



An Chartlann Náisiúnta National Archives

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Confidence in the Administration of Justice
Progress under Articles 5, 7 and 8 of the Agreement
(Bill of Rights, Policing, UDR, Prisons, Administration of Justice)

Progress

Little/No Progress

Article 7

Repeal of Flags and Emblems Act

Public Order 1987 instituting better handling of parades and other events. This area shows continuing improvement.

RUC Code of Conduct introduced

Introduction of religious discrimination as a disciplinary offence, per new RUC disciplinary regulations.

Improvement since 1987 in the RUC handling of nationalist funerals, although not all.

UDR seem to be less in evidence in rural areas and we get fewer complaints possibly due to measures introduced to tighten control and improve training. More time is needed for a fuller assessment.

Article 5

Negative response on our proposal for Bill of Rights for Northern Ireland (Instead cosmetic declaration for all Ireland proposed by British).

Article 7

No prosecutions arising from, and unsatisfactory and unacceptable handling of, Stalker/Sampson Report.

RUC accompaniment of UDR

Progress is impossible to monitor objectively because of the absence of regular statistics. Our impression from contacts is that accompaniment is patchy at best, notwithstanding the British commitment at Hillsborough to a police presence in all Army/UDR operations which involve direct contact with the community.

New Police Complaints Commission established this year. Some improvement on previous position but does not take account of major reservations which we had - viz - serious complaints against the police will still be investigated by the

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Progress

Discussions set in train by Conference of 25 March to give new impetus to the Conference's work on a programme of special measures to improve relations between the security forces and the community and to build confidence Administration of Justice. The British are monitoring incidents of harassment more closely.

Our request for a special review of the sentences of S. O. S. P. s agreed by the British side.

Some improvements in the prison regime in Northern Ireland with the successful closure of the Special Category Compounds in the Maze and with a special sentence review for all (90) remaining special category prisoners.

Little/No Progress

police and the provision for public tribunals eliminated from the new legislation. We nominated a nationalist (Kit Napier) to serve on the Commission. Our nomination was rejected.

Harassment continues to be a problem particularly of young people in nationalist urban areas.

No response to our proposal for the repatriation of prisoners held in British jails.

Recurrence some months ago of allegations of ill-treatment of suspects under interrogation at Castlereagh (e.g. Gillen case). However no further cases have come to light in recent months.

Plastic bullets: less in use than previously but nothing done in response to our proposal for tighter guidelines in their use (Conference of 17 June 1986).

British side have not accepted our suggestion (official level) for tightening of the legal position on the use of lethal force.



Progress

Article 8

Appointment of two additional Catholic High Court judges and one additional Catholic County Court judge. The British would appoint more Catholics to the County Court if they could get them (there is a general reluctance among senior barristers to take positions on the County Court)

No supergrass trials in progress or contemplated.

Changes Emergency Provisions Act (arrest on reasonable suspicion, transfer of onus in bail cases to the prosecution).

Some progress on descheduling of offences, but scheduled offences still include robbery and aggravated burglary and too many non-terrorist cases go to Diplock.

Emergency Provisions Act
Our proposal that suspects in custody for terrorist offences should have the same protection as those in custody for criminal offences will be given effect to in non-statutory form.

Little/No Progress

Article 8

The Courts

Negative response on idea of mixed courts, mentioned as a possible reform in the Agreement.

Negative response on three-judge courts ("not presently persuaded")

No response to our proposal (aimed at emphasising the norm of trial by jury) that instead of the present system where charges are certified out, the system should be that charges are certified in.

Final response to our proposal to have the reference to the Monarch in the juror's oath deleted (not required in England) still awaited.

Negative Response to our proposal that a second senior judicial post be created with duties analogous to our High Court President and allocated to a judge other than the Lord Chief Justice.

Composition of County Court still unbalanced (2 Catholic judges out of 13)

Negative response to our proposal that a judge's discretion in bail cases should be limited or abolished.



Progress

Little/No Progress

Negative response to our proposal that confessions obtained by torture/inhuman treatment should be inadmissible irrespective of whether it was the intention to use torture to induce the accused to make a confession.

No response as yet to our proposal that there be special provisions to cover the treatment of minors detained under emergency legislation.

Negative response to our proposal that the Army's power of arrest should be exercised under the clear direction of the civil powers. Arrests by the Army are on the increase.

Prevention of Terrorism Legislation
(Northern Ireland)

Negative response to our proposal that maximum period of detention be reduced from 7 to 5 days. The present legislation lapses in 1989 and will be replaced by fresh legislation to be introduced by way of a Bill later this year or early next year.

Anglo-Irish Section,
September 1988.

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CONFIDENTIAL

Gibraltar Inquest

The inquest into the shooting of 3 IRA members in Gibraltar on 6 March began on Tuesday 6 September. The inquest is being attended by a legal observer nominated by the Government (Donagh McDonagh, Barrister-at-Law) and by Deputy David Andrews representing the Fianna Fail Party. There are four possible verdicts open to the Gibraltar jury - accidental death, lawful killing, unlawful killing, or an "open" verdict. Counsel for the families will look for a verdict of unlawful killing. Any verdict other than lawful killing will be a serious matter for the British Government.

