, Restricted, Europol 112, 22.11.94; Provisional version of the draft Convention on the establishment of Europol, from the Presidency to the Europol Working Party, 10324/4/95, REV 4, Limité, 26.4.95.

FEATURE

Law and Orange Order

In the second week of July, the Orange Order took to the streets to challenge what looked like a simple operational decision of the RUC Chief Constable, Sir Hugh Annesley, and won. Annesley, who had already announced that he would retire earlier than expected in November 1996, had decided to re-route an Orange Order march which planned to return from a church service at Drumcree on the outskirts of Portadown via the Garvaghy Road. This road passes through a Catholic housing estate. On the same occasion last year, the RUC barred the road until an agreement was reached between the Orange Order marchers and local residents, an agreement brokered by the Mediation Network for Northern Ireland. This year, the Orange Order - in a pre-planned operation - mobilised throughout the North of Ireland in protest at the re-routing. After four days, Annesley changed his mind, forcing a way through the protesting Garvaghy Road residents for the Orange Order marchers by means of police batons and plastic bullets. The inability and unwillingness of the RUC to uphold its original decision, with or without the assistance of the British Army, created a huge sense of outrage throughout Ireland, raising fundamental questions about the constitution and control of the RUC, and the role of the British government led by Secretary of State Sir Patrick Mayhew who, prior to the events at Drumcree, had also announced his retirement as MP for Tunbridge Wells (at the next general election). The Taoiseach, John Bruton, interviewed by the BBC on 12 July, directly blamed the British government for the widespread loyalist intimidation of Catholics throughout the Drumcree stand-off and in an unprecedented public attack went on to say:

"A state cannot afford to yield to force; a state cannot afford to be inconsistent; a state - a democratic state - cannot afford to be partial in the way it applies the law and I'm afraid we have seen all three basic canons of democracy breached in this instance."

The Orange Order, Unionism and Marching

The Orange Order was founded in 1795 and takes its name from the Dutch royal House of Orange whose King William III - the

Protestant William of Orange - is the hero of the annual 12th July celebrations commemorating the defeat of the Catholic King James II at the Battle of the Boyne in 1690. There are other loyal institutions including the elite Royal Black Preceptory and the Apprentice Boys of Derry. The Orange Order requires its members not to be "Roman Catholic or Papist" or to be married to one. If a member "dishonours" the institution by marrying a Catholic then they shall be expelled. Members must swear "true allegiance to Her Majesty Queen Elizabeth II, and to her Protestant successors". The Order's members are sworn to secrecy and have a duty to "strenuously oppose the fatal errors and doctrines of the Church of Rome" and to "resist the ascendancy of that Church". In the 1830s, the Order was banned for a brief period. During the latter half of the 19th century, the Orangemen were often blamed for outbreaks of disorder and sectarian attacks, and parades were frequently banned - at least six commissions of inquiry into Orange disorder were held in the second half of the century. The Order took on a more political role during the Home Rule campaign and became directly associated with Unionism and Protestant middle and upper class interests. After partition the close identification of the Unionist political and governing class with the Orange Order was widely and publicly celebrated. Most Unionist politicians were members of the Order and July 12th was soon declared a public holiday and remains the basis of school and work summer holidays to this day.

During the period of the "Orange State" (1920 to 1972) Orange marches came to have a special status. They were rarely banned or re-routed while demonstrations by nationalists or republicans were frequently banned.

Being a secret society, the membership of the Orange Order is not known - estimates range from 40,000 to 100,000. While the Order is not as powerful as it was, leading Unionist politicians, many presbyterian and Church of Ireland ministers, business people and an unknown number of police and prison officers are amongst its members. RUC members of the Order are not permitted under standing orders to participate in Orange parades, though some have been disciplined for doing so. While membership of the Order has been declining, the number of marches has increased

by nearly a third in ten years. The RUC recorded a total of 3,500 parades during 1995, of which 2,581 were loyalist and 302 nationalist. Twenty marches were re-routed by the RUC in 1995.

