ing secrecy provisions in our laws. In many other Acts, there are as many as 179 provisions elsewhere, that are supposed to be brought into accord with FoI within three years.

5. There are various exclusions and various other problems that require attention.

Remember the principles which the Canadian expert, Professor Rowat, put forward. He said there were three important principles for a good freedom of information Bill:

1. disclosure must be the rule rather than the exception;
2. there must be narrowly defined exemptions justifying secrecy;
3. there must be enforcement through appeals against secrecy to some independent arbitrator.

One can add a fourth criteria to it, in regard to access, because he did refer in detail to these matters. There must be easy access. This is very important. If you have a marvellous Bill but people do not use it, its not good enough. Legislation must include production and correction of documents which affect people's personal lives. You must charge low fees and have a right of waiver of fees. The public service must be enjoined to ensure it will be helpful to people seeking information. Now I say finally, Mr Chairman, that I wish you every bit of luck in Britain in going ahead with this campaign. It took us about ten years and you have some time to wait, but FoI is an idea whose time has come. It is very necessary for Britain to get back to its role in democratic reform. I hope that you will soon have a strong freedom of information Bill and I am sure it will be of great benefit to and for your people if you manage it.

The full text of this speech can be downloaded from the Campaign for Freedom of Information <**http://www.cfoi. org.uk/miss n.html**>. This lecture is reprinted courtesy of the UK Campaign for Freedom of Information.

NATO'S web of secrets

Last December, the international movement for open government marked a small victory: Romania's new right-to-information law came into force. Unfortunately, the victory was short-lived. Four months later, Romania also adopted a new state secrets law that creates a broad authority to withhold information that has been classified as sensitive by government officials.

An earlier draft of this state secrets law was strongly criticised by the International Helsinki Federation, and struck down by Romania's Constitutional Court in April 2001. The new law is only a modest improvement. Article 19, a freedom of expression advocacy group, says that the restrictions on access to information are still 'incredibly broad'.

There have been similar developments across much of Central and Eastern Europe. Ten countries in the region have adopted right-to-information laws in the last decade — while eleven have adopted laws to restrict access to information that has been classified as sensitive. The Slovak Republic adopted its new secrecy law in May 2001 despite protests from non-government organizations. In May 2002, a cross-party coalition of legislators launched a constitutional challenge against Bulgaria's recently adopted state secrets law.

There's a simple explanation for this wave of legislative activity. In 1999, NATO made clear that countries who wanted to join the alliance would need to establish 'sufficient safeguards and procedures to ensure the security of the most sensitive information as laid down in NATO security policy'. Central and Eastern European countries have rushed to get legislation in place before NATO's meeting in Prague this November, where decisions on expansion are expected to be made.

The result has been tight new rules on the treatment of classified information, as well as strict policies on security clearances. In the Slovak Republic, the new security agency will review political and religious affiliations, and lifestyles — including extramarital affairs — that are thought to create a danger of blackmail. The Associated Press reported recently that Romania intends to deny clearances to security staff with 'anti-western attitudes'.

Some observers have asked whether governments in the region are using the process of NATO expansion as a pretext for adopting unnecessarily broad secrecy laws — or whether NATO's requirements are themselves unduly tilted against transparency. These are reasonable questions, but NATO is doing little to help provide answers. Although its security policy is contained in an *unclassified* document, NATO refuses to make it publicly available. It has also instructed its current member countries to withhold their copies of NATO's policy. As a result, requests for the policy made under the freedom of information laws of the United States, Canada and United Kingdom have all been declined. (A similar request to the European Union, which is collaborating with NATO, was also refused.)

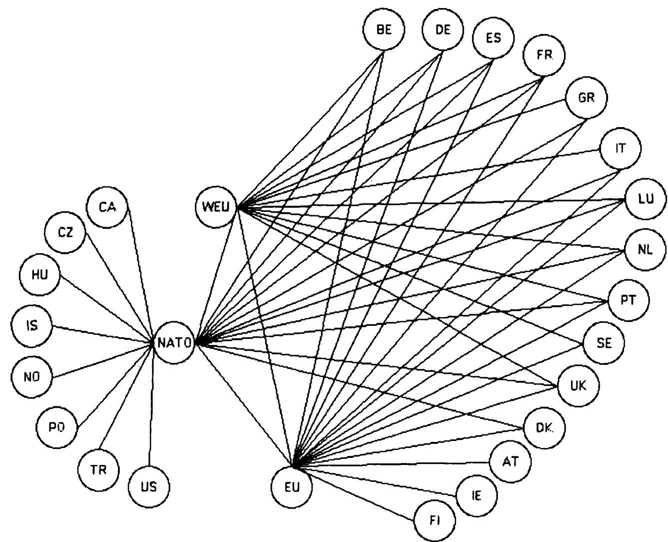
A small window into the evolution of NATO policy is provided by a selection of archival records from the 1950s that are now available at NATO's Brussels headquarters. (The rules that determine which archival records will be made publicly available are contained in NATO's security policy, and are therefore inaccessible. Captain Yossarian would be impressed.) These archival records suggest that the criticisms made against the new state secrets laws of Central and Eastern Europe — excessive breadth, combined with onerous clearance rules — could likely be made against the NATO policy itself.

