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FROM: CHRISTINE COLLINS
Security Policy and Operations Division 1
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cc PS/Secretary of State (L) - B
PS/Mr Mates (B&L) - B
PS/PUS (B&L) - B
PS/Mr Fell - B
Mr Ledlie - B
Mr Thomas - B
Mr Lyon - B
Mr Steele - B
Mr Leach - B
Mr Brooker - B
Mr Perry - B

S65/1 - for file

PS/Secretary of State (B) - B

ECHR: JOHN KELLY V UK: COMMISSION HEARING ON ADMISSIBILITY AND MERITS

Ms Murphy

My submission of 2 July 1992 on this case involving a challenge to the provisions governing the use of force, contained in Section 3 of the Criminal Law Act 1967, refers.

<u>The Hearing</u>

2. This case, which was taken by the father of a 17-year-old joyrider killed by soldiers when he rammed the stolen car he was driving through a vehicle checkpoint on the Stockman's Lane/Kennedy Way Roundabout on 18 January 1985, was heard before the Commission of the European Court of Human Rights yesterday. Brian Kerr QC, assisted by Nicholas Bratzer QC, represented the UK; Mr Mooney QC, the applicant. Mr Kerr's speech, which in measured but forceful terms, made clear the difficulties facing soldiers in dealing with such incidents, and drew a careful distinction between "ordinary decent" criminals who may on occasion use violence, and terrorist criminals whose raison d'etre <u>is</u> violence, was surprisingly well received by the Commission. A copy of the working text is attached at Annex A for information.

3. Mr Mooney's speech, which dwelt at length on the primacy of the "right to life", and which attempted to argue that the power to

arrest under the Emergency Provisions Act, or to stop and question, did not allow the use of any force, was perhaps rather confusing for the Commission members, especially those who were not native English speakers.

The outcome

4. In the event, and somewhat unexpectedly given the hostile nature of their questions in advance of the Hearing, the Commission held the application to be inadmissible; a full report of their reasons is awaited, but is unlikely to be prepared for another six weeks or so.

Implications

5. There was almost universal gloom in the Government camp before the Hearing; indeed it had required some strength of character to ensure that the case was defended, rather than attempts made to reach a "friendly" settlement. This "courage in adversity" has paid dividends, in that the favourable outcome permits a free consideration of the range of complex issues arising from such "lethal force" incidents; it bodes well for the Gibraltar case; and it does not add further to the problems likely to arise over the next few weeks, as the delayed inquests get underway.

6. In all, a sterling performance by Brian Kerr; whose experience and conviction, and personal understanding of the Northern Ireland situation, underpinned the credibility of the Government's case.

[signed]

CHRISTINE COLLINS
SHA EXT 2212

JOHN KELLY -V- UNITED KINGDOM

ORAL SUBMISSIONS

1. In his letter of 16 September 1992, the Secretary to the Commission asked that the parties to this Application should confine their oral submissions to five questions posed by the Commission.

I am happy to abide by the Commission's request.

We will wish to preserve in full the case made in written observations especially by way of non exhaustion.

May I make two general observations by way of introduction to our answers to those questions?

2. (i) In making any judgment on the actions of the soldiers who fired the shots which killed Paul Kelly, a clear insight into the situation which faced the soldiers is not only crucial, it is indispensable.

(ii) It is of fundamental importance that the Convention issues which arise should be examined in the light of the National Trial Judge's Findings of Fact and of his evaluation of the evidence.

I would like to develop those general points very briefly before turning to our direct answers to the specific questions posed.

3. A clear understanding and appreciation of the situation with which the soldiers had to deal on the night of 18 January 1985 is not as easy to achieve as one might at first imagine. We now know a great deal more about the occupants of the car which was fired on than did the soldiers who fired the shots.

also have the luxury of time in which to ponder and reflect on the actions which they took. That luxury was not available to the soldiers.

