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13 August 1993

Dear Mark

JAMES JOSEPH SMYTH

As promised, I attach (i) a draft question and answer brief (with two annexes) for John Chilcot, (ii) a draft submission to the judge in camera explaining no-go areas for Government witnesses, and (iii) an MOD draft brief for the Army witnesses.

On the brief, it became clear that the statistics you proposed to exhibit to Mr Marsh's testimony (which was used as the basis for the brief) may not always be NIO statistics. It would be helpful if you could indicate where you got Exhibit numbers 69 to 84 from. Are some of these RUC statistics? Tom Haire in NIO will need to provide the statistics to be produced during John Chilcot's testimony, I suggest. The question of exhibits generally needs sorting out this month.

There are a lot of square brackets in the brief, and you will be able to discuss these when you meet John Chilcot on 10 September. But please comment before then if you can. I would also be grateful for John Chilcot's comments.

Am I right in thinking you will want similar briefs to be prepared in the RUC and MOD for the police and Army witnesses? If so, this will be for Paul Hamlin and James Harrison. Jim Conn will take

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statements from the non-establishment Catholic witnesses who I hope will be available to be interviewed by you when you visit Belfast.

I understand the Army witnesses will be either Major General Ian Free (CLF NI) or Brigadier Alistair Irwin (Commander 39 Bde). I daresay you will be in touch with James or Paul Cassell (Head of SCT Secretariat, MOD) about their evidence.

On the draft submission, we will very much be guided by you and John Martin (Head of Internal Security Section, Department of Justice) who I gather is helping out on this area of the case. Please let me and copy recipients know if you need further information to what is provided here.

My understanding is that we should be putting up witnesses who, taken together, know about all the matters covered in the submission. That way they will be able to say with confidence to the judge (if it ever comes to this) why they cannot give evidence about special units, for example. If they all plead ignorance, the court will feel (with some reason) that HMG is fielding inappropriate witnesses. We have also spoken about the risk to witnesses in refusing to give evidence. I gather that you (and John Martin?) suspect the worst that could happen is that some or all of their testimony would be struck from the record. A finding of contempt is highly unlikely, and would in any event be immediately appealed.

I am copying this to John Chilcot, Tom Haire, Steve Rickard (NIO), Paul Hamlin (RUC), Jim Conn (CSO), Paul Cassell and James Harrison (MOD). Letter only: David Bentley (HO), David Mercier (RUC), Ian Freer, David Pickup (MOD), Graham Archer and Elizabeth Wilmshurst (FCO).

*Tom
Steve*

STEVEN BRAMLEY

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JOHN CHILCOT: QUESTION AND ANSWER BRIEF

(i) Personal and professional history

Q1. Could you please tell the Court your name?

A1. John Anthony Chilcot.

Q2. I think you are 54 years old; and were educated at Brighton College, in England, where you were a Scholar and at Pembroke College Cambridge, where you were an Open Scholar and obtained a Master of Arts degree in English and languages?

A2. That is correct.

Q3. Could you tell the Court your occupation?

A3. I am a civil servant. I joined the Home Office in 1963. [Followed by a number of jobs in the Home Office which we probably neither need nor want to get into.]

Q4. What is your present position?

A4. I have been Permanent Under Secretary of State at the Northern Ireland Office since 1990.

Q5. And what does that job entail?

A5. I am responsible for the day-to-day running of the Northern Ireland Office, which governs affairs in Northern Ireland. I am responsible for the provision of advice to the

Secretary of State for Northern Ireland, Sir Patrick Mayhew, as well as Ministers of State and Parliamentary Under Secretaries of State [ie junior Ministers] in the Office. I have a personal responsibility for security issues and security policy generally. [The nature of my job means that I have a close working relationship with the Secretary of State, as well as senior officers in the Royal Ulster Constabulary, including the Chief Constable, Sir Hugh Annesley, also the senior members of the Armed Forces including the General Office Commanding Northern Ireland Lieutenant-General Sir Roger Wheeler]. I am the most senior official in the Northern Ireland Office.

Q6. What does advising about the security policy in Northern Ireland involve?

