

## NATIONAL ARCHIVES

### IRELAND



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## Follow-up Overflights

1. Developments on this question, up to the point of inter-Ministerial discussions in its regard on 26 May 1976, are summarised in the attached memorandum. Some additional information on incidents of 18 April and 25 April mentioned in the British speaking note of 4 May, is included.

### 2. Appendices

- I:- British note of 4 May
- II:- Legal Division opinion
- III:- Air Navigation (Foreign Military Aircraft) Order 1952
- IV:- Other types of security overflights for which permission has been granted since 1973 except 2 km overflights on which a separate note is attached.

Minister

1. I have mentioned the British request for permission for hot pursuit overflights and you have indicated that this is something you might wish to have discussed at the Cabinet Security Sub-Committee this week.

2. The matter was first raised at official level by Mr. Hickman of the British Embassy when he was in to see me on another matter on 30 March this year. He raised it in the context of "improvements which could lead to greater operational flexibility" in overflights and said that at a meeting between the Minister for Justice and the N.I. Secretary of State on 8 January 1976, two improvements (viz. blanket clearance for a regular series of photographic surveillance flights and hot pursuit overflights) had been "mentioned in a general way". Our record of the discussion on this topic on 8 January is as follows:

Mr. Rees spoke of the problem of culvert bombs and the problem of movement across the border in both directions by terrorists. This was always alluded to by Northern politicians and created continuing problems. Mr. Cooney said that the more information they could be given on these problems the better and we would certainly be responding fully to any information received. Mr. Rees raised the question of aerial photography in border areas. It was agreed after some discussion that there were no real problems on this. It could be discussed further as necessary in joint operation discussions. It was also agreed that the present method of handling air surveillance permission was generally satisfactory and any specific difficulties arising from e.g. postponement of flights due to bad weather could be easily resolved.

At the end of the 8 January meeting, the following was one of four points agreed:

That the Joint Co-ordinating Committee of the Garda and the RUC would consider and report on the planning and execution of joint operations by all the security forces North and South of the Border to inhibit and apprehend those responsible for violence, including surveillance and observation flights of unarmed military aircraft.

We have, as you know, been unable to obtain copies of the Joint Committee reports but understand that the Joint Committee did not consider the question of flights in any detail. My response to Mr. Hickman when he raised the hot pursuit flights with me on 30 March was (i) to indicate that it did not appear to have been raised at inter-ministerial level; (ii) to express doubts about the value of hot pursuit overflights, even if the political and legal problems could be overcome and (iii) to ask for an indication of the type of incidents which would give rise to hot pursuit flights.

3. On 4 May, Mr. Hickman came in to discuss overflights generally and left a speaking note, a copy of which is attached. (Appendix 1) Paragraphs 7-9 refer to the hot pursuit flights. You will note that the British suggest that details of an arrangement might be discussed between the Gardaí and the RUC in the Joint Co-ordinating Committee. A copy of the speaking note was referred to the Departments of Justice and Defence and both have informally indicated their total opposition to the idea of hot pursuit flights. In both cases, the papers have been referred to the Ministers who will no doubt make their attitudes known at the Cabinet Security Sub-Committee.

4. The Legal Division have been asked for their views and these are contained in appendix 2. In discussion with the Legal Adviser, he summarised the views by saying that there was no fundamental legal objection to your giving permission for follow-up overflights but that the formulation of the permission would present considerable difficulties and might have to be done in a way which would make it administratively almost impossible for the British overflights to achieve the desired purpose.

#### Analysis of Incidents

5. The British speaking note lists incidents in which follow-up facilities by helicopters could have assisted the Gardaí in making arrests. The following comments on these incidents are relevant:

14 December 1975: This incident did not feature in the relevant weekly security report we receive from the British of "terrorist incidents originating in the Republic" though one would imagine it was a prime example of the type of incident these reports are designed to cover.