In a few highly charged seconds, the soldiers had to make a decision as to how to react. It is necessary (in our submission) to recall the incident as it occurred and to try to imagine how the circumstances must have appeared to them before passing judgment on their actions.

4. The circumstances of this incident have been described in the written observations and need not be repeated in unnecessary detail.

To illustrate and emphasise this first general point, however, we draw attention to the following:-

(i) This car had been stolen in South Belfast, taken to West Belfast, and driven, apparently without stopping, to an area far from West Belfast and well away from any area where joy riding normally took place [page 3 of the Judgment].

(ii) It had stopped outside the home of a member of the security forces and an attempt was made to tamper with his car [page 4 of the Judgment].

(iii) When the crew of a land rover of the Ulster Defence Regiment spotted the car, all of the occupants (apart from the driver) lowered their heads to try to avoid detection [page 4 of the Judgment].

(iv) The car then headed back towards West Belfast, a strongly Republican area and the area from which the vast bulk of members in Belfast of the terrorist organisation known as the Provisional IRA is drawn, and from which terrorist attacks are commonly launched.

Pausing there, one may ask what conclusion could the soldiers have reached other than that these were terrorist, embarked on some terrorist mission?

(v) When the car came upon the land rover and its crew which had set up a vehicle checkpoint at the roundabout, it came to a sudden stop, some distance back from the checkpoint, with a screech of brakes. It was then reversed at high speed but collided with the following land rover with a heavy impact [pages 5 and 6 of the Judgment].

This roundabout is at the West and South Belfast interface.

(vi) It then (in the words of the Judge) "shot forward again with smoke coming from its tyres". [Page 6 of the Judgment].

(vii) The car was driven straight at soldiers who had run towards it waving and shouting at the driver to stop [page 6 of the Judgment].

(viii) One soldier had to dive out of the path of the car but this did not deter the driver [page 6 of the Judgment].

(ix) One soldier tried to smash the driver's window without success but, again, the driver was not deterred [page 6 of the Judgment].

(x) The Granada car collided heavily with a Cortina which had already been stopped at the vehicle checkpoint. This collision was sufficient to cause substantial damage to the Cortina; and to propel it forward so as to knock over one soldier and trap another between the Cortina and the land rover [page 6 of the Judgment].

(i) The Granada then bounced back from its collision with the Cortina but <u>once again</u> was driven forward at speed striking the Cortina again, scraping along the side of the land rover and twisting its front bumper. The car mounted the kerb of the central reservation, left a track on the grass and then returned to the roadway before heading at speed towards an exist which would have taken it to the haven of West Belfast [pages 6 and 7 of the Judgment].

Even by the standards of actual terrorist events in Northern Ireland, the driving of this vehicle was exceptional in its ferocity. The Commander of the soldiers, Sergeant A, said in evidence that he had never seen such a determined attempt by anyone to try to evade the security forces [page 99 of the transcript]. The sheer terror that the driving of this vehicle must have caused, is not difficult to imagine. The conviction of the soldiers that these were active and dangerous terrorists in the middle of a terrorist mission is not hard to understand.

5. May I then say a few words about our second general point?

The need to pay close attention to the findings of the National Trial Judge is well recognised. In its decision on the admissibility of the case of <u>Stewart v United Kingdom</u> the Commission emphasised this point. As the Commission pointed out:

> "The National Judge has had the benefit of listening to the witnesses at first hand and assessing the credibility and probative value of their testimony after careful consideration."

It is difficult to think of a case where that principle would have greater importance than the present.

the Commission is today considering events which occurred almost exactly eight years ago. It does so without the opportunity - available to Carswell J - of seeing and hearing the witnesses.

In a case such as the present where the state of mind of the soldiers who opened fire and their reasons for firing are so crucial, the importance of actually hearing from the mouths of the soldiers themselves their description of the incident and their account of the reasons for firing is fundamental.

Carswell J, over the course of a hearing lasting four days, heard evidence from a total of 17 witnesses. During searching and exhaustive cross examination of each soldier, he had the chance to observe their demeanour and reactions. He was uniquely placed, therefore, to make a judgment on their state of mind and behaviour.