A6. It includes: advice concerning the respective functions of the Army and the RUC, consideration of the policy on the use of lethal force, the use of informants, the preparation of emergency legislation to counter the terrorist threat and review of the circumstances under which persons arrested under that legislation are detained and interviewed.

(ii) **The conflict in Northern Ireland**

Q7. It is common knowledge that there exists in Northern Ireland a campaign of terrorist violence.

A7. Yes.

Q8. When did this start?

A8. There have been sporadic outbreaks of violence in Northern Ireland ever since the partition of Ireland, following the Anglo-Irish Treaty of 1921. However, the present 'Troubles' began in or around 1969 and have continued unbroken ever since.

Q9. Who was involved in this campaign?

A9. Republican paramilitary organisations, principally the Provisional Irish Republican Army and the Irish National Liberation Army. Also involved are so-called loyalist paramilitary organisations such as the Ulster Defence Association, the Ulster Freedom Fighters and the Ulster Volunteer Force.

Q10. What is the stated aim of the IRA?

A10. A socialist Republic of Ireland, comprising its original 32 counties (ie including the whole of Northern Ireland). This can be obtained by use of the ballot box and the bullet.

Q11. Has there recently been an upsurge in sectarian violence committed by people calling themselves loyalists?

A11. That is correct. There have also been sporadic attacks by such people against the Security Forces (ie the RUC and the Army) since the Anglo-Irish Agreement of 1985.

Q12. Can we discuss terminology for a moment? What is understood by a Republican?

A12. A person who is in support of a united Republic of Ireland, in the sense of the 32 counties. In Northern Ireland, however, there are those who support this aim but call themselves nationalists. Colloquially, republicans are often understood to be those in support of the means as well as the aims of the IRA (as to which, see A10).

Q13. What is understood by a Loyalist?

A13. A Loyalist supports the continued existence of Northern Ireland within the United Kingdom, and thereby governed to a greater or lesser degree by Westminster. However, those who regard themselves as Unionists also share these aims. So, Loyalists have come to be understood as those who support these aims, but also support violent means to sustain them.

Q14. With your knowledge of Northern Ireland (you roughly divide your time between London and Belfast) would you say the majority of those who support a united Ireland agree with the use of violence to achieve it?

A14. No; and this is borne out by the far greater support for the nationalist Social and Democratic Labour Party than for the Republican Sinn Fein party.

Q15. Can you tell me what has been the pattern of violence in Northern Ireland since 1969?

A15. There was a large upsurge of violence in early to mid 1970s. Since then there has been a relative decline, but

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it is still at quite a high level. Republicans have also exported terrorist violence to Great Britain (in England, Wales and Scotland) and Western Europe.

Q16. I take it that as part of the daily routine of the Northern Ireland Office, records are maintained, and data compiled, regarding the number of terrorist incidents?

A16. That is correct.

Q17. Have the statistics been prepared for murders in terrorists incidents in Northern Ireland, broken down by factions responsible?

A17. Yes [produces NIO stats - MZ EX71;PP 27 and 40 in JAC's bundle]. And they show 296 murders by Republicans and 155 murders by Loyalists between 1987 and 1992.

152.

Q18. Have you the statistics for shooting incidents in Northern Ireland?

A18. Yes [MZ Ex72;P36 JAC].

Q19. Have you the statistics for bombing incidents?

A19. Yes [MZ EX73;P15 JAC].

Q20. Is there also a summary of deaths from January 1983 to December 1992?

- 5 -

not in my
brief.

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These did not appear in my brief.

A20. Yes [MZ EX70; these appear to be RUC stats; if so, NIO stats may be necessary]. [These do however appear to be set out in para 8 of the Marsh affidavit although unsupported by any exhibit to that affidavit]. During the period from 1983 to 1992 759 people died as a result of the terrorist campaign in Northern Ireland, including 258 members of the Security Forces (144 soldiers and 114 police officers), with a further 10,000 injured. This is in a jurisdiction of 1.5 million people. There were nearly 5,000 shootings and over 3,000 bombings, while around 5,000 people were charged with terrorist offences over the period. [71 of the deaths (91% of the total) were caused by the security forces using firearms in the course of their duty]. At present, there are some 13,000 police officers supported by approximately 18,000 soldiers security in Northern Ireland.

