



An Chartlann Náisiúnta
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Lethal Force

Speaking Points

- You know the importance we attach to having a comprehensive and early report from your Working Group on lethal force. I would be interested therefore in having an up-date on progress so far;
- I remain uneasy at the lack of terms of reference for the Working Group. It is difficult not to see this as an impediment to fresh and forward-looking thinking. I assume that the views in our paper of 1991 and the views I have expressed here will be taken into full account;
- Will the review be completed in the next few months - can we expect it before the Summer holiday?
- The current trial of the six members of the Parachute Regiment arising out of the deaths of two teenage joyriders, Karen Reilly and Martin Peake, is a timely reminder of the urgent need to address this problem.

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Use of Lethal Force

Background Note

I. Policy Review

1. Since 1969, there have been 22 cases where serious charges, including murder, have been pressed against members of the security forces arising out of the use of lethal force whilst on duty. Only one individual (Private Thain) in all of these cases has been convicted of murder. He was released and reinstated in the Army after serving 2½ years of a life sentence. (One other individual was convicted of manslaughter and was given a suspended sentence). In addition, twelve members of the security forces are currently awaiting trial for offences arising out of the use of lethal force. The outcome of these cases will have obvious implications for nationalist confidence in the administration of justice in Northern Ireland.

2. Against the background of this ready recourse to lethal force the Irish side have pressed for a major review of policy in this area. There are three main areas where change is required:
 - (i) Tighter legal and operational rules on the circumstances in which the security forces may open fire;

 - (ii) Provision for an independent element (e.g. from a police force in Britain) in the investigation of such incidents; and

 - (iii) Revision of the existing law so as to establish a wider range of offences in lethal force cases. (The latter is necessary because of the evident reluctance of the Northern Ireland courts to convict members of the security forces on murder charges and the effective impossibility, in the light of a 1975 ruling by the House of Lords, of bringing a lesser

charge (e.g. manslaughter) in cases where lethal force was intentionally used).

3. At the meeting of the Intergovernmental Conference on 16 July 1991, the Irish side proposed that the Secretariat consider the whole area of the use of lethal force by the security forces in Northern Ireland, including the legal provisions which govern it, in an attempt to agree a Joint Report to a later Conference. The issue has been regularly reviewed since that time. Following an exchange of preliminary papers setting out each side's position, a Joint Summary Report on progress to date was agreed in April 1992 with the British side.
4. In a further paper which we transmitted to the British side in September 1992, we asked that any review of this issue consider also the question of inquests into deaths arising from the use of lethal force, and in particular a useful study of this aspect commissioned by the Standing Advisory Commission on Human Rights (SACHR).
5. The British side informed us in late 1992 that they had set up an informal interdepartmental committee to consider the lethal force issue further. This Committee is chaired by the Home Office and comprises representatives of the Ministry of Defence, the Northern Ireland Office and the Law Officers. While genuine signs of willingness by the British side to consider the issue in a sustained way would be welcome, the informality of the arrangements is potentially troubling: for example, there appear to be no specific terms of reference; and the British side are unable to tell us when the Committee might be in a position to report its findings. That said, the British side have indicated tentatively that a solution specific to Northern Ireland (which in the past has been downplayed by the British side who have also invoked the difficulties in the way of a "UK-wide"

solution) is not ruled out.

6. At the most recent meeting of the Conference on 3 February 1992, the British side remained unable to tell us when the committee will report and they confirmed that the committee has no formal terms of reference. The Secretary of State mentioned, as he had done at the previous meeting of the Conference, that he has a personal interest in the issue.
7. A note detailing recent controversial shootings by the security forces is attached.

II. Inquests

8. There was discussion at the last meeting of the Conference of issues raised by the inquest of Seamus McElwaine, an IRA member on "active service", who was killed by undercover soldiers in April 1986. Discussion of the whole question of present inquest arrangements, which in our view are inadequate, will continue at official level. An inquest into the deaths of three IRA men (Mullin and the brothers Harte), shot by undercover soldiers in 1988, has recently begun. Several further controversial inquests (including the inquest into the death of Aidan McAnespie, who was shot by a British soldier in Aughnacloy in 1988), are due to be held in the near future.