Gardaí who were in the general locality heard, at 12.15 (13 minutes before alleged shooting) an explosion in the Crossmaglen area and, while moving towards the border to investigate on their side, met a van they recognised as having been stolen shortly before in Castleblayney. This is the vehicle chase referred to in the British report. At no stage were the Gardaí made aware of the shooting at the helicopter. Selection of this incident as one in which follow-up flights would have been useful is surprising in view of (a) the fact that by the time a (presumably second) helicopter had spotted a suspect vehicle it was coming back into Northern Ireland where the British were at perfect liberty to pursue it as far as necessary; (b) the fact that up to now the Gardaí have apparently been unaware of any shooting incident. At what point during a "follow-up" flight" on that day would the British have proposed to inform the Gardaí of the alleged shooting incident? (c) the fact that the Garda reaction seems, to the lay observer, to have been completely adequate - they informed the RUC they were chasing a vehicle and, when the pursued men apparently took refuge in a shed across the border in Northern Ireland, the Gardaí remained in the area until the British withdrew. The only conclusion that can be drawn from the incident is that there is considerable room for improvement in the N.I. system of reporting incidents both as soon as they happen and subsequently.

25th April 1976: It is surprising that the British note makes no mention of the fact that the RUC, Newry, contacted the Gardaí at Dundalk about the shooting ten minutes after it commenced. They subsequently notified the Gardaí of an explosion in the same area. Garda/Army checkpoints were set up in the H26 area and maintained for over an hour but at no stage were the Gardaí alerted about gunmen escaping at the neighbouring crossing H27. It is hard to say whether or not a pursuing helicopter would have been more useful than the normal police channels when these channels were not even used as fully as they might have been.

7th January 1976: RUC reported firing to Gardaí five minutes after it began and Gardaí immediately cordoned off the relevant area. The immediate search revealed nothing but a follow-up search next morning revealed five rounds and spent shells in the vicinity. This information was, of course, conveyed to the British. The presence of a helicopter in follow-up pursuit in the dark would hardly have been of much assistance given that there were Gardaí on the ground and that no one, north or south, spotted anyone who might have been chased.

It is, however, possible that if a helicopter with strong search lights had been quickly available to the Gardai, the immediate search operation might have been fruitful. On the other hand, such a search light would possibly have illuminated the Gardai themselves, and indeed the British Army, making them vulnerable to sniper fire.

24 January 1976: Gardai were alerted by an Irish Customs official within minutes of this shooting commencing and threw up road blocks even before the RUC got through to them (30 minutes after the shooting commenced).— Cars in the area were searched with negative results.— Duck shooters in the vicinity and other locals said the shooting came from the British VCP itself and about an hour later, Gardai who had been searching a house in the area themselves were put in danger by sub-machine gunfire from the VCP. Although a full search of the area on the following day did reveal two firing positions and a quantity of empty shells in the Republic and some five hundred yards away from the British VCP, Gardai are cautious about making a direct connection between this find and the alleged shooting incident. Here again it would seem that Garda action was adequate to the occasion which in any event may well have been a case of British over-reaction to the duck shooters. If snipers were present a "Nitesun" (helicopter search light) might have been of use but with the danger discussed above. This incident also reveals the more important need for improving communications (a) between the RUC and the British Army, who were apparently unaware of Garda presence in the area and (b) between the RUC and Gardai in reporting the actual incident.

29 February 1976: This was not mentioned in the weekly reports. It appears that while the snipers' firing position in this incident was, according to the Gardai, definitely within Northern Ireland (which would explain why a Garda/Army patrol which was on the scene within 15 minutes, failed to apprehend the snipers) a search on the following day did reveal tracks of the route through fields back into the Republic used by the attackers. There is probably a reasonable case to be made here for a follow-up flight, but at the time of year in which the incident occurred a Nitesun would have been essential, with the dangers discussed above.

6 April 1976: The Gardai have confirmed to the RUC only the presence in the Republic of a detonation point. The incident, according to the weekly report, took place at 9.15 a.m. Gardai who were notified by the RUC at 9.40 a.m. threw up road blocks and searched houses. Ballwire was found in the area but no trace of a gunman. It is not known how quickly a British helicopter can be summoned to the scene of an incident but it would appear that unless it were actually hovering over the mobile patrol at the time of this incident its chances of successful detection of the culprits would not be any higher than that of good police work on the ground.

11 April 1976: This was reported somewhat more briefly in the relevant weekly security report. Although the Gardai put the snipers' firing position at only 300-400 yards away from the border, they are quite certain the shooting occurred entirely within the North. They also deny and publicly contradicted at the time press reports which stated they had arrested a fleeing gunman, although road blocks were set up as soon as precise details about the incident were received from the RUC. A note on the matter was handed to the British on the day the note presently under analysis was received from them.