? 99%
NOT SUPPLIED
BY ME

[NB to NIO - important to authenticate these figures]

Q21. Now do you have statistics for the total number of persons charged (ie criminally prosecuted) between 1972 and 1992 with terrorist offences, broken down by sectarian groups?

A21. Yes [MZ EX 74; EX 1 to Mr Marsh's affidavit]. It is the policy of the security forces in Northern Ireland in all practicable circumstances to arrest those suspected of involvement in terrorist activity, whether Loyalist or Republican, and to charge those suspects with relevant offences under the law. In accordance with this policy, 405 people were charged in 1992 with terrorist-related offences; 191 Loyalists and 214 Republicans. In the same period, 354 people were convicted of such offences following court proceedings.

405 in Table 11
but 423 in Table 1
and 15

*There is a difference between those charged 423, and those dealt with (405).
Both the table of Column 3, Table 1 need to say "Indicted and dealt with".*

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Not supplied by me

(iii) UK Security Policy in Northern Ireland

Q22. In connection with your official duties, I take it that you are familiar with the security policy of the UK relating to Northern Ireland?

A22. Yes.

Q23. Is there a document which sets forth the current statement of security policy in Northern Ireland?

A23. Yes - [produces Statement of Security Policy MZ EX69].

Q24. This document refers to the defeat of terrorism?

A24. Yes. The policy is, firstly, that we address terrorism through enforcement of the criminal law. Secondly, it is for the police to take the primary responsibility for the prevention and investigation of crime. The Army will only act in support of the police when this is considered necessary by the security forces.

Q25. What is the policy of the security forces in Northern Ireland with regard to the investigation of any serious crime?

A25. It is for the police alone to investigate these fully, and to decide whether any charges should be brought against suspects. A full report is then sent to the Director of Public Prosecutions for Northern Ireland. His is an independent office, not subject in any way to the RUC or, indeed, the Northern Ireland Office. He will decide whether or not a prosecution can be brought. If not, an inquest will be conducted under the supervision of an

independent coroner. Further, the police or military authorities may take disciplinary action against the individual concerned, if internal procedures have been breached.

Q26. Is the police investigation conducted thoroughly, and entirely irrespective of the political affiliation of the victim or suspected perpetrator [a somewhat leading question!]?

A26. Yes.

Q27. Approximately what proportion of terrorist crimes are committed by Loyalists?

Not supplied by me.
A27. 176 out of 388 in 1991; ie just under 50% in 1991 [MZ EXS 71-73; p31 JAC, MZ: we may be working from different statistics. Please let me know which statistics you are referring to here].

Q28. For the years 1987-1992 what percentage of persons charged with terrorism crimes were Loyalists?

Not supplied by me.

42% according to Table 12
A28. About 40% [MZ EX 74; p81 JAC - this gives the figures from 1992. See comments above]. There is a high threat to the community from both Loyalists and Republicans. Both factions are treated equally under the law.

Q29. To respond to this threat, the Statement on Security Policy which you have produced states that the Government is committed to the rule of law. What does this mean?

A29. It means that members of the security forces are subject to the same law as anyone else. They can expect the same impartial treatment from the investigating authorities, the prosecution authorities and the courts.

Q30. Can you mention some developments in the last few years which demonstrate the Government's impartiality in the area and its commitment to the rule of law?

A30. Yes. [Taken from NIO Greyband.]

- improvements in the procedure for handling complaints against the RUC;
- the establishment of the Independent Commission for Police Complaints (ICPC);
- revised procedures for handling complaints against the armed forces;
- considerable efforts by the RUC to increase the level of recruitment from the minority community;
- the establishment of local police/community liaison committees, and the introduction of Lay Visiting Schemes to RUC stations;
- improved training and briefing of security forces in dealing sensitively with the public;
- appointment of Mr David Hewitt as the Independent Assessor of Military Complaints Procedure post, to provide an independent review of the operation of complaints procedures;
- the appointment of Sir Louis Blom-Cooper as the

Independent Commissioner for the Holding Centres, to provide further reassurance that all the safeguards for those being questioned about terrorist offences are being implemented;

- The Secretary of State has recently published for consultation draft codes of practice under the NI (Emergency Provisions) Act 1991, governing the detention, treatment, question, identification of suspects. These will be laid before Parliament as soon as possible after the consultation phase has been completed. [This is actually planned for October, and may well happen during the trial.]