Orange parades which pass through predominantly Catholic towns and villages, or through Catholic neighbourhoods of the larger towns, are deeply resented as displays of Protestant dominance and supremacy. While the Orange Order argues that it has an unqualified, traditional right to march and right to religious liberty and freedom of expression, nationalists liken the parades to the racist supremacism of the Ku Klux Klan. In recent years, the RUC has increasingly defined itself as "caught in the middle" of these two opposing "identities". This view is not borne out by the force's handling of July's Orange disorder.

Drumcree and beyond

The three-day confrontation at Drumcree in July of last year was ended when Garvaghy Road residents reluctantly agreed to end their sit-down protest on the understanding that there would be no Orange parade down the Garvaghy Road in 1996. The Deputy Chief Constable, Ronnie Flanagan (at the time of writing, a leading contender for Chief Constable) had told representatives of the Mediation Network that in future "there was no question of marches going where there was no consent from the community". Following the 1995 "marching season", local residents groups, the Mediation Network and many others sought to engage the Orange Order in discussions over the 1996 parades. Aside from ideas for re-routing at local level, some commentators -including the Labour Party's Mo Mowlam and Flanagan himself - called for a wider review of the whole issue but this was resisted by Secretary of State Mayhew.

The 1996 marches approached with nothing resolved, attitudes hardening and with no clear indications from the RUC as to which Orange parades would be re-routed and which would be forced through against the wishes of objecting residents. One major focus was the lower Ormeau Road area of South Belfast where residents groups had frequently sought judicial review of the RUC's decisions to facilitate the Orangemen's marches.

While some parades had been re-routed in 1994 and 1995, there was no consistency to the decisions and on one occasion in 1995 dozens of residents had been batoned off the road to make way for an Apprentice Boys parade. On other occasions, residents had been blocked in side streets by a large force of the RUC and military while the parades passed by.

Two weeks prior to this year's Drumcree stand-off, a large Orange parade was forced through a Catholic section of North Belfast. Approximately 600 people staged a sit-down protest for which the RUC were fully prepared and fully mobilised - over 1,500 police were on duty for the event. The protestors were dragged one by one from the road, an operation which took over 90 minutes. After the parade went through, rioting ensued for several hours.

The decision to re-route the Drumcree parade was announced well in advance. This gave the Orange Order plenty of time to put in effect a plan of action which it had been preparing for months. The idea was to paralyse roads, airports and harbours while seeking to exhaust the RUC at Drumcree itself. While the RUC had some knowledge of the plan it appeared to lack the ability to confront it.

Annesley's original decision to re-route the parade was not supported by Mayhew it appears who, as many journalists observed, played a low-key role issuing statements about the operational independence of the Chief Constable - a position he abandoned a month later when he personally authorised that the Apprentice Boys be prevented from marching along a section of the old city walls of Derry. In the absence of political authority from the British government, the rhetoric of Unionist politicians went largely uncontested. "We are not here to play games", declared Ian Paisley, "we are here to save Ulster. We are going to win". Orange Order Grand Master and MP for South Belfast, Rev. Martin Smyth declared "There comes a time when if we are breaking the law then we have to suffer the penalty".

It was this sort of "loose talk" by politicians that the father of taxi driver Michael McGoldrick complained of at his son's funeral. McGoldrick had been murdered during the first night of the Drumcree stand-off, a killing attributed to the Portadown unit of the UVF which was subsequently stood down. Billy

Wright (known as "King Rat"), widely acknowledged as the leader of this unit, was frequently present at Drumcree and at one point met with Ulster Unionist leader and Orangeman David Trimble, apparently warning him of the willingness of the UVF to open fire on the RUC, a threat which Trimble claims he communicated to Mayhew. Other immediate threats at Drumcree included a fortified bulldozer and a slurry tank rumoured to be full of petrol to make a giant flame-thrower. Orangemen taunted the RUC by shouting out the addresses and telephone numbers of individuals and threatening their children - following Drumcree over 150 officers left their homes in the wake of loyalist intimidation. Beyond Drumcree, roads were blocked intermittently, thousands of people were threatened, the airport road was sealed for one night, Catholics were burnt out of their houses, businesses were forced to close and public and private transport disrupted. While the RUC were prepared to confront the Orange Order road blocks in a few cases, for the most part their actions contributed to the disruption. There were many reports of officers standing by while intimidation took place, or officers claiming they were under orders not to confront the protests. Other reports suggested that officers were going sick and failing to report for duty, and still others that there was a virtual mutiny in support of the Orange Order in some areas. Little effort was made to limit the number of protestors converging on Drumcree: on the contrary, a senior police officer announced on Radio Ulster that people were quite free to travel to Drumcree to engage in peaceful protest. There is evidence that some Catholic Belfast-bound traffic was deliberately routed towards Portadown. Passengers on the Dublin-Belfast express took nine hours to get to Belfast one evening due to rail and road disruption. Protestors blockaded a few smaller towns and villages for several days. Loyalists hi-jacked and burnt vehicles, set up burning barricades and wrecked business premises in East Belfast.

