

C O N F I D E N T I A L

FROM: P N BELL
SECURITY POLICY AND OPERATIONS DIVISION
DATE: 22 JULY 1991

DESK IMMEDIATE

Mrs Collins

cc Mr Petch - B
Mr McCready - B
Dr Rosborough
Mr Sloan
Mr Marsh - B

REC
Please open a file on the
PA items before an AT
7/F to me in 2 weeks
about.
26/7

SECRASP - PAPER ON THE RELATIONSHIP BETWEEN POLITICAL AND
OPERATIONAL CONTROL OF THE SECURITY FORCES

I attach a draft of a paper which I hope to circulate by close of play tonight. It is self-explanatory, but I would be grateful for urgent comments not just from you but from other copy recipients, including above all Mr Petch and Mr McCready. The latter may even have some papers of his own on "relationships" between ourselves and the RUC and PANI which SPOB might find helpful in the longer term, even if not for the present exercise. You will note that I have carefully avoided touching on the highly vexed question of the wider NIO/RUC/PANI relationship - or more recent sore points.

(signed)

P N BELL
(Ext SH 2201)

C O N F I D E N T I A L

JI/17122

THE RELATIONSHIP BETWEEN THE POLITICAL AND OPERATIONAL CONTROL OF THE SECURITY FORCESAim of Paper

1. This paper seeks to:

- (a) summarise the security policy which the RUC, supported by the Armed Forces, and other agencies and instruments of Government seek to implement;
- (b) summarise the chief constitutional and political relationships between the Secretary of State and the security forces (and also, for the sake of completeness, with some other agencies);
- (c) set out briefly the main formal machinery for co-ordinating the work of the security forces in implementing security policy within the current constitutional and political framework; and
- (d) suggest aspects of current relationships in the areas covered by (b) and (c) above on which SECRASP may wish to commission further study. Each area is dealt with briefly in turn below.

Security Policy

2. Security policy in Northern Ireland is conducted within a legislative framework set by Parliament. Formally and constitutionally, the Secretary of State for Northern Ireland has overall responsibility for law and order. In practice, the Secretary of State decides overall security policy in the light of advice from the Chief Constable and the GOC, who are his principle security advisers. Current security policy was described briefly in a Statement issued by the Secretary of State in November 1990 (attached as Annex A). The Secretary of State is answerable to Parliament for law and order matters in Northern Ireland.

3. That policy explicitly recognises the primacy of the police in dealing with all forms of crime, including terrorist crime (with the exception of the "Border Zone" where the Army is theoretically in the lead in anti-terrorist operations), their operational independence in so doing, and their accountability (as also that of the soldiers who act in their support) to the law for all their actions. The arrangements in place to provide for co-ordination of the activities of the police and the Army, which acts in their support, other agencies and Government are described in paras below. But other elements within the command justic system, notably both the prosecuting authorities and the courts, remain totally independent of both the security forces and the Government.

The Constitutional Relationship

4. Within the Secretary of State's overall responsibilities for law and order, both statute and convention contribute to a distinction between security policy and security operations. Thus -

- (a) the Secretary of State has certain statutory responsibilities in the security (and policing) fields. At Annex A is a list - illustrative rather than exhaustive of his main powers. Where the security forces wish the Secretary of State to exercise such powers, their request will be accompanied by comprehensive advise from officials;
- (b) implementation of security policy as determined by the Secretary of State (ie "security operations") is the responsibility of the Royal Ulster Constabulary. They are supported where necessary by the Armed Forces. The RUC is under the direction and control of the Chief Constable. Like police officers in the rest of the United Kingdom, RUC officers have a wide range of powers and responsibilities invested in them by statute and common law. In security terms, the most important statutory powers for the RUC are those of stop, search, arrest and (short-term) detention provided under the Northern Ireland (Emergency Provisions) Acts and the Prevention of Terrorism (Temporary Provisions) Act 1989. Under the

C O N F I D E N T I A L

general criminal law, police powers are, for the most part, now consolidated in the Police and Criminal Evidence (Northern Ireland) Order 1989. In the exercise of their powers under these and other statutes, as in all their actions as individuals, police officers are answerable to the law. They are not, however, answerable to the Secretary of State, or under his command;

- (c) the Armed Forces, where their assistance is required, act only in support of the civil power. In practice this means the RUC, in so doing, are subject to a chain of command which stretches back through the GOC at Headquarters, Northern Ireland to the Chief of the General Staff, and, ultimately, to the Secretary of State for Defence (who is responsible, in addition to internal military matters, including their finance and logistics, for the level of military support available). Members of HM Forces have limited powers to stop, question and arrest under the Northern Ireland (Emergency Provisions) Acts. The GOC and his officers remain responsible for the operational deployment of the Armed Forces in support of the tasks allocated to them by the police; like police officers, the actions of individual members of the Armed Forces are always subject to the law;
- (d) A corollary of this approach is that the Secretary of State is not consulted about specific deployments of the Armed Forces (including, as will be the case of Great Britain) of deployments of Special Forces) in support of the RUC;
- (e) the Secretary of State appoints the Police Authority for Northern Ireland, an independent public body, wholly funded by the NIO. The Authority has ^athe statutory *duty to* ~~responsibility of [Mr McCready to complete]~~. There is a measure of disagreement between the Authority and the RUC as to the correct interpretation of this remit. However, in practice, the Authority determines (within the overall

C O N F I D E N T I A L

JI/17122

Secure the maintenance of an adequate and efficient police force in N.I.