NATO's policy on the handling of sensitive information was codified between 1953 and 1955, in the early years of the Cold War. It was very much a product of that time. Its rules on vetting of personnel mimicked the onerous loyalty requirements adopted by the Eisenhower administration in November 1953 as a counter to the McCarthy investigations. Military planners in the United States and United Kingdom, who dominated NATO in its early years, ensured that NATO policy also included strict rules against disclosure of information.

Behind NATO's closed doors, some governments chafed at the new restrictions. Belgium complained about disproportionate influence of British and American military staff; Norwegian and Danish officials lobbied for narrower definitions of classified information; Italy suggested that

CHART
Parties to Multilateral Security of Information (SOI) Arrangements in Europe

As the chart shows, European states are subject to an increasingly dense web of intergovernmental arrangements that constrain the use and distribution of information by national governments. At least 17 European states are bound by NATO's security of information (SOI) rules. Ten states are also bound by the comparable SOI rules of the Western European Union (WEU). Many of these states must also conform to the security regulations adopted by the EU in March 2001. The three multilateral institutions are also bound together by SOI agreements: the NATO and WEU in 1992; the EU and WEU in 1999; and the EU and NATO in 2001. This entanglement must make the reform of SOI policies extremely difficult. (ICANN country codes are used in this chart, which does not include candidate countries.)



the scope of the policy — regulating even non-NATO information held by national governments — could create 'difficulties of a constitutional nature'. None of these complaints carried much weight. American policymakers wanted stiff rules; the British, desperate for American atomic secrets, acquiesced; and other nations — 'for the sake of unity', as Norway put it — ultimately withdrew their objections.

NATO policy was established long before any NATO member had adopted a right-to-information law — and subsequent laws were tailored to accommodate NATO requirements. One of these requirements is the absolute prohibition of disclosure of any information — however innocuous — received through NATO channels, unless NATO or the authoring state consents. However, many NATO states do not publicly acknowledge the conflict between NATO policy and domestic right-to-information laws — perhaps because this would itself constitute an unauthorised disclosure of the content of NATO's policy.

A more obvious illustration of the impact of NATO rules was provided two years ago in Brussels. In July 2000, the Council of European Union gutted its policy on access to documents by eliminating the public's right to any kind of classified information. Many observers were shocked by the decision. The decision proved to be a prerequisite for a cooperation agreement signed by the EU and NATO on the preceding day. The EU's letter of agreement with NATO was released early this year in response to a right-to-information request by Swedish researcher Ulf Öberg — with the specific reference to NATO's security policy carefully excised. (The Secretary General of the EU, Javier Solana, is also a former Secretary General of NATO.)

NATO policy continues to have an impact within the EU. In March 2001 the EU adopted new and stricter regulations on classified information that appear to conform to NATO requirements. In a sense, the EU is in the same position as countries in Central and Eastern Europe: to engage with NATO, it must adopt its policy on access to information. EU member states — including countries that will be welcomed into the EU at its Copenhagen summit in December — have an obligation to adopt national measures to ensure that the EU's new rules on classified information are respected.

In a May 2000 declaration, eight Central and European countries argued that accession into NATO would help to consolidate 'the values of the Euro-Atlantic community' throughout the region. Some of these values get more attention than others. Integration might promote democratic government and respect for human rights. But integration also appears to involve some of the less attractive aspects of the Euro-Atlantic way of governing — including the values and institutional apparatus of the national security state.

This phenomenon deserves more attention from proponents of open government. By looking only at the steady diffusion of right-to-information laws, it is easy to conclude that the principle of open government is in the ascendant. Slow but significant reforms at institutions such as the World Bank, IMF and WTO might seem to suggest that intergovernmental organisations are also recognising their obligation to conform to standards of transparency comparable to those imposed on national governments.

This is a partial and misleading view of the world. As the European experience vividly demonstrates, national governments are becoming entangled in a thickening web of multilateral and bilateral agreements that restrict the capacity of national governments to disseminate information within their borders. This trend was already well underway before the events of September 11 — but the new emphasis on intelligence-sharing and military cooperation must certainly give it added force. One of the key hubs in this network of intergovernmental agreements is NATO, an institution that has never been subjected to an intense campaign for improved transparency and therefore clings to unreconstructed views about state secrecy and the sanctity of interstate communications.

No one can dispute that the preservation of secrets is sometimes essential to national security. But citizens are at least entitled to have an informed discussion about the rules that will be used to determine when secrets must be kept. 'Secrecy is justifiable,' says Professor Dennis Thompson of Harvard University, 'only if it is actually justified in a process that itself is not secret'. NATO's information security policy — the unobtainable product of a half-century of secret negotiations — violates this basic principle of democratic accountability.

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