Q31. Is there any more to the UK's security policy than impartiality and the rule of law? What is the UK doing to meet the wider concerns of a divided society?

A31. As the statement on security policy makes clear, the Government's overriding priority on Northern Ireland is the defeat of terrorism. The statement also makes clear however that terrorism, from whichever side of the community it comes, can only be brought to a permanent end if security policy and security measures are complemented and reinforced by effective political, social and economic policies and programmes. Northern Ireland is a troubled and divided society; and it is from this fundamental division that much of the continuing violence arises. The British Government has sought to develop a wide range of policies designed to promote reconciliation and mutual respect between the two communities, and to ensure equality of opportunity and equal treatment for all.

Q32. Can you give some examples?

A32. [The following is taken from an NIO Greyband. It is for JAC to decide how much detail will be necessary - obviously not everything set out here. For discussion with MZ]. See also SACHR report attached at Annex A.

POSITIVE DEVELOPMENTS OVER LAST FEW YEARS

The following examples show how HMG has moved to improve the protection of human rights in Northern Ireland.

1. Community Relations Unit (CCRU)

The CCRU was established in 1987 to advise the Secretary of State on all aspects of the relationship between the different parts of the Northern Ireland Community. The Unit, which reports to the Head of the Northern Ireland Civil Service, (Mr David Fell), is charged with formulating, reviewing and challenging policy throughout the Government system in order to ensure that everyone enjoys equity of treatment and equality of opportunity and to improve community relations.

In addition in June 1989 the Government announced its support for the creation of a new independent voluntary body, NI Community Relations Council, to promote the improvement of community relations in Northern Ireland. The Council, which has a budget of £1.55m in 1992/93, and an independent grant-making capacity, has 21 members representing the community with one third appointed by the Government.

2. Fair Employment (NI) Act 1989

The Act, which came into effect on 1 January 1990, is tough, radical and greatly strengthens the law. It introduced two new structures; the Fair Employment Commission and the Fair Employment Tribunal and requires the following:

- Monitoring
 - All specified public authorities, and private sector employers with more than 10 employees must monitor the religious composition of their workforce;
 - All specified public authorities and those private sector employers with more than 250 employees must monitor their applicants for employment.
- Criminal Penalties
 - Range of criminal penalties, eg for failing to register, to monitor or respond to enquiries by the Commission or for supplying false information.
- Economic Sanctions
 - Employers disqualified by the Commission cannot be awarded Government and public authority contracts and may not be given Government grants.
- Affirmative Action
 - Employers must take affirmative action and set goals and timetables where required.
- Indirect Discrimination
 - Indirect discrimination outlawed by the Act. Direct discrimination has been unlawful since 1976.

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- Evaluation and Review - Commission and Government regularly evaluate the implementation of the legislation.
- Formal review of effectiveness of the Act to be undertaken after 5 years. Work on this has already begun.

3. Targeting Social Need - (TSN)

Economic and social disadvantage persist on both sides of the NI community. On all major indicators however, eg unemployment, income, health, overcrowding - Catholics generally do worse than Protestants. Through TSN the Government aims to meet greatest need and promote equality and equity by focussing resources more precisely on NI's most disadvantaged areas and people, Protestant and Catholic.

4. Policy Appraisal and Fair Treatment

The Government is drawing up Guidelines on Policy Appraisal and Fair Treatment for issue to employees in all NI Departments. This should ensure that policies and programmes being developed or reviewed do not discriminate unjustifiably against particular sections of the community, eg women, disabled people, ethnic minorities, people of different sexual orientation, religious belief or political opinion.

5. Race Relations

The Government has published a Consultative Document on the scope for legislation on racial discrimination in NI and on what might be done to promote equality and equity for ethnic minorities there.