C O N F I D E N T I A L

constraints imposed by the Secretary of State, and the Treasury) the size and structure of the force, appoints senior officers, provides and maintains buildings, equipment, and supplies, and exercises budgetary control over police services. It is required to keep itself informed about the way complaints against the police are handled and it is the complaints and discipline authority for senior officers. In contrast to police forces in Great Britain, the RUC (via PANI) is virtually wholly funded by a grant from the NIO LOPMS Vote;

- (f) the NI Prison Service is responsible for accommodating securely prisoners remanded or convicted by the courts. Its members are NIO civil servants and, as such, they are directly accountable to the Secretary of State and subject to his direction within the framework of prison legislation approved by Parliament;
- (g) the Secretaries of State for Transport and for the Home Department have certain national responsibilities for security at airports and ports;
- (h) under the Prosecution of Offences (NI) Order 1972, the Director of Public Prosecutions for Northern Ireland is responsible for initiating, undertaking and carrying on prosecutions in respect of all serious criminal offences in Northern Ireland. The Director is responsible to, and in certain circumstances may be directed by, the Attorney General for Northern Ireland. The Director is wholly independent both of the Secretary of State and of the police; although his Office, like that of the Crown Solicitor, is entirely funded out of the NIO LOPMS Vote.

C O N F I D E N T I A L

JI/17122

C O N F I D E N T I A L

5. There are two devices for ensuring, in addition to less formal contacts, that the political and operational aspects of security policy and its implementation are co-ordinated. These are:

- (a) Security Policy Meeting (SPM). This group meets approximately monthly, under the chairmanship of the Secretary of State (with the Paymaster General and Minister of State also present). The Chief Constable, GOC, and DCI also attend as do a small number of senior NIO officials. The meeting reviews the current security threat, and attempts to forecast likely developments. It discusses major security issues, especially those of political salience: for example, at recent meetings, the future of PVCs; accompaniment; forthcoming Inter-Governmental Conferences. It is not, however, any kind of executive committee. Nor, recently at any rate, as it discussed the kind of wider, community relations and political dimensions of security force operations of concern to SECRASP; and,
- (b) Security Co-operation Meeting (SCM). This committee is chaired by the AUS(Law and Order), and attended by representatives of SPOB, POB, and Liaison Staff as well as HQ RUC And HQNI. This exists, theoretically, to prepare the agenda for SPM. In practice, more time is devoted to an exchange of information on issues of common interest, and to register NIO concerns on matters of political importance (eg, most recently, the need for the sensitive implementation of controversial new powers under EP legislation). Like SPM, it also reviews the security situation. Like SPM, it has no executive functions.

6. Operationally, the co-ordination of police and Army operations has been made easier by the recent realignment and harmonisation of police (including both uniformed and Special Branch) boundaries and Army TAORs. The new system is still in the process of settling

C O N F I D E N T I A L

JI/17122

C O N F I D E N T I A L

down. Again, and in addition to informal contacts, there exists the following hierarchy of Committees:

- (a) Province Executive Committee (PEC). This is a very recent innovation (designed to replace the existing operational co-ordination group (OCG) and the Intelligence Planning Group). It is intended to be the senior committee tasked for the direction and co-ordination of operations against terrorism, within the framework of existing security policies. (This entails the responsibility for the direction and management of all joint operational issues; for the allocation of joint resources, and the co-ordination of inter-regional and inter-brigade requirements.) The Chairman is the Deputy Chief Constable, and the other permanent members are the Commander Land Forces and the DCI. The Head of Special Branch also normally attends. There is, however, no NIO official present (apart from the DCI or his substitute); nor is there, as yet, a combined permanent secretariat or a single joint headquarters while a better co-ordinated approach, at high level, to security force operations is to be welcomed, it is too early to pronounce judgement on PEC's effectiveness or likely development; and
- (b) Regional, Divisional and Sub-Divisional Action Committees (RACS, DACS and sub-DACS) which exists to formulate and implement joint operational strategy at their respective levels. All these committees are chaired by the appropriate senior RUC officer, while the Army and Special Branch are also represented. There is, once again, no NIO representation on any of these bodies.

7. There are a number of proposals circulating for specialist joint committees in such areas as communications, IT, and technical matters.

