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For Attorney file ... 14.2.75.

S.18660

The Report of the Gardiner Committee

1. On 4 April, 1974, the Secretary of State for Northern Ireland announced in Parliament that he had decided, in consultation with the Attorney-General, to set up a committee under the chairmanship of Lord Gardiner.

"to consider what provisions and powers, consistent to the maximum extent practicable in the circumstance with the preservation of civil liberties and human rights, are required to deal with terrorism and subversion in Northern Ireland, including provisions for the administration of justice and to examine the working of the Northern Ireland (Emergency Provisions) Act, 1973, and to make recommendations.

2. The committee received submissions from 61 different individuals, groups of individuals and organisations (the recommendations of the major political parties are summarised on a separate sheet at the end of this note) and apparently their report was ready and handed to the Secretary of State in December 1974. However, due to the security situation and the ceasefire, publication was postponed until 30 January 1975.

3. The findings of the report were as follows:
   (a) non-jury (Diplock) trials should be continued;
   (b) the committee was unable to recommend that the time had come to abolish detention because of the security situation and handed the responsibility for this decision back to the Government (paragraphs 148 - 149);

   (c) the present procedures for detention were severely criticised (hearings before the Commissioners, the delays involved) and it was recommended that the sole and ultimate responsibility for detention should be that of the Secretary of State, aided by a Detention Advisory Board. The procedures of this body would be more open than those of the Commissioners with the abolition of

the pseudo - adversarial techniques now employed and the exclusion of legal counsel and they would operate on a time table of 35 days for each case which would be a significant improvement on present delays (paragraphs 159 - 165. Releases, however, were to be effected as speedily as would be compatible with security and the social rehabilitation of the individuals involved, and this could be facilitated by the establishment of a Release Advisory Committee (paragraph 167 - 179);

(d) Special Category Prisoner Status (introduced by Mr. Whitelaw in 1972) should be abolished and sentences for serious crimes allowed to have their full deterring effect by the disappearance of amnesty hopes, (paragraphs 105 - 108).

(e) The prison conditions in the North were the subject of the most severe criticisms and the abolition of the compound system and its replacement by the conventional cellular system was considered as the most urgent priority;

With an eye to the security situation and terrorist activity in general

(f) the setting up of an independent body to investigate complaints against the police (and possibly the Army) as a means of restoring the minority's confidence in the RUC was recommended;

(g) the news media came in for particular scrutiny and it was recommended that it be made a summary offence for editors, printers and publishers to publish anything which purports to be an advertisement for or on behalf of an illegal organisation or part of it (paragraph 74). The B.B.C. and Independent Broadcasting Authority should also be asked to re-examine their policies about contact with and reporting on terrorist views and activities (paragraph 76).

(h) In speaking about terrorism in general the committee recommended that its definition be widened to embrace not only political but also sectarian acts and that the criterion for making a Detention Order should be raised from the "detention of an individual (which is) necessary for the protection of the public" to "a person should be detained only if his freedom would seriously endanger the general security of the public" (paragraph 166).

NOTE: At first glance this new criterion would appear to be less stringent than the older one and could be seen as an escape for Loyalist terrorists who are not activally setting off bombs, shooting etc. But if it is read in conjunction with paragraphs 69 - 72 where such acts as intimidation, recruitment to organisations, wearing of disguises (uniforms to intimidate) and other Sectarian acts by non-proscribed organisations are condemned it would appear to indicate a desirable change in thinking on the part of the British which is falling into line with our definition of terrorism as argued under Art. 14 of the Convention before the Commission of Human Rights in Strasbourg.

Finally the recommendation that consideration should be given to the enactment of a Bill of Rights (paragraph 21) is something to be welcomed, but Lord MacDermott's reservation (p. 57) that it is "a difficult legislative subject which does not always live up to its expectations" should be noted.

One anomaly is worthy of note: Paragraph 16 (p.7) which concluded with the sentence "The 1973 Act is therefore not in breach of international agreement" is not fully consistent with the more sweeping statement in the Summary of Conclusions (p.56) which says: "The British Government has acted legitimately, and consistently with the terms of the European Convention for the Protection of Human Rights and Fundamental Freedoms, in restricting certain fundamental liberties in Northern Ireland."

No statement was made by the London Government when the report was published, but it is generally believed that the Government is in no way committed to implementing any of the recommendations. It is also believed to be unlikely that the Special Category Prisoner Status will be abolished. The anger of the Provisionals and Loyalists to this idea has already been reported in the press and its actual implementation could provoke a considerable backlash of further anger.