His carefully reasoned Reserved Judgment (which was found to be faultless by the Court of Appeal in Northern Ireland) bears witness to his painstaking approach to the case.

In our submission it would be wholly wrong for the Commission to be asked to "second guess" the findings of the Trial Judge and his evaluation of the evidence.

It could not be correct to invite the Commission to substitute its view for that of the Trial Judge on such questions as the state of mind of the soldiers or whether there was any practicable alternative course open to them to effect the arrest or prevent the escape of the occupants of the car.

With that introduction, may I now turn to the specific questions posed by the Commission?

6. In the first question we are asked whether the use of lethal fire was strictly proportionate, having regard to the opinion of the Trial Judge that the use of that level of force to

arrest for the actual offences committed would not be justified and in light of a passage in the opinion of the House of Lords in the Attorney General for Northern Ireland's Reference.

At the outset, I think it is important to point out that Carswell J did not make a finding on whether the level of force used would be justified in order to arrest the occupants of the car as suspected offenders.

Indeed, he stated explicitly that he did not need to reach a view on that because of his conclusion that the shooting was justified in the prevention of crime.

What he actually said was:

> "I should find it difficult to accept that the soldiers were using no more than reasonable force in shooting at the driver, with the substantial risk of death or serious injury to him, in order to arrest him for reckless driving" [page 21 of the Judgment].

Of course, there was no question whatever of the soldiers having opened fire to arrest the driver for reckless driving.

The actual reason for opening fire was the belief, later found to be a reasonable belief, that those in the car were terrorists who were showing a formidable determination to break through the vehicle checkpoint heedless to any danger to the soldiers who sought to stop the car [page 99 of the transcript]. Indeed, the Commander of the patrol which sought to stop the car, Sergeant A, said specifically that he believed that he had a terrorist incident on his hands [page 116 of the Transcript]. That he was in the middle of a terrorist incident and that the people in the car 'may have been in the act of terrorism or may have committed some act of terrorism' [page 182].

Carswell J did not examine the justification of the use of force to arrest the occupants of the car because they were terrorists. But it is clear the force was used not simply because the occupants of the car were believed to be terrorists. It was used because it was believed that they were terrorists who were breaking through a vehicle checkpoint with fierce determination and violence, utterly indifferent (at best) to the safety of the soldiers and those present at the vehicle checkpoint.

7. In our submission, the use of lethal force to arrest terrorists in those circumstances is justified both under Domestic Law and under the Convention.

It is clear that the words "in order to effect a lawful arrest" in Article 2(2) of the Convention embrace not merely the arrest of a person for a crime that he has committed but also the apprehension of a person in order to prevent him from committing an offence or from fleeing after he has done so.

This much is confirmed by Article 5(1) of the Convention which draws a clear distinction between, on the one hand,

> "The lawful arrest . . . of a person, effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence."

And, on the other,

> "The lawful arrest . . . of a person . . . when it is reasonably considered necessary to prevent him committing an offence or fleeing after having done so."

This dual concept of arrest is reflected in the domestic provision in Section 3 of the 1967 Act in the distinction drawn in the section between, on the one hand, the use of force,

"In effecting . . . the lawful arrest of offenders or suspected offenders"

And, on the other, the use of force,

"In the prevention of crime."

Thus, we submit that terrorists who belong to a brutal organisation like the Provisional IRA, who behave in a fierce and vicious manner, similar to that in the present case, may have to be arrested by the use of lethal force to prevent them from committing offences, if no other alternative is available.

8. Moreover, there is nothing in that proposition which is at all inconsistent with the passage from the speech of Lord Diplock in the Attorney General's Reference to which the Commission has drawn attention.

What Lord Diplock said at page 207 was:

> "It has not been suggested that shooting to kill or seriously wound would be justified in attempting to effect the arrest under Section 12 of a person who, though he were suspected of belonging to a proscribed organisation (which constitutes an offence under Section 19), was not also believed on reasonable grounds to be likely to commit actual crimes of violence if he succeeded in avoiding arrest."