The Government issued two statements on 8 March and 29 April stating that they were "deeply perturbed that three unarmed Irish people should have been shot dead when it appeared that they could have been arrested" and that "the Government expect that the fullest possible information will be provided by the forthcoming inquest and that any further enquiry or legal action necessary to uphold without fear or favour the rule of law will be instituted".

Mrs Thatcher is on record in the House of Commons on 20 June as indicating clearly that no "official inquiry" is envisaged and that "the Inquest is the proper occasion for the matter to be examined". Mr King told the House of Commons on 28 July that all the facts would come out at the inquest.

Attention is now focussed on the likely scope of the inquest, ie how far will it delve into the background of the deaths? The Gibraltar Coroner's Ordinance defines the role of the jurors as "to inquire touching the death of the person" on whose body the inquest is held and to give their verdict setting forth "who the deceased was and how when and where the deceased came by his death." The British High Court ruled in 1982 (R. v. South London Coroner, ex p. Thompson) that "an inquest is a fact finding exercise and not a method of apportioning guilt." The Coroner's Ordinance makes it clear that an inquest will be

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adjourned if the Coroner is informed that a person is to be charged with causing the death.

To consider this question of the scope of the inquest and various matters of procedure, a preliminary hearing was held in Gibraltar in July. At that hearing, the Coroner dealt with the question as to the manner in which evidence from the soldiers would be heard (they would be screened from everyone save the Coroner, jury and Counsel) and made a number of interesting observations illustrating how difficult it will be for this inquest, if it is to be meaningful, to avoid in the words of the British High Court "apportioning guilt": -

Self-incrimination of Soldiers

"I find it hard to think of any significant question which will not be of that nature once they take the stand. The reality seems to be that unless the witnesses are screened I may not have a meaningful inquest and of course if they are screened it would be a flawed inquest in any case".

Victims Unarmed

"it must not be forgotten that however clear these elements might be, nevertheless at the time they came to their deaths they were neither armed nor did they have any detonating device nor was there any explosive found in the car.....and that these three factors will exert their influence over the conduct of the Inquest perhaps in a manner not yet appreciated by anyone."

Extent of Questioning

The Coroner agreed that questioning should be confined to three issues, ie (1) the circumstances of the deaths; (2) the nature of the perceived threat which led to responsibility for arrest being transferred to the military; (3) the state of mind of the soldiers at the time of the shootings. He also added the proviso, however, that "this general direction will not preclude the inquest to enquire as to relevant matters preceding the moment of the shooting."

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The key element will be questions regarding relevant matters preceding the moment of the shooting. While it now seems certain that the SAS soldiers involved will give evidence at the inquest, the Army Minister made it clear in the House of Commons on 11 July that certain categories of information will be protected from disclosure on the basis that their disclosure would inflict "unquantifiable damage" to the security of the United Kingdom. These categories would include the identities of the soldiers and any details of their training or previous deployment and "all or any sources of intelligence information which is material , however indirectly" .

Few observers expect the inquest to provide a satisfactory enquiry into the full circumstances surrounding the killings and a number of calls (including from the British Labour Party Spokesman) have been made for a full judicial enquiry. Moreover the jury is likely to favour the Government's case. However, the Coroner has already shown himself to be an independent-minded man and may allow considerable latitude to Counsel for the families. If Counsel for the families succeed in drawing damaging admissions from the SAS men about the nature of their operation, the instructions they received and other background information to the shootings, these may provide a reason for a judicial enquiry and further action by the families in the civil courts and the European Court even if the verdict is lawful killing.

Anglo-Irish Section
8 September 1988

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Confidential

BACKGROUND NOTE

DRUMNAKILLY SHOOTINGS

On Tuesday, 30 August 1988, three members of the IRA were shot dead by the British security forces at Drumnakilly, Co Tyrone, in what appears from the scanty evidence so far available to have been an SAS ambush. The men included one of the people lifted by the RUC for questioning in connection with the Ballygawley bombing.

On learning of the incident the Taoiseach asked for an urgent and full report on all circumstances surrounding the shootings through the Anglo-Irish Secretariat in Belfast. A full report has not yet been provided.

On Sunday 4 September 1988, the Secretary of State for Northern Ireland, Mr King affirmed that the IRA had opened fire first and reiterated that the security forces were acting under the rule of law and the rules of engagement and there was no question of any change in those rules. On 31 August in an interview carried in the Daily Express Mrs Thatcher also rejected suggestions that the security forces were operating a shoot-to-kill policy. She was attacked, however, by the deputy leader of the British Labour Party, Mr Roy Hattersley, for saying that the rules of engagement applied to the British forces in Northern Ireland as they had in the Falklands, as it gave credence to the claim that the IRA were freedom fighters. The British Government has never revealed the instructions for opening fire in Northern Ireland but the attached rules (the so-called "yellow card") were published some time ago in the Irish News and are probably authentic. These instructions stress that firearms must only be used as a last resort and that normally a challenge must be given before opening fire.