C O N F I D E N T I A L

JI/17122

Areas for future consideration

8. The above sketch does not do justice either to the wealth or importance of informal contacts between the NIO, whose functions include trying to inject a wider political dimension, and the security forces. Nevertheless, for informal contacts to be fully effective, it is essential to operate within the most supportive political/constitutional framework as well as more formal administrative structures (which are desirable and important in their own right). SECRASP may accordingly wish to discuss, and possibly to commission future work on a number of points arising from the above, including the following:

- (a) the constitutional relationship between the Chief Constable and the Secretary of State. The Chief Constable is adamant that he is only accountable to the law, and would rightly draw attention to the desirability of RUC operations being taken, so far as possible, "out of politics". There is much to be said for this doctrine, and for the way in which the RUC have consistently sought to apply it. This doctrine, however, evolved in Great Britain. And it is less clear that it applies in such an absolute fashion in the situation we have in Northern Ireland where, first, the civil power (and the RUC) consistently require support from the Armed Forces on a massive scale; and, second, in a region in which security force operations have a widespread political salience that goes far beyond what is normally the case in Great Britain. Both considerations suggest that the constitutional doctrine as represented by successive Chief Constables (and accepted implicitly by the NIO) now needs re-examination;
- (b) the working of SPM. SPM now deals more systematically with politically sensitive security issues than it has perhaps at other times in the past. Nevertheless, there remain some grounds for believing that it could usefully go further in drawing the attention of the Chief Constable and the GOC to the wider dimensions of security operations

C O N F I D E N T I A L

than is normally the case at present; and that, because SPM is well established machinery, personally chaired by the Secretary of State, it is the only formal structure in which these issues could be successfully broached. There is scope, therefore, for examining the possibility of a more "activist" operation of SPM. Before making any proposals, however, to the Secretary of State, SECRASP would need to be clear about areas in which it did in fact wish to press the Chief Constable and GOC;

(c) the machinery for operational co-ordination (PEC etc).

There is no NIO representative at present. This is, in large part, owing to the resistance of the Chief Constable to anything that could be construed as "political interference" in operational matters. These fears seem, objectively, unjustified: the NIO's concern very largely to ensure that wider issues are taken systematically into consideration in the planning, execution and follow through of operations. Moreover, the Chief Constable's hesitations rest on a constitutional doctrine which is questionable (see (a) above). In fact, both at Province level, but also at lower levels, there are many operational issues with intense community relations or political consequences on which the NIO may not be informed until after action has been taken, but which, in theory, Ministers could find themselves answering for in Parliament. (Examples include road closure schemes; relocation of bases; public order questions) where the NIO view, without necessarily predominating, ought nevertheless to be taken fully into account.

9. Issues sketched above are of considerable sensitivity as well as intrinsic importance. This should not inhibit SECRASP from considering them. But the Committee will wish to be sure, before broaching them with either the Secretary of State or the security force Commanders, that they possess a well thought out "agenda", and have considered sufficiently their presentational tactics, with the Chief Constable in particular.

C O N F I D E N T I A L

J1/17122

SECRETARY OF STATE FOR NORTHERN IRELAND'S PRINCIPAL DIRECT RESPONSIBILITIES IN THE FIELD OF POLICING/SECURITY

1. Under the Police Act (NI) 1970 the Secretary of State must approve the appointment of a Chief Constable made by the Police Authority and may require his retirement. He transmits the Chief Constable's annual report to Parliament, and may himself call for a report from the Chief Constable on any relevant matter. He may also make regulations as to the government, administration and conditions of service of members of the RUC and its reserve.
2. Under the Northern Ireland (Emergency Provisions) Act 1991 and 1987 the Secretary of State will proscribe or de-proscribe organisations; direct the closure of highways; pay compensation; set time limits to preliminary proceedings; make directions in relation to custody of young persons; requisition property; and make regulations for promoting the preservation of the peace and maintenance of order.
3. Under the Prevention of Terrorism (Temporary Provisions) Act 1989 the Secretary of State may exclude persons from Northern Ireland or the United Kingdom. He may also, on application by the RUC, authorise the continued detention for questioning of persons reasonably suspected of involvement in acts of terrorism for periods not exceeding a maximum of 7 days in total from the time of first arrest.
4. Under the Public Order (NI) Order 1987, he may exempt certain classes of procession from requirements to give advance notice; or prohibit, in certain circumstances, public processions or open air meetings, in consultation with the relevant committee of the Police Authority wherever practicable.

5. Under the Firearms (Northern Ireland) Order 1981, he considers appeals against the refusal by the Chief Constable to grant, renew or vary a firearms certificate or to issue a certificate of registration to a firearms dealer. He authorises firearms clubs and issues licences under the Explosives Acts, (1875-1970). He also makes regulations.

6. Under the Police (Northern Ireland) Order 1987, he may refer to the independent Commission for Police Complaints any matter, not the subject of a complaint, if he considers it is in the public interest that the Commission should supervise the investigation of the matter. He makes regulations on complaints and discipline matters.