In other words, it had not been argued before the House of Lords that the shooting of a person to effect his arrest on suspicion that he was a member of a proscribed organisation was justified.

It would be quite a different matter, however, if he was also believed on reasonable grounds to be likely to commit actual crimes of violence if he succeeded in avoiding arrest.

consider that proposition in the context of the present case. This car, reasonably believed to contain terrorists, was involved in a fierce and determined attempt to break through the vehicle checkpoint; it collided with three vehicles; it was driven at high speed regardless of the obvious danger to those on the roadway.

In those circumstances, did not reasonable grounds exist to believe that its occupants would commit violent crime if they succeeded in avoiding arrest?

In summary, therefore, we submit that the use of lethal force was strictly proportionate to the legitimate purpose of effecting a lawful arrest within the meaning of Article 2, paragraph 2 and there is nothing in the Judgment of Carswell J or in the Attorney General's Reference which is inconsistent with that submission.

9. The Commission's second question is whether sufficient weight was given in the assessment of the necessity for the shooting to the possibility that the occupants in the car were not terrorists.

I assume that this refers to the assessment of the soldiers rather than that of the Judge since it is clear from the Judgment of Carswell J that he gave very careful and detailed consideration to this point [pages 13 - 16], particularly the top of page 16 of the Judgment].

In our submission, each of the soldiers more than amply demonstrated in the course of their evidence that they had given sufficient consideration to the question of whether the occupants of the car were terrorists.

Each was cross examined at length on this topic. It is not appropriate to refer the Commission to the detail of their evidence but a number of salient points may be recalled.

(i) Normally joyriders from West Belfast did not travel to the Ormeau Road district. Even one of the plaintiffs, Mr Hegarty, was not disposed to challenge this proposition with any conviction [page 17 of the Transcript].

(ii) Sergeant A, the Commander of the patrol and the one who opened fire first, knew that they had been seen near the car of a member of the security forces.

(iii) The manner of driving in the checkpoint gave the clearest indication that these were not only terrorists but determined and violent terrorists. The car collided with three vehicles. First it rammed the land rover stopped behind it. Then it struck the Cortina. It bounced back from that collision and shot forward again. It struck the Cortina again, scraped along the side of the front land rover and twisted the front bumper out of position. It mounted the kerb of the central reservation and travelled at speed partly on that reservation and partly on the roadway for some distance. Its course was straight at the soldiers. One had to dive out of the way to avoid injury. Two others were injured when the Cortina slammed against the first land rover.

This description of the incident is surely sufficient to convey the sheer ferocity of the determination of the car's occupants to avoid capture. It is little wonder, therefore, that Sergeant A described it thus:

> "I have never seen such a determined attempt by anyone to try to evade the security forces before in my life."

Given that the soldiers had but a few seconds to reach a conclusion as to the likely identity of the occupants of the car, is it really a matter for surprise that each of them concluded that these were indeed terrorists?

The Trial Judge expressly accepted the soldiers' evidence on this issue and we therefore submit that it is quite impossible to say that insufficient weight was given by the soldiers to the possibility that the occupants of the car were not terrorists.

10. Substantially the same submissions may be made in relation to the Commission's third question, namely, whether the use of lethal force was the only possible course of action open to the soldiers having regard to their proximity to the car, the fact that there were two UDR land rovers on the spot and the fact that the soldiers were in radio contact with other Units. In addressing this question, it is highly significant that in the course of the trial before Carswell J, the plaintiffs were unable to suggest any other course of action which the soldiers might have taken to stop the car. This is apparent from pages 19 to 20 of the Judgment. It is hardly surprising, therefore, that Carswell J should have concluded as he did that the soldiers either had to use their rifles or take no action to stop the car.