From some of our local contacts, we have been told that shortly before the shootings, the three men, masked and carrying arms had hijacked a car, broken its windows and appeared to mount a gun on the back seat. They drove off at high speed and within a minute gunfire was heard. According to a local farmer, after the shootings, a group of men in civilian clothes was lifted by an army helicopter which flew off in the direction of Belfast. A very brief RUC statement issued later that evening said that the incident "occurred when soldiers encountered armed men in a vehicle and opened fire. Two rifles were recovered at the scene." The following day the RUC briefed that two rifles had been found in the car in which the three men were travelling when they were shot, and a hand-gun had been discovered in the car later. A number of spent rounds had also been found at the scene and removed for examination. On Friday, the RUC briefed that the

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forensic tests had shown that the spent rounds corresponded with one of the weapons found at the scene after the shooting. A full RUC statement was expected but has not yet been made. The IRA deny claims that their men had opened fire before being killed. A number of local people heard the gunfire but their accounts are conflicting.

The Sunday Times of 4 September 1988 carries an account of the incident based on "sources in the security forces". While admitting that the incident resulted from a carefully planned SAS ambush, it claims that the IRA men were carrying out an attack and were the first to fire - a crucial point in determining whether or not a shoot-to-kill policy is in operation. According to this version, the security forces had learnt of an IRA plan to murder a former UDR man after he had driven his lorry to work. The lorry was taken by an SAS team and positioned on the Omagh to Carrickmore road with one of its tyres punctured. As the hijacked car sped towards the lorry, the IRA men fired at the man mending the wheel - supposedly the ex-UDR man but in fact an SAS officer - who miraculously escaped injury. As the car passed the lorry, the SAS team lying in wait on both sides of the road opened fire and killed its occupants. According to the article, the security forces are dismayed at the cautious reaction of both of the British Government and the RUC which has led to renewed suspicions of a shoot-to-kill policy. The paper's sources firmly deny that the incident was a response to Ballygawley or part of a tougher line resulting from the British Government's "security review".

The lack of information about the incident and the failure of the authorities to issue a full and detailed statement on the matter, allied to the accounts by witnesses of men in civilian clothes being spirited away after the event has naturally fuelled suspicions that what took place was a Gibraltar-style operation. Unlike Gibraltar, however, it is clear from the evidence of the hijacking of the car, that the Drumnakilly three had weapons and were on a mission.

In May last year eight members of the IRA were shot dead at Loughgall as they attacked an RUC station. During that incident an innocent civilian was also killed and another seriously injured. In July of this year a Belfast taxi driver was killed in crossfire when an SAS unit opened fire on IRA members attacking North Queen Street RUC station.

Anglo-Irish Section
8 September 1988

British Army Instructions for
opening fire in Northern Ireland

(RUC have Force Regulations in
substantially the same terms)

The 1980 Yellow Card

<p>RESTRICTED Army Code No. 70771</p> <p><i>Instructions for Opening Fire in Northern Ireland</i></p> <p>General Rules</p> <p>1. In all situations you are to use the minimum force necessary. FIREARMS MUST ONLY BE USED AS A LAST RESORT.</p> <p>2. Your weapon must always be made safe: that is, NO live round is to be carried in the breech and in the case of automatic weapons the working parts are to be forward, unless you are ordered to carry a live round in the breech or you are about to fire.</p> <p>Challenging</p> <p>3. A challenge MUST be given before opening fire unless:</p> <ul style="list-style-type: none">a. to do so would increase the risk of death or grave injury to you or any other person.b. you or others in the immediate vicinity are being engaged by terrorists. <p>4. You are to challenge by shouting: 'ARMY: STOP OR I FIRE' or words to that effect.</p> <p>Opening Fire</p> <p>5. You may only open fire against a person:</p> <ul style="list-style-type: none">a. if he* is committing or about to commit an act LIKELY TO ENDANGER LIFE AND THERE IS NO OTHER WAY TO PREVENT THE DANGER. The following are some examples of acts where life could be endangered, dependent always upon the circumstances:<ul style="list-style-type: none">(1) firing or being about to fire a weapon(2) planting detonating or throwing an explosive device (including a petrol bomb)(3) deliberately driving a vehicle at a person and there is no other way of stopping him*b. if you know that he* has just killed or injured any person by such means and he* does not surrender if challenged and THERE IS NO OTHER WAY TO MAKE AN ARREST. * 'She' can be read instead of 'he' if applicable. <p>6. If you have to open fire you should:</p> <ul style="list-style-type: none">a. fire only aimed shots,b. fire no more rounds than are necessary,c. take all reasonable precautions not to injure any one other than your target.

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