On the third day of the stand-off, 1,000 extra troops were flown in bringing the total to around 18,500. Officers of the parachute regiment surveyed the scene at Drumcree and departed. Their advice to the police seemed to be that the only way to prevent the Orangemen's bulldozer from breaching the barbed wire defences would be to open fire. The RUC had already intermittently fired several hundred plastic

bullets at the protestors, with reports of two injuries. On the grounds that life might be lost if the police continued to hold the line, the Chief Constable reversed his decision to re-route the parade. With no warning - although the Orange Order seemed to know the night before - the British army removed the barricades and allowed the Orangemen to proceed down the Garvaghy Road while the residents' leaders were still sitting in a nearby factory with church leaders waiting to discuss a possible settlement. Suddenly the right to peaceful protest evaporated as the RUC removed the Garvaghy Road protestors and launched volleys of plastic bullets.

While the RUC had fired several hundred plastic bullets at loyalists during the Drumcree stand-off, they now let fly with thousands of rounds as nationalist anger erupted in Derry and elsewhere, resulting in the death of one protestor run over by a British army vehicle. At one stage as the RUC staked out the casualty department of Derry's Altnagelvin Hospital, officers attacked four people with batons in the waiting area. Back in Belfast, hundreds of RUC officers with British army back-up surrounded the lower Ormeau Road area, completely sealing off the area in a curfew which lasted 26 hours. No-one was allowed into the cordoned off area unless they could prove they were on the electoral register, copies of which were being used by the RUC to check names and addresses.

Some residents without identification were unable to return home. Ostensibly this action was taken to prevent a crowd of 1,500 people from West Belfast joining the Ormeau Road residents in protest at the 12th July parade due the following day. The only people freely allowed into the area were the members of the Orange Order marching into Belfast city centre. Not until they had returned in the evening of the 12th was the police curfew lifted.

The partiality of the police actions makes a mockery of the government's white paper on policing ("Foundations for Policing") published in May. This proposes to strengthen the position of the Secretary of State and the Chief Constable who will be given greater responsibility for managing the police budget. While the white paper speaks glowingly of the need for "every democratic and civilised society" to be based on "a widely respected and supported body of law, based on shared values, upheld by the co-operation between the public and the police", it

completely fails to recognise just how far the North of Ireland is removed from such ideals.

The events surrounding this year's Orange marches have confirmed and strengthened the polarisation of Unionism and Nationalism and with it calls for the disbanding of the RUC.

EU

SIS=EIS: Who pays what?

When the Schengen Agreement was finally put into operation on 25 March 1995 the Schengen Information System (SIS) based in Strasbourg was up and running. The start of the Schengen Agreement had been planned for the beginning of 1993, when the removal of the internal borders of the EU should have formally come into being. But the start was delayed largely because of delays in getting the SIS to work and then to link into national computer systems (N.SIS). In the end the computer interface had to be changed adding to the cost of setting the SIS up. The total cost of the SIS computer system was FF46 million (over £6 million). The annual running cost the SIS in 1995 was, in 1995, officially between FF6-7 million (around £873,000).

The annual running costs are shared among the nine Schengen member states - Germany, France, the Netherlands, Belgium, Luxembourg, Portugal, Spain, Greece and Italy. But the last two states, Greece and Italy, although their governments have signed the Schengen Agreement it has not yet been ratified by their national parliaments. They do not participate in the SIS and have no computer links or access to the information held on the SIS. However, it appears that they are still having to pay their share of the running costs.