6. Security forces and the law

The security forces in Northern Ireland are required to operate at all times within the law. If they are to retain the support and confidence of the public they must act at all times with integrity, professionalism and even-handedness. Considerable steps have been taken to make the RUC and the armed forces more acceptable to the whole community, including: [See A30]

7. Integrated Education

The Education Reform (NI) Order 1989 introduced provisions to facilitate the development of integrated Schools and Government provides 100% funding from the start, for approved running costs to help establish new integrated schools. There are also arrangements for existing schools to be re-designated as integrated schools, following ballots of parents.

At present there are 18 integrated schools with aggregated enrolments of some 3,400 pupils, approximately 1% of total pupil numbers in all Northern Ireland schools. The main factor determining further growth will be parental demand.

In addition to recurrent expenditure, when long-term viability has been established, the schools also receive 100% funding for capital works.

Financial Support for Voluntary Schools Under Catholic Management

About 50% of all Northern Ireland pupils are educated in voluntary schools under Catholic management. All of these schools receive 100% grant on their recurrent costs with funding being based on a formula which is common to all voluntary and state schools. All schools, therefore, receive 100% equitable funding on recurrent costs.

I presume that these education stats are correct.

It was accepted that there has been a relative under-provision of grammar school places for the more academically able Catholic pupils in some areas. This has arisen for historic reasons in part related to the Catholic Church's reluctance to provide new grammar schools. Following discussions between the Department of Education and the Northern Catholic Bishops, there is now agreement for the provision of 2 new grammar schools - one in Belfast and one in Londonderry - providing an additional 1,500 places for Catholic pupils.

At present the capital grant rate on all voluntary schools - including those under Catholic management - is 85%. Following discussions with the Northern Bishops, new legislation is to be introduced to give all voluntary schools - including those under Catholic management - the right to have 100% grant on new capital works. To qualify for this grant rate, the schools will have to adjust their management structures to ensure that no one interest has an overall majority on the Board of Governors which manages the schools. The new arrangements have the full agreement of the Northern Catholic Bishops.

8. ROYAL COMMISSION ON CRIMINAL JUSTICE

A Royal Commission has reviewed the criminal justice system and considered the investigation of pre-trial stages, the conduct of criminal trials, the duties and powers of the courts and appeal procedures. It reported in mid-1993.

The review does not specifically cover Northern Ireland or Scotland but the Government is carefully considering the implications of the Royal Commission's recommendations for Northern Ireland.

Q33. What political steps are being taken towards ending the Troubles?

A33. A central objective in the British Government's policies in Northern Ireland is to pursue political development through a process of constitutional talks, involving the main political parties in Northern Ireland - both unionist and nationalist - which are committed to non-violent methods, and the British and Irish Governments. The British Government is committed to seeking a lasting political accommodation both between the two main traditions in Northern Ireland, and between the two main traditions in the island of Ireland as a whole.

(iv) Legislation

Q34. Are you familiar with the anti-terrorist legislation currently in force in Northern Ireland?

A34. Yes. The relevant primary legislation is the Northern Ireland (Emergency Provisions) Act 1991 and the Prevention of Terrorism (Temporary Provisions) Act 1989. [See attached briefing. Same comment applies as in A32.]

NORTHERN IRELAND: EMERGENCY LEGISLATION

Emergency legislation is that part of the law which gives the security forces and the courts the extra powers that they need to deal effectively with terrorism. This paper summarises the Prevention of Terrorism (Temporary Provisions) Act 1989 and the new Northern Ireland (Emergency Provisions) Act 1991, and provides a history of emergency legislation in Northern Ireland.

Prevention of Terrorism (Temporary Provisions) Act (PTA) 1989

In 1988 the Government introduced the Prevention of Terrorism (Temporary Provisions) Bill, to re-enact with additions the Prevention of Terrorism Act 1984, following a review of the Act by Lord Colville, an eminent QC. In addition to existing provisions:

- the definition of existing offences of contributing to terrorism was extended to cover activities and transactions carried on by banks, financial institutions and other financial advisers. New provisions were introduced to facilitate the investigation of terrorist finance and to order the restraint and confiscation of assets of terrorist organisations.
- following Lord Colville's recommendation, the power of examination and detention in ports and the system of designating control areas at ports were incorporated into primary legislation.
- in Northern Ireland only, the automatic 50 per cent remission of sentences was reduced to 1/3 on all sentences of five years or more for scheduled offences, thus bringing remission for these offences into line with general remission arrangements in Great Britain.