18 April 1976: When reports were received that a UDR patrol had come under fire near the border, joint Army/Garda patrols went to the area. Two armed men in full battledress were met an an Irish Army Officer, who supposing them to be British Army or UDR personnel went up to them. They revealed themselves as Provos and keeping the Army Officer covered made their escape. Intensive searches for these two men proved negative. Diversionary tactics were staged in Ballyconnell by local IRA sympathisers that evening and some court cases are pending as a result.

Although the development of this incident does not appear to reflect much credit on our security forces (but investigations are still continuing) the central question about whether a helicopter would have been of use could still, plausibly enough, be answered in the negative as Irish security forces were on the scene very shortly after the incident occurred.

### Conclusions

The analysis of the incidents cited by the British in support of their request for hot pursuit flights suggests that there is room for improvement, particularly on the part of the RUC/British Army in their own internal communications and in notifying the Gardai of incidents near the border. In none of the cases cited, however, was

there a British aircraft at or near the scene which might have been used in hot pursuit nor is there any convincing evidence that the outcome of the investigations would have been any different had an aircraft been present and allowed to cross the border in hot pursuit. Moreover, there are some grounds for suspecting that, where incidents occur after dark a helicopter's search light used indiscriminately could put the lives of security forces on both sides at risk.

6. The British request implies in some unspecified way our security forces are less well able than theirs to cope with the violence along the border. With the possible exception of the highly technical business of aerial photographic reconnaissance - and we have recently given the British permission to overfly the Republic for this purpose - there is no basis for the British implication and indeed all the evidence is that our forces are, in an admittedly less difficult situation, coping much better than theirs with the problems created by the violence along the border. To concede any role to the British in the pursuit and capture of suspected persons in the Republic would be to accept their implication and in addition to the local problems which this would create, it would also have the effect on public opinion in Britain of confirming the impression which official spokesmen have been trying and continue to try to create viz. violence in N.I. originates largely from the Republic and the security forces there are unable/unwilling to deal with it.

7. The analysis of the incidents cited by the British and our general knowledge of the estimated 144 incidents that have taken place in the vicinity of the border over the last sixteen months does, however, suggest to lay observers that there may be room for some further improvement in the joint security effort both to prevent incidents and to investigate them when they happen. Now that the Criminal Law Jurisdiction Act is about to come into use, it is particularly important that the tracking down of those involved in border violence should be as effective as possible. The area of improvement would, to a layman, seem to lie not in hot pursuit overflights but in better communication, both between the British Army and RUC and the RUC and the Gardai. It is understood that communications has been one of the main topics of discussion by the Garda/RUC Joint Co-ordinating Committee and it may well be that the problems thrown

up by our analysis of the incidents have already been taken into account in that channel. This is something you might wish to check with the Minister for Justice.

8. If the arguments against granting the British request are accepted, the question of how and when to convey the refusal arises. The British have asked that it be discussed by the Gardaí and RUC in their Joint Co-ordinating Committee but this would be an inappropriate channel since it is not a police matter but one for which you have the statutory responsibility. There is a possible marginal disadvantage in conveying the refusal at diplomatic level in that it might leave the way open for Mr. Rees to 'appeal' the refusal during his visit on 28 May and the best way of handling it might be to tell Mr. Rees that having examined the case made and in particular the incidents cited (a) we are not convinced of the value of hot-pursuit flights; (b) there are legal and political problems anyway and (c) what may be needed is a tightening-up of communication procedures.

## SPEAKING NOTE

## CROSS BORDER FLIGHTS

1. We understand that the Irish authorities are prepared to agree in principle to overflights by aircraft of the British security forces to a depth of 3 kilometres where these are necessary for intelligence gathering purposes. We are grateful for this offer which we should like to take up and which we believe will be of direct operational benefit to the security forces on both sides of the border.
2. We would propose to proceed with programmes of surveillance overflights within given periods and border areas. Other than in cases of emergency, we would give the Department at least three days' notice of the first flight in each series. We would also provide the following details on each occasion:
  - (1) Period of each series
  - (2) Area covered by each series
  - (3) Number of flights
  - (4) Reason for flights
3. If further details are required, we shall of course be willing to provide these whenever possible.
4. After formal diplomatic clearance for the series has been given, local clearance would be sought through RUC/Garda channels for each individual flight in the series. Information of use to the security forces of the Republic resulting from these flights would be passed on as quickly as possible through the same channels. The British authorities will also, of course, be  
/ willing

willing to offer reciprocal facilities to the Republic's security forces if and when requested.