In 1995 the overall cost was paid for as follows:

Germany	39.2%
France	23.83%
Italy	14.53%
Spain	8.44%
Netherlands	6.09%
Belgium	3.8%
Portugal	1.90%
Greece	1.87%
Luxembourg	0.34%

Italy is therefore the third largest contributor to the Central SIS (C.SIS) even though it cannot use the system. It is unlikely Italy or Greece will ratify the Schengen Agreement this year and it may be well into 1997 before they do.

The figures for 1995 will, of course, be adjusted this year. Denmark, Sweden, Finland and Austria have now signed the Agreement, and have observer status on the Schengen Executive Committee. These four countries will now be paying their "share" of running the SIS even though their parliaments have not ratified the Agreement and are not likely to do so for some time.

Overall in 1996 there will be six countries whose governments have signed the Schengen Agreement and who have not ratified it who will be paying the costs of the SIS without being able to use it.

SIS=EIS

The SIS, like the whole Schengen Agreement, is intended to be replaced by EU-wide policies when they meet the objectives in the Agreement itself. When, and if, the Council of Justice and Home Affairs Ministers is able to agree on the External Frontiers Convention - which has been held up since 1991 by a dispute over the status of Gibraltar between the UK and Spain - under Article 13 the "European Information System" (EIS) will be set up. Due to all the problems faced by the original Schengen member states in setting up the SIS, and in getting ratification through their parliaments, they insisted that the draft Convention on the European Information System should match the provisions for the SIS word for word. The non-Schengen states have not been allowed to change a dot or comma affecting the SIS provisions in the Schengen Agreement in the discussion on the EIS Convention.

The SIS will simply be renamed the EIS when the two Conventions - External Frontiers and EIS - are signed by the EU governments and then ratified by their national parliaments. Governments like the UK, Ireland and Denmark and now Sweden, Finland and Austria, not only have had no say in the drawing up of the SIS provisions in the Schengen Agreement they had none in the creation of the SIS computer system itself. The UK government, in an explanatory memorandum, was coy about the implications: "The draft EIS Convention is closely based on the relevant

articles of the Schengen Convention... "

The SIS/EIS computer system in Strasbourg will complement the Europol system based in the Hague. While the Europol system is primarily concerned with "organised crime", although its remit is more widely drawn that is, the SIS/EIS will contain millions of records (the SIS already holds 3.68 million entries) (see *Statewatch* vol 6 no 3). The SIS/EIS EU-wide computer system covers migrants, asylum-seekers, police and internal security targets. One of the provisions would exclude those who "represent a threat to public policy, national security or international relations of Member States..."

The Interparliamentary Advisory Committee of the Benelux countries, reporting on 13 May 1996, said that plans are now underway to acquire "a new network" for the SIS as the present capacity will soon be "insufficient". The expenditure on the SIS is therefore set to rise yet again only 18 months after it came into operation.

A draft "Statement relating to the link between the EIS and the Schengen System" makes the handover of the SIS explicit and the fact that non-Schengen countries will be expected, retrospectively, to share all the costs of "setting up the Schengen Information System." The Statement reads:

"The High Contracting Parties (Member States of the Union) state that, for the implementation of this Convention [EIS] they will take over the Schengen Information System from the States parties to the Schengen Agreement... They further state that they will take on the regulations adopted in the Schengen framework for the implementation and application of the Schengen Information System... The Member States of the European Union which are not parties to the Schengen Agreement shall share retroactively in the costs of setting up the Schengen Information System."

The EU member states which were not part of the initial Schengen group are faced with paying out for a EU-wide computer system they have had no say in creating. The initial group was: Germany, France, Belgium, Luxembourg and the Netherlands who signed the first and second Schengen Agreements in 1985 and 1990 respectively. Spain and Portugal joined and ratified the Agreement later and had little say in the SIS's construction. Greece and Italy are

having to pay for the annual running costs without being able to access the SIS - so too, from the date of signing the Agreement, are Denmark, Sweden, Finland and Austria. Each of these six countries are also liable for their "share" of the setting up costs. The UK and Ireland the only two EU member states outside the Schengen Agreement will have to pay for their share of the SIS set up costs when, and if, they sign the EIS Convention - which will automatically follow agreement on the External Frontiers Convention.