The main provisions of the Act were made permanent, but they require annual renewal by affirmative order in both Houses of Parliament in order to remain in force. The Government did not accept Lord Colville's recommendation that the power to make exclusion order should be abandoned.

Northern Ireland (Emergency Provisions) Act 1991

Lord Colville was invited in 1989 to review the Northern Ireland (Emergency Provisions) Acts 1978 and 1987; his report was published in July 1990. His main recommendations were that:

- the main emergency provisions remained necessary;
- it would not be safe to return to jury trial for terrorist-type offences, due to the likelihood of intimidation of jurors;
- a new offence should be created (similar to the existing offence of "going equipped for theft"), which would relate to the possession of ordinary or household items in circumstances which indicated their use for terrorist purposes;
- the Secretary of State should be enabled to make statutory codes of practice regulating the use of the emergency powers;
- the Government should look at ways of improving confidence in the effectiveness of police and Army complaints systems (perhaps including the appointment of an ombudsman-type figure);
- the provisions on executive detention (internment) should not be re-enacted;
- interviews with terrorist suspects in police custody should be (silently) recorded on video; and
- powers relating to the investigation and confiscation of terrorist finance should be strengthened.

The 1991 Act re-enacts with amendments and additions the Northern Ireland (Emergency Provisions) Acts 1978 and 1987, and Part VI of the Prevention of Terrorism (Temporary Provisions) Act 1989 in the light of the review by Lord Colville. The Act, therefore, consolidated all the anti-terrorism provisions which apply uniquely to Northern Ireland (but not those that apply throughout the United Kingdom). The principal powers remain temporary: they will be subject to annual renewal by affirmative order of each House of Parliament, otherwise they will lapse. A review of the Act will be carried out each year by an independent person, whose report will be presented to parliament in time for the renewal debate. The Act also contains provision for the whole Act to expire at the end of a period of five years from its coming into force.

In addition to a number of minor changes, the Act introduced the following new provisions:

- a new offence of directing at any level the activities of an organisation concerned in committing acts of terrorism. The maximum penalty is life imprisonment. The offence is aimed at those who do not participate in particular acts of terrorism, but give strategic direction to the terrorist organisations;
- a new offence of "possession of items intended for terrorist purposes". The offence relates to the possession of household of everyday items (such as CB radios, balaclavas, fertiliser) in circumstances which indicate their intended use in acts of terrorism;
- a new power to enable the police and Army to examine any document or record, other than one to which legal privilege applies, found during the course of a search, so far as reasonably required to ascertain whether it contains information likely to be useful for terrorists;

- a new power to allow members of the Army to seize equipment (such as tractors, diggers, etc) used in reopening or interfering with closed border crossing points; and a new offence of creating a bypass around a border road closure, within 200 yards of the closure;

- an enabling power to allow the Secretary of State to make codes of practice governing the exercise of the emergency powers by the police and army. Breach of any provision of such a code would be a disciplinary offence; such codes would also be admissible in any civil or criminal proceedings;

- new powers of investigation which may be conferred by the Secretary of State, on application from the Royal Ulster Constabulary, on persons other than police officers (eg trained accountants, lawyers etc) to conduct the investigation of the finances of terrorist organisations. The powers, which allow persons to be compelled to give evidence and produce relevant documents to an investigation, are similar to those of the Serious Fraud Office in England and Wales;

- new powers relating to the confiscation of proceeds of terrorist-related activities. Where a person has been convicted of two separate terrorist-related offences within a period of six years, and a court is satisfied that he has benefited from the proceeds of involvement in terrorist financing and has realisable property of more than £20,000, the court may confiscate any assets of that person which it judges to be the proceeds of terrorist-related activity;

- a requirement on the Secretary of State to make codes of practice governing the detention, treatment, questioning and identification of persons detained under the Prevention of Terrorism Act and the new powers of investigation into terrorist finance;
- a new office of Independent Assessor of Military Complaints Procedures in Northern Ireland, whose function is to keep under review the operation of the procedures for investigating and responding to complaints against the Army, and to report annually to Parliament.