5. We are submitting to the Department a request for clearance for a series of flights to take place between 10 and 16 May 1976 which would be designed to obtain information about suspect explosive devices and command wires. This first series is not intended to be a specimen example of what we propose but has been planned with a view to obtaining necessary and important information for the security forces.

6. In addition, we may need to continue, as a separate matter, to make requests for specific overflights in areas and at times not necessarily covered by the above when these are urgently required for operational reasons, e.g. for the clearance of particular explosive devices or following cross border incidents. As in the past, some of these cases will be urgent and we should welcome clearance for them from the Department as quickly as possible. We are most grateful for the speedy clearance which the Department has usually been able to give in such cases in the past.

7. There is also the question of follow-up overflights to keep track visually of suspected terrorists who may be in the course of attempting to escape across the border from Northern Ireland. We should be grateful if the Irish authorities would give further consideration to this which is an extension of the problem covered by existing arrangements for emergency operational overflights. What we have in mind is to allow more time for helicopters to maintain surveillance on escaping terrorists in border areas. We are providing details of cases in which a follow-up capability of this kind would have assisted both sides. The object of the

/ surveillance

surveillance would be to keep the suspects in sight and pass detailed information of their identity and whereabouts in order to assist the Garda to establish contact and intercept. There would be no question of following suspects wherever they might go, still less of engaging them by gunfire either from Northern Ireland or from the helicopter itself or of apprehending them within the Republic. Our proposal is quite different from the concept of "hot pursuit" as known in international law.

8. We appreciate the difficulty this proposal presents to the Irish authorities since, in the circumstances envisaged, there would hardly ever be time to arrange formal advance clearance for a helicopter to overfly the border on such a mission. But we believe that there has been a sufficiently large number of incidents in which terrorists have been able to escape without detection (despite the improved communications which now exist through the RUC/Garda) to justify some special arrangements in the interests of the security in the Republic and in Northern Ireland. If the Irish authorities were able to agree to this proposal, the surveillance could obviously be made still more effective if direct communication could be established between the helicopters and the Garda. However more rapid communications would not themselves provide a satisfactory answer: even the most rapid communications cannot make up for loss of visual contact.

9. If the Irish authorities see merit in this proposal, we suggest that details of an arrangement to cover this problem might be discussed between the RUC and the Garda in the Joint Coordinating Committee.

4 May 1976

INCIDENTS IN WHICH FOLLOW UP FACILITIES BY HELICOPTERS INTO THE  
REPUBLIC COULD HAVE ASSISTED THE GARDA IN MAKING ARRESTS

Date	Location	Incident	Garda Reaction
14 Dec 75 1228 hrs		A Scout helicopter was fired at from a position thought to have been in the Republic of Ireland. One of the occupants of the helicopter was injured. During the follow up an Army helicopter in the area reported seeing a vehicle cross the border from the South and stop near H24 border crossing. Two men were seen entering a house in the area of the border crossing. Shortly afterwards the Garda reported that they were chasing a vehicle which contained four armed and masked men in the area south of H25 border crossing.	Not known
25 Apr 76 1920 hrs	Crossmaglen	80 HV shots were fired at a patrol by gunmen from a position 2 kms south east of Crossmaglen (GR 93751347). In the follow up the gunmen were seen crossing H27 border crossing in a car and on a motor bike.	Not known
7 Jan 76 2155 hrs	Auchnacloy VCP	100 rds were fired at the Auchnacloy VCP. Initially fire was not returned but 20 minutes later 10 more shots were fired. During the follow up empty cases were found near an unoccupied house at GR 662508 in the Republic of Ireland by the Garda.	Not known
24 Jan 76 1743 hrs	Middletown VCP	HV 60-70/shots were fired at the Middletown VCP from the area of GR 744388 in the Republic of Ireland.	Not known