Anglo-Irish Division

19 March 1993

BACKGROUND NOTE

RECENT DISPUTED SHOOTINGS BY
THE NORTHERN IRELAND SECURITY FORCES

The Whiterock Road Shooting

1. On 13 January 1990 two men, Eddie Hale and Peter Thompson, armed with replica weapons were shot dead by an undercover British Army unit outside a Bookie shop on the Falls Road which they had tried to rob. Another man, John McNeill, was allegedly shot repeatedly at close range as he sat, unarmed, in the getaway car outside the bookie shop. Allegations were made by eye-witnesses that the soldiers had shot the men without warning. The incident gave rise to widespread disquiet and despite numerous calls for an independent public inquiry the British authorities refused to do this and the incident was investigated by the RUC. In December 1990 the DPP announced that the soldiers involved would not be prosecuted.
2. In July, 1991, following a Panorama programme on the killings which raised a number of disturbing questions regarding the shooting of John McNeill, the DPP reopened the investigation and asked the police to make further enquiries. However, in February 1992 the DPP announced that the soldiers would not be charged with any offences arising out of the second investigation.
3. The inquests into these deaths have yet to be held but given the restricted scope of inquests in Northern Ireland and the fact that the soldiers involved in the killings cannot be compelled to testify it is unlikely that the inquest will allay public concern over these shootings.

Karen Reilly and Martin Peake

4. Karen Reilly (18) and Martin Peake (17), both alleged "joyriders", were shot dead by a British army patrol on the Upper Glen Road in West Belfast on 30 September 1990. In October, 1991, six British soldiers were charged with offences arising out of these killings, including murder, attempted murder, and attempting to pervert the course of justice. The trial of these six soldiers began in Belfast on 9 March and is continuing.

Fergal Caraher

5. Fergal Caraher was shot dead and his brother Mícheál was wounded as a result of shots fired by an unaccompanied patrol of Royal Marines operating a vehicle checkpoint in Cullyhanna on 30 December, 1990. The British Army claimed that Fergal and Mícheál Caraher were in a car which failed to stop at a checkpoint and injured two soldiers. Local eyewitnesses contradicted the Army's version of events and said that the two brothers were fired on without warning and that no member of the Army patrol had been injured during the incident. In February, 1992, a soldier was charged with the murder of Fergal Caraher and another soldier was charged with the attempted murder of Michael Caraher.

Gerald Maginn

6. Gerald Maginn was an 18 years old alleged "joyrider" from West Belfast who was shot dead by the RUC in a stolen car on the Glen Road in West Road in West Belfast on 3 November, 1991. Another youth in the car, John Brady (16) was shot in the arm and shoulder. Concern was expressed by many local community figures that the police had not been justified in opening fire. The incident was raised in the Secretariat and the ongoing RUC investigation was supervised by Bernard Turkington, a Catholic solicitor from West Belfast, on behalf of the Independent Commission for Police Complaints. We

understand that the ICPC has pronounced itself satisfied with the conduct of the investigation. The DPP has decided not to prosecute the RUC officers involved.

Kevin McGovern

7. Kevin McGovern, was shot dead by the RUC in Cookstown, Co. Tyrone on 29 September, 1991, after he and some friends who were going to a disco apparently failed to stop when challenged by the RUC. The RUC were investigating reports of a hijacking and possible mortar attack at the time. The RUC confirmed that he was not engaged in any terrorist activity and the Chief Constable issued a statement in which he expressed his deep regret at the shooting. A police investigation was carried out under the supervision of solicitor Fionnuala McGrady on behalf of the ICPC. The ICPC issued a statement that the investigation was conducted to its satisfaction. A member of the RUC, Timothy Hanley, has since been charged with McGovern's murder.

Peter McBride

8. Peter McBride was shot dead by the British Army on 4 September 1992 in the New Lodge area of North Belfast. At the time of the shooting he was being chased by soldiers, having fled from a security force patrol which had sought to question him. All accounts of the incident are agreed that McBride was unarmed and was running away from the soldiers when shot. The following day the RUC announced that two members of the Scots Guards (Mark Douglas Wright and James Fisher) had been charged with murder arising out of the incident. They were remanded into military custody.

Pearse Jordan

9. Pearse Jordan (22), a member of the IRA, was shot dead by the RUC amid controversial circumstances on the Falls Rd. on 25 November 1992. Jordan, who was unarmed, was shot

after the car in which he was travelling was forced to stop by police vehicles. The Chief Constable appointed an RUC officer from outside the Belfast area to investigate the incident. (This appointment was criticised by local elected representatives and by the Committee on the Administration of Justice, who had called for the appointment of an investigating officer from outside the RUC.) The Chairman of the Independent Commission for Police Complaints, Mr. Seamus Grew, criticised the delay in calling upon the Commission to supervise this investigation. Jordan's family have since initiated a civil action against the Chief Constable of the RUC, claiming that the RUC caused his death by negligence. It is unlikely that this action will be heard for some time, however.

Anglo-Irish Section

18 March 1993.

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