Interparliamentary Advisory Council of the Benelux countries, 13 May 1996; *Home Office explanatory memorandum on the EIS*, 22.2.94; *Outcome of Proceedings of the Horizontal Group on Data Processing*, 6.6.95; *Convention between the Member States of the European Communities on the crossing of their external frontiers*, June 1991; European Commission proposal, amending the June 1991 version, *Treaty on the European Union establishing a Convention on the crossing of the external frontiers of the Member States*, 10.12.93.

FEATURE:

SWITZERLAND: XXX

The State Protection Bill presented by the Swiss Justice and Police Ministry (EJPD) in 1994 was debated in the National Council (the large chamber of Swiss parliament) in June. Compared to the version favoured last year by the Council of States (the smaller parliamentary chamber) the bill has been watered down. While the differences will not be debated until the end of the year it is already clear that the practices of the political police, which gave rise to the state protection scandal in 1989, will be legalised. When the law comes into force the right of access to state protection files (political police records), will be abolished. On the issue of the right of access the conservative majority in parliament favours the "British version".

In 1989 about 6.5 million people were living in Switzerland. The Federal Police (BUPO) had collected files on about 900.000 people, most of them were not suspected of having committed any offence. This was highlighted by the parliamentary enquiry commission in November 1989. The commission report led to the "Fichenaffäre" - the revelation of the

index cards held in the state protection scandal - and led to widespread protests. Two conclusions were drawn by the left: It launched a campaign for the abolition of the political police and the demand for complete access to index cards ("Fichen") and files ("Dossiers").

Within three months, 350,000 people had formally asked whether they were registered which turned out to be the case in more than 10% of the enquiries. Since 1990 about 40,000 people and organizations have received a censored and partly "blacked out" copy of their index cards. It was another campaign in 1992/93 which led to the restricted access to the files, which contained much more detail, connected to the index cards. Plans by Justice Minister Koller for the destruction of files were stopped, but people had to present another request for access, claiming a "more than minor interest" or an ideal or material damage. The censoring of cards and files by which, for example, information coming from foreign police or secret services were kept in secret, meant that the whole process of disclosure took six years. Despite these restrictions, the Swiss left thus has achieved the most extensive opening of political police archives ever achieved in western Europe.

Modernisation and computerization

In dealing with the popular initiative the Federal Council (the government) hoped that protests over the files would disappear. The campaign for the abolition of the political police was presented in 1991 and signed by more than 100,000 citizens. Its aim is to introduce a new article 65bis into the federal constitution: "The political police is to be abolished. Nobody shall be observed in the exercise of his ideas or political rights. The prosecution of offences is unaffected."

A date for voting on the initiative has still not been agreed. Instead of allowing a popular vote on the question of abolition of the political police the Ministry of Justice wanted to go ahead with the computerization and modernization of the state protection agencies and the police in general as well as a detailed legalisation of its practices. The Swiss police thus passed through a similar process to other European countries.

The activities of police and prosecution authorities in Switzerland are based almost entirely on the

criminal code and the criminal procedures of the cantons and the confederation. Under these the agencies of the Confederation are only authorised to deal with political offences (high treason, explosives) and in drugs matters. In the latter the Federal Prosecutor's office and the subordinate Federal Office of Police (BAP) are in competition with the cantonal prosecutors and police forces. With the Federal Law on the central services of criminal police, in force since 1995, a central service for combatting organized crime was created alongside the existing central drugs service in the BAP. The central services of the BAP will co-ordinate international and inter-cantonal co-operation. The law also covers the running of computer systems. The DOSIS drugs data bank already exists and a data bank on organized crime will be established. The law on the central services also provided the blueprint for the regulation of access to files and data. The minister and the conservative majority in parliament followed what they called the "British" line, excluding any possibility of subject access.

The introduction of the "formation of criminal organizations" as an offence (art. 260ter penal code) in 1993 had extended the activities of criminal police forces far beyond any suspicion of concrete offences. Another law on covert investigation, providing changes in the federal criminal procedure and in the narcotics law, has been drafted.

