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PB/85/2667/RE

PS/MR SCOTT (L&B)



cc: PS/S of S (L&B)
PS/PUS (L&B)
~~PS/Mr Bloomfield~~ 12/9
Mr Brennan
Mr Stephens
Mr Palmer
Mr Chesterton
Mr Merifield
Mr Blackwell
Mr Bell
Mr McKillop
Mr Hammond
Mr Bickham

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A NEW "KILLING" OFFENCE

1. You may recall the thought that was given to this question in the spring, following articles by Tom Hadden in New Society and Fortnight (my minute of 26 April and Mr Hurd's letter of 7 May to Sir Geoffrey Howe). It was left that I would discuss the issues with Home Office officials, after which we would need to take the Attorney General's view.

2. I have now talked to the Home Office. Their own attitude is coloured by the fact that the problem has not presented itself in England in the way that it has here, through shooting incidents involving both soldiers and policemen. They agree nevertheless that if a change were to be made in the law, it is desirable in a context such as this that Northern Ireland should not act alone. (It seems, as often, that Scottish law has already got it right).

3. Technically the Home Office see a number of difficulties about legislating: there is no obvious vehicle at an early date; legislation on this isolated point would raise questions in relation to many other points which the Criminal Law Revision Committee discussed at the same time in a report which the Home Office after five years remains reluctant to implement; the difficulty of legislation directed at shootings by members of the security forces would have somehow to be overcome; with or without such a limitation, military and police commanders might be highly resistant to the proposed change (we have not yet consulted the Chief Constable or GOC on the matter); close analysis suggested that the precise formula defining the new offence might be extremely hard to arrive at.

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4. Since we were still far from finding an answer, I suggested that Home Office officials might like to consider the matter further and make recommendations to the Home Secretary, who might himself (having of course initiated this enquiry while at the NIO) wish to give his considered views to our Secretary of State. Out of this we could hope to evolve a common line, to put to the Attorney General.

5. We have at present no clue to the Attorney's likely attitude, beyond the view that Northern Ireland ought not to legislate alone. But the Director of Public Prosecutions has briefed the Attorney in a sense that suggests that he would be content with a change in the law on the lines recommended by the Criminal Law Revision Committee (that is that "where a person has killed using excessive force in the prevention of crime in a situation in which it was reasonable for some force to be used and at the time of the act he honestly believed that the force he used was reasonable in the circumstances, we consider that he should not be convicted of murder but should be liable to be convicted of manslaughter".) This is very much the position taken by the Lord Chief Justice in his recent conversation with Mr Hurd (Mr Daniell's minute of 28 August).

6. There is therefore a fair consensus in favour of change amongst those concerned with the law in Northern Ireland, though we cannot be certain that this would include the Chief Constable and GOC, whose views we shall eventually have to take. Their views may well be mixed, since the effect of the change could be on the one hand to ensure that those at risk were convicted of a lesser offence, but on the other that more of them were charged and convicted. Rather than attempting to pursue these questions further ourselves, I recommend that Mr Scott should agree that we should leave the Home Office to make the next move, and await a reply from the Home Secretary.

P W J Buxton

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10 September 1985

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