Date	Location	Incident	Garda reaction
2 Feb 76 1917 hrs	L49 Border Crossing (SW of Lisnaskea)	15-20 automatic shots were fired at an RUC mobile patrol which was near the L49 Border Crossing. A total of 120 rounds were returned at gunmen who were seen in the area of Church Hill (GS 2721) in the Republic of Ireland.	Not known
6 Apr 76	Near M5 border crossing 6 km SE of Clogher	A culvert mine exploded near an Army mobile patrol and when the occupants of the vehicles debussed one HV shot was fired by a gunman in the Republic of Ireland. The firing point both for the detonation of the mine and of the gunman was confirmed by the Garda as GR 599486.	Not known
11 Apr 76 1505 hrs	Nr Jonesburgh	80 HV shots were fired at an Army patrol which was carrying out VCPs in the area of GR 067175. Fire was returned at gunmen seen in the area of GS 0617 and to the east. The gunmen were seen crossing the border into the Republic.	The Garda who deployed very quickly apprehended one man suspected of being involved in the incident. He was later released without being charged.
18 Apr 76 1709 hrs	L49 Border Crossing (SW of Lisnaskea)	60-70 HV shots were fired at a routine UDR patrol when it was 150 metres north of L49 Border Crossing. The gunmen used 2 fire positions inside the Republic of Ireland.	Not known

Legal Adviser

1. I think that it is possible under our legislation for the Minister to give blanket clearance for the flights envisaged provided that the permission was given in writing and that the terms were set out clearly.
2. A military aircraft covered by such permission would have legal immunity both in civil and criminal cases from our Courts. If the terms of the permission were broken it seems likely that the permission would lapse and the immunity with it. This is not very clear however.

G.L.

14 May 1976

Mr. Swift

Mrs. Liddy's minute above deals with the purely legal aspects of the question put to her. However, I expect that there would be extreme difficulty in setting out the terms of a "blanket" permission in a way that would be acceptable to both sides, e.g. time, route, depth of penetration if determined would defeat British purposes; if not determined they would have carte blanche which I am sure would be unacceptable to us, although I doubt that the absence of such terms would invalidate the permission. As we are unlikely to try to arrest or shoot down a helicopter, para. 2 of Mrs. Liddy's minute may seem largely academic. It does mean that our jurisdiction over a helicopter in these circumstances would be in doubt at least - a hat on which you might safely hang an objection without mentioning immunity.

F.M.H.

14/5/76

S. I. No. 74 of 1952.

AIR NAVIGATION (FOREIGN MILITARY AIRCRAFT) ORDER, 1952.

I, SEÁN F. LEMASS, Minister for Industry and Commerce, in exercise of the powers conferred on me by the Air Navigation and Transport Act, 1946 (No. 23 of 1946), hereby order as follows:—

1. This Order may be cited as the Air Navigation (Foreign Military Aircraft) Order, 1952.

2. In this Order—

the expression "military aircraft" means aircraft used in military service;

the expression "aircraft used in military service" includes naval, military and air force aircraft, and every aircraft commanded by a person in naval, military or air force service detailed for the purpose shall be deemed to be an aircraft used in military service;

the expression "the Minister" means the Minister for External Affairs.

3. No foreign military aircraft shall fly over or land in the State save on the express invitation or with the express permission of the Minister.

4. Every foreign military aircraft flying over or landing in the State on the express invitation or with the express permission of the Minister shall comply with such stipulations as the Minister may make in relation to such aircraft.

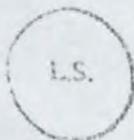
5. Articles 3 and 4 of this Order shall not apply to foreign military aircraft engaged in searching for an aircraft in distress or in rescuing survivors of an aircraft accident but—

(a) no such foreign military aircraft shall enter any area appointed as a prohibited area under or by virtue of an order made under Part II of the Air Navigation and Transport Act, 1946 (No. 23 of 1946), and

(b) any such foreign military aircraft shall comply with such stipulations as the Minister may make in relation to it.

6. Article 75 of the Air Navigation (General) Regulations, 1930, is hereby revoked.

GIVEN under my Official Seal this 27th day of March, 1952.



(Signed) SEÁN F. LEMASS,  
Minister for Industry and Commerce.

The version of this Statutory Instrument in the Irish language, officially prepared, is printed on the opposite page.

(a) Security flights - permissions granted

1973	7
1974	6
1975	86
1976	<u>24</u>
Total	123

("Security" in this context refers mostly to preliminary photographic reconnaissance flights to check for booby traps and other security hazards at the scene of proposed operations e.g. road closures.)

(b) Clonoony Salient flights - permissions granted.

1973	None
1974	23
1975	48
1976	<u>15</u>
Total	86

In March 1974 standing permission, subject to consequent notification to the Department of Foreign Affairs, was given to the British security forces to fly across the Clonoony Salient, a narrow strip of Co. Monaghan jutting into Co. Fermanagh. The reasons for which this permission was requested by the British were variously described as the more rapid transport of personnel and supplies, the evacuation of casualties and the shadowing of suspect vehicles.