The Government did not accept Lord Colville's recommendations that the powers of executive detention should be repealed, or that interviews with terrorist suspects should be video-recorded.

Q35. Is the operation of the current legislation ever reviewed?

A35. Yes. Both the Emergency Provisions Act and the Prevention of Terrorism Act are reviewed annually by an eminent, independent lawyer. I can produce the two most recent reports [MZ: I take it you have these]. The legislation also has to be approved annually by a renewal debate in both Houses of Parliament. In addition, it has been the practice of the Government to bring forward new emergency legislation - which has to be debated line by line - every 5 years or so.

Q36. Does the anti-terrorist legislation conform to the standards of the UK's obligations in international law?

A36. Yes; among the UK's many obligations in this area, the most notable is the European Convention of Human Rights. Under this Convention, the European Court of Human Rights has the power to issue binding judgements with which the UK must conform. Over the years, it has taken a close interest in the security situation in Northern Ireland.

Q37. What is the most recent decision of the Court on Northern Ireland?

A37. The Brannigan and MacBride case [MZ: EX 78]. In 1988, the Court held in a case called Brogan that detention of suspects under the Prevention of Terrorism Act was capable of breaching the requirement in the Convention that detainees should be brought "promptly" before a judicial authority. The UK then derogated from that provision on account of the emergency situation created by the Troubles in Northern Ireland. The applicants in Brannigan and MacBride challenged the derogation on the grounds that the situation did not justify derogation. But the Court upheld the derogation by 22 votes to 4. It held the situation in Northern Ireland fully justified the powers of detention contained in the Prevention of Terrorism Act.

(v) Shoot to Kill Policy

Q38. There has been mention in Northern Ireland of a so-called shoot to kill policy. Are you familiar with this term?

A38. Yes.

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Q39. Can you describe what you understand it to mean?

A39. A policy, held by the security forces, to shoot and kill terrorist suspects in circumstances when less drastic action, such as arrest, is open to those forces.

Q40. And do the security forces in Northern Ireland operate such a policy?

A40. Absolutely not.

Q41. You have stated that the security forces are subject to the rule of law. What is the law on the use of reasonable force in Northern Ireland?

A41. The law is contained in section 3(1) of the Criminal Law Act (Northern Ireland) 1967 [MZ: Do we need to exhibit this, or is it a matter of public record?]. This states:

"A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large."

Q42. Does this apply only to Northern Ireland?

A42. This is the same law as applies in England and Wales [Scotland has a quite separate legal system], and applies equally to civilians as to members of the police and Army.

Q43. Have the courts decided any cases on the responsibility of the security forces in the use of reasonable force?

A43. Case law in the UK has determined that it is for the courts, in considering all the facts of a particular case, to decide what is reasonable force in any particular circumstances. [In addition, the court has given the following specific guidance. A soldier with a gun may use it only in the honest belief that it is required in the circumstances for the prevention of a very serious crime (eg murder)]. [See note, and attached case, from David Bentley at Annex B. I am not sure how helpful to our case this is].

Q44. Has the use of reasonable force in Northern Ireland been considered under the European Convention of Human Rights?

A44. Yes it has. In the case of John Kelly [MZ: EX79], the European Commission of Human Rights recently ruled inadmissible the applicant's claim that the use of lethal force by soldiers in a particular incident was inconsistent with the right to life enshrined in Article 2 of the European Convention. The case involved the shooting by soldiers of the occupant of a car which went through an Army checkpoint. The Commission specifically considered that the use of lethal force could be justified in certain cases consistently with the European Convention.

Q45. How was this case investigated in Northern Ireland before it reached the European Commission of Human Rights in Strasbourg (France)?

A45. It was independently investigated by the RUC, who then sent a report to the independent Director of Public Prosecutions for Northern Ireland.

Q46. And what happened next?

A46. The DPP NI decided not to bring a prosecution against the soldier concerned. This decision was of course vindicated when the European Commission of Human Rights (made up from distinguished lawyers throughout Western and Central Europe) held that the application by Kelly was inadmissible.

Q47. Now with regard to joyriders generally, are there investigations when such people are shot?

A47. There will always be a fully independent police investigation whenever a death is caused, no matter by whom or in what circumstances. (Compare A25.)