State protection by law

In addition to the extension of criminal police activities, the Justice Ministry wants to introduce a legal regulation covering preventive state protection, that is political police activities. Up to now, the legal basis for this only existed in art. 17 clause 2 of the federal criminal procedure, which was introduced in 1945: "For the accomplishment of the prosecution and information service in the interest of maintaining the internal and external security of the Confederation, the federal prosecutor's office is given the necessary personnel. They co-operate in general with the cantonal police forces."

The Federal Police (BUPO, not to be confused with the BAP), which is also subordinate to the Federal Prosecutor, is on the one hand the judicial police for political offences and on the other hand the secret intelligence or information service, thus the central

institution of preventive state protection. It gives instructions and orders to the political intelligence departments of the cantonal police forces. The BUPO also undertakes military intelligence.

The general authorisation cited above is now to be replaced by a new law, which according to the Justice Ministry will guarantee the rule of law in matters of preventive police and prevent excesses seen before 1989. Even the name of the bill, presented in March 1994, will delete all traces that could be associated with the old state protection activities. Nevertheless, the draft "Federal Law on measures to maintain internal security" is nothing less than the legalisation of state protection in a modernised form including the data Bank ISIS, which was build up since 1992. Its tasks have been changed too. The revamped BUPO, and its equivalents in the cantonal police forces, will not only cover terrorism, violent extremism and espionage, but also organized crime - a phenomenon which turns out to be the "spectre of the 90s". A separation of police operational powers and intelligence services, as exists in other European states, is not planned. Additionally the BUPO will participate in the security checks and vetting of federal personnel (art. 17-19).

Agreement ...

The general lines of the bill are not disputed by the Federal Council and both chambers of parliament. In the preventive area, that is where no offence has been committed, state protection authorities shall be given legal powers to collect, treat and transmit data. This includes eg:

- the observation of incidents and events, including private communication, in public spaces, also by sound and video-recording or photos;
- the gathering of profiles of contacts and movements of persons;
- the collection and evaluation of information, set out in clear terms: reports of private informers and denunciation - exactly the kind of "intelligence" which used to be in the BUPO-files before 1989;
- the access of police agents to files and registers of public services (art. 12 - collection of information);
- the power to oblige cantonal police forces (art. 6,7) and other public institutions (art. 11) to co-operate and to collect and transmit data for state protection purposes,
- the transmission of data to other authorities and

foreign services (art. 15) and finally
- the storage and treatment of data in the data system
ISIS (art. 13)

A motion in parliament, that the most intimate and sensitive data on health, sex and race should be excluded where there is no suspicion of offence was explicitly rejected.

Also agreed is the abolition of the right of access to personal data. The original draft by the Federal Council provided a regulation under which the applicant would be obliged to effectively undertake self-accusation - citing a concrete incident or activity, that could have led to them being "registered" (being put on file) and to claim a special interest in the disclosure of the information. Instead of this restricted access - the "German version" - the Council of States and one year later the National Council voted for the "British version". According to this, an applicant will have to apply to the data protection commissioner to review his data. In no case may the commissioner inform the applicant of the result of the review. Instead, the commissioner always has to give the same answer: "that either no data is stored and treated illegally or in the case of eventual errors a recommendation for their correction has been given". Thus the applicant will even not be informed when they have not been observed by the political police.

... and differences

In the Council of States, where Social Democrat and Green opponents of the political police are hardly represented, the conservative parties' hardliners could go even further. The Council introduced an art. 12a into the bill, which would allow the BUPO without any suspicion to tap phones, and to surveil apartments and houses by using bugs, microphones and video cameras. Up to now bugging in apartments was only allowed in the context of a judicial police investigation following a warrant issued by a judge.

The amendments introduced by the Council of States last year caused consternation even in liberal circles with criticism from the data protection commissioner, Odilo Guntern, a Christian Democrat, and the Special Commissioner for the access to the old state protection files, René Bacher, who belongs to the Liberal Party. At least in the preliminary debate in the Law Commission of the National Council their critique seemed to impress the conservative MPs. But

the proposals of the commission were overthrown in the plenary session of the National Council on 4 and 5 June, with two exceptions.

The National Council rejected the idea of organized crime being made a task for the BUPO. This decision may have been motivated by the interventions of prosecutors and criminal police officers in the media a few days before the debate who said the BUPO activities in this field would be an unnecessary duplication of the work by the competent judicial and criminal police authorities. Also thrown out was bugging as a method of preventive information gathering.

"The political police", Paul Rechsteiner, social democratic MP and president of the *Komitee Schluss mit dem Schnüffelstaat* says, "will not loose its dangers or make sense by introducing a few legal restrictions. The result is that in future state protection as in the past will mean the surveillance of dissident convictions, opinions and political activities."

The negotiation on the different versions presented by the two chambers is expected to take place in the autumn. There will be no big surprises. The Council of States, it can be presumed, might reject bugging, and the National Council might agree to the observation of organized crime.

Popular vote

After the parliamentary decision there has to be a popular vote. At its general assembly at 4 October the *Komitee Schluss mit dem Schnüffelstaat* will decide, whether in addition to this initiative to abolish the political police, it will launch a referendum against the state protection law. For a referendum 50,000 signatures are needed. The Komitee sees two factors that might favour a successful referendum: on the one hand, the support of liberals such as René Bacher, for whom the abolition of the right of access is the reason "to fight under all circumstances against this law." On the other hand, a specific historical characteristic of Switzerland: the fact, that all state protection laws in the history of the country failed in a referendum.

Sources: *Fichenfritz* no 25; Paul Rechsteiner, "Staatsschüffelei wird perfektioniert", *plädoyer*, 3/96, pp25-27; *Schlussbericht über die Tätigkeit des Sonderbeauftragten für die Staatsschutzakten des Bundes* (final report on the activities of the special commissioner on the federal state protection files), Bern 8.5.1996; *Bundesgesetz über*

kriminalpolizeiliche Zentralstellen des Bundes (Federal Law on the central criminal police services) vom 7. October 1994, *Bundesblatt* no 41, Band III, 18.10.1994, p1850 ff; *Botschaft des Bundesrates zum Bundesgesetz über Massnahmen zur Wahrung der inneren Sicherheit und zur Volksinitiative "S.o.S. - Schweiz ohne Schnüffelpolizei"*, 7 March 1994, 94.028 (text and official remarks of the government to the state protection bill).

FEATURE

Policing the streets: stop and search powers in 1995.

Introduction

The Home Office has published details of the operation in 1995 of certain powers under Section 1 of the Police and Criminal Evidence Act (PACE) for England and Wales and other legislation including the Misuse of Drugs Act, 1971, Firearms Act, Prevention of Terrorism Act and Sporting Events (Control of Alcohol etc) Act 1985. Once again they draw attention to the increasing use of police powers on the streets (see, "Policing the Streets: the use and abuse of police powers", *Statewatch*, vol 5, no 4).

Stop and search in England and Wales.

Between 1993 and 1994 the number of stops and searches increased by over one third from 442,800 to 576,000. Between 1994 and 1995 there was another staggering increase of over 114,000 bringing the total to over 690,000. There are now six times more stops and searches on the streets of England and Wales than in 1986 when the powers were first introduced. The steady upward increase in the number of persons and/or vehicles stopped and searched can be seen in Fig 1.

Figure 1

The police are required to note the reason for a stop and search. In 1995 37% of stops and searches were to look for stolen property, followed by 34% to look for drugs. Fig 2 notes the trends in the different reasons given for stops and searches.

Figure 2

The figures for individual police forces show very wide variation in the use of the powers in 1995. Over half (53%) of all stops and searches were carried out by the Metropolitan Police and the Greater Manchester Police. When the figures are standardised in relation to the size of the population in a Police Force Area the variations are still considerable. While five forces had search rates of less than 300 per 100,000 of the population at the other end 16 Police Forces had search rates of over 1000 per 100,000. The Metropolitan Police has the highest rate of more than 4000 per 100,000 of the population, followed by Dyfed Powys with over 3,000 per 100,000 of the population.