Q48. Have there been prosecutions of security force personnel when they have shot so-called joyriders?

A48. Yes. A recent example is the Clegg judgement [MZ: EX80]. In this case a soldier who shot and killed a joyrider was prosecuted, and in due course sentenced to life imprisonment for murder.

Q49. In order to put your evidence in context, could you tell the court how you would characterise the threat to security forces themselves from terrorists?

A49. Extremely high. This year alone, [redacted] have been killed [We can fill this statistic in nearer the trial date] in terrorist incidents. [JAC: Something about the sniper in south Armagh?]

Q50. What has been the pattern of violence directed at the security forces since the Troubles began?

A50. In the early to mid 1970s it was even higher, but has declined a little since then. However, it does remain very serious indeed. During 1992, for example, the security forces came under potentially lethal attack very frequently. In the four years from 1989 to 1992, security forces came under fire on nearly 700 separate occasions. And this figure excludes the very many attacks launched on them using explosive devices. By contrast, throughout this period, fire was returned by the security forces on 84 occasions.

*Not fulfilled
by me -*

Q51. Could you please give the Court a rough idea what sort of terrorist attacks are made on the security forces other than 'ordinary' firearms attacks?

A51. The security forces have been subjected to many bomb attacks, and terrorist attacks with large scale assault machine guns, rocket launchers, mortars and flamethrowers.

Q52. Roughly how many members of the security forces have been killed since the Troubles began in 1969?

A52. Over 900.

Not
implied by
me.

Q53. And roughly what is the population of Northern Ireland?

A53. 1½ million.

Q54. So if we multiply that by 20 we come to the population of California - 30 million. And if we multiply the 900-plus security force murders by 20, we come out with 18,000 security force personnel killed since 1969 in a State the size of California.

would

A54. I think that might give the Court some idea of the impact of the security situation on Northern Ireland, and the need of the security forces to use reasonable force.

Q55. Now - the supposed shoot to kill policy indicates that suspects are shot rather than arrested?

A55. That is correct.

Q56. Have you figures for how many people have been arrested on suspicion of terrorist offences?

A56. Yes. [MZ: EX77. Could you please send a copy of this exhibit. JAC and Tom Haire will need to see it.]

* need to see

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(vi) Collusion

Q57. There has been a series of public allegations regarding alleged collusion. What is the policy of the UK Government regarding collusion between the security forces and terrorist paramilitary organisations?

A57. The British Government is absolutely opposed to collusion of any form with terrorist organisations, and will act resolutely to prevent collusion or material assistance to those organisations by any element of the security forces. Any individual found to be assisting in the commission of terrorist acts will face criminal trial and prosecution.

Q58. Could you tell the Court something about the Stevens inquiry into allegations of collusion?

A58. Following a number of allegations relating to collusion between members of the security forces and loyalist terrorist organisations in Northern Ireland, the RUC Chief Constable in September 1989 asked Mr John Stevens, Deputy Chief Constable of Cambridgeshire, to conduct an independent police investigation into the allegations, and to make recommendations on any relevant matters. A summary of Mr Stevens' report was published; I now produce a copy [MZ: EX81]. The report concludes:

"The detailed analysis of the security force documents recovered during the enquiry and the evidence secured, makes it clear that the passing of information to paramilitaries by security force members has been restricted to a small number of individuals. It is neither widespread nor institutionalised."

Mr Stevens made a series of recommendations to prevent future leakage of classified information, and these recommendations have in all instances been acted upon. The Secretary of State for Northern Ireland made a statement to Parliament following publication of the Stevens report, the record of which I also produce [MZ: Do you have this?]. A number of prosecutions were instituted as a result of the Stevens inquiry.

Q59. Do you have a summary of the prosecutions which were instituted after Stevens?

A59. Yes; and I now produce them [MZ: EX82].

*Not produced
by me.*

[(vii) In the March brief, there follows a line of examination about IRA murders of Roman Catholics. It is compelling stuff; and it may be thought preferable to end Mr Chilcot's testimony on such a note, rather than the rather defensive evidence about the Stevens inquiry. But on balance, I think that evidence about PIRA attacks on Catholics are best left to an RUC witness. Do recipients agree?]