Another way to examine the figures is in terms of the level of crime in each Police Force Area. It might be expected that higher rates of stop and search would occur in areas which experience high crime rates. When the stop and search figures are related to the number of notifiable offences there appears to be some relationship between the two, but there is still some extraordinary variation. For example, 10 Police Forces have stop and search rates of under 45 per 1000 of notifiable offences while at the other end the City of London Police has a rate of over 800 and Dyfed Powys of 779 stop and searches per 1000 of notifiable offences. Fig 3 shows the searches per 1000 notifiable offences by police force area.

Figure 3

There has also been large variations between Police Forces in the use of stop and search powers over the period 1987 to 1995. While the number of stops and searches in England and Wales as a whole has increased sixfold, in the Cumbria Police Force twenty times more people are being stopped and searched in 1995 than in 1987. There have been similar staggering increases in Dyfed Powys, Northumbria and Cleveland.

Figure 4. Increase in SS 1987-1995

Outcomes of stop and search powers.

The number of arrests arising from the stops and searches have increased in the period 1986 to 1995 from 18,900 to 81,000 - a fourfold increase. On the surface it would appear that the increase use of stop and search has been effective in the fight against crime. But this is not necessarily the case. No figures are currently kept on the outcome of arrests arising from these powers, but there is evidence from various studies to suggest that the proportion of arrests disposed of by no further action has increased significantly in recent years. In other words, although more people are being arrested and processed in the police station proportionately more are being released without action. Thus, the increased use of stop and the accompanying increase in arrests simply reflects a net-widening in the use of these coercive powers rather than success in bringing more criminals to book.

Figure 5.

Another way to look at these absolute arrest figures is to show them as a proportion of all stops and searches. In 1986 some 17% of all stops and searches led to an arrest. In 1995 the figure had dropped to 12%. It thus appears that stops and searches are now much less likely to lead to an arrest suggesting an even greater abuse of the powers than ten years ago. Figure 5 shows the trend in the proportion of arrests arising from different suspicions. As it can be seen there has been a steady decline in the proportion of arrests for all reasons noted for an arrest except arrests described as "Other". These showed an increase in the proportion of stops and searches leading to arrests up until 1991 since then there has been a decline. Figure 6 notes the proportion of searches resulting in an arrest shown by police force in 1995.

Figure 6

New stop and search powers

These figures do not include the radical new powers of stop and search introduced under the Criminal Justice and Public Order Act of 1994. This provides a

power to stop and search in anticipation of serious violence and came into force on 10 April 1995. In addition, the Act amended the Prevention of Terrorism Act and enables stops and searches to be made in association with terrorism. This power came into effect on 30 November 1994. The former power led to another 2,439 stop and searches in some 17 Police Forces with over half being carried out by the Metropolitan Police. It is reported that only one Police Force used the powers to stop and search in association with terrorism, a period in which both the IRA and loyalist paramilitaries were observing a cease-fire.

Road checks.

Between 1992 and 1993 the number of road checks increased eightfold from 445 to 3,560, with some 3,200 being carried out in the City of London. In 1994 the number dropped by 16%. In 1995 the number of road checks dropped to the lowest level since 1986 with only 113.

As with stops and searches there is wide variation in the use of this power between Police Forces. Eighteen Police Forces did not have resort to this power at all while Kent and West Mercia set up 25 and 21 road checks respectively. The 113 road checks lead to some 250 roads being obstructed and over 17,000 vehicles being stopped. They resulted in 35 arrests connected with the reason for the road check and 34 arrests for a matter unconnected with the reason for the road check.

Conclusions

Two broad conclusions can be drawn from this analysis. First, if the staggering increases in the use of the stop and search powers continue, then over 1 million people and/or their vehicles will be stopped and searched in England and Wales by 2000. While the Home Office figures do not contain any information on who is stopped, other sources particularly for London, suggest that black people are disproportionately affected by these powers. The implications for police/black relations are therefore considerable.

Second, the very wide variations between different police forces in both the use of the power to stop and

search and the arrest rates following a search, suggest that the likelihood of becoming subject to these coercive powers is strongly related to where you happen to be and who you are. There appears to be no consistent application of the law either under section 1 of PACE or under other relevant legislation. Freedom from arbitrary stops, searches and arrests, in all likelihood, owes much more to geography and ethnicity rather than the rule of law.