To refer to the specific courses of action suggested by the Commission, it is our submission that the proximity of the soldiers to the car was not and could not have been of the slightest assistance in stopping it. As the Trial Judge found, the soldiers had made every effort to stop the car by shouting and gesturing to the occupants and, when those efforts proved unavailing, by trying to smash the car windows. Not only were those efforts fruitless, but the driver showed total disregard for the lives and safety of the soldiers by driving straight at them.

The fact that there were two land rovers on the spot was equally of no help in stopping the car. There was no prospect of either land rover being able to give chase. Each land rover was manned by one soldier only - in the case of one by an unarmed female soldier. The second land rover did pursue the

ar but caught up with it only after it had crashed. Land rovers used by army patrols carry armour protection which makes them heavy and cumbersome. They have poor acceleration and a top speed of around 40 mph. There would simply have been no possibility of either vehicle catching the Granada - a high performance car - once it had escaped at speed from the checkpoint. Moreover, if a terrorist car had succeeded in escaping into West Belfast, the chances of a successful pursuit would be greatly reduced.

Similarly, the suggestion that the soldiers could have made radio contact with other units and thereby stop the car is not supported by any evidence. There was no evidence before the Trial Judge nor is there any evidence before the Commission as to the location of other units at the time, or as to whether any unit was in the immediate area. On the contrary, Sergeant A gave evidence that he was not in direct contact with other units which might have been able to intercept the Granada, and had no knowledge of any such units. It is highly unlikely that another patrol could have been instructed to intercept the Granada and could have deployed effective measures to stop it, given that the car would have been moving at high speed.

In this connection, it is perhaps relevant to refer to a Judgment of MacDermott J in a case of Donaghy v Ministry of Defence the material portion of which is quoted in the Lynch case (at page 232) which is contained in the Annexe to the Government's Observations. In the Donaghy case, a similar argument was advanced, namely, that other means to stop the car apart from firing were available to the army at a checkpoint such as, for instance, using radio communication to seal an area. MacDermott J rejected that argument. In doing so, he said this:

"I have considered these various points - in my view if one is dealing with an offender or suspected offender who may have been involved in terrorism immediate action is necessary. By the time reinforcements had been sought and put into position the vehicle could have been anywhere. In the circumstances the only practical option was to do nothing or use the only available weapon - the SLR rifle."

There was, in short, as the Trial Judge found, no effective way of apprehending these reasonably suspected terrorists in this car other than by opening fire at the driver as the soldiers did.

11. In its fourth question, the Commission asks whether it can in any event be regarded as "absolutely necessary" to use lethal force to stop a car of suspected terrorists who are not suspected of having committed any actual offence of violence or of being about to commit a specific act of violence.

In our submission, this is not a question which can be answered in the abstract. Regard must be had to the particular circumstances of the individual case.

But it cannot be right (we submit) that lethal force can <u>never</u> be justified under Article 2 unless a specific act of violence was suspected in the sense of a particular, identifiable offence of violence.

Let us suppose that a member of the security forces observes a person whom he reasonably believes to be a terrorist during the hours of darkness in an area of Belfast where he would not normally expect to be found.

Let us further suppose that he sees that person don a mask and make ready to commit a terrorist offence.

The precise nature of the terrorist atrocity is not known. It may be the assassination of a member of the security forces. It may be the planting of a bomb or the setting up of an ambush.

If that person is called upon to stop and if the security forces seek to arrest him and if he seeks to evade arrest, can it be right that they may not use force - even lethal force - to prevent his deadly mission, if he cannot otherwise be stopped, solely because they are unable to be sure of the particular offence which he intends to commit.

Subject to that point, the question whether the use of force can be justified must depend on all the circumstances of the individual case.

Those circumstances will include such factors as:

(a) the immediacy and seriousness of the threat posed by the persons concerned if they are permitted to escape;

(b) the likelihood of those persons engaging in acts of violence if they remain at liberty; and

(c) the known or suspected propensity of the persons concerned.

May I illustrate the point by looking at two hypothetical situations?

In the first example a criminal who is not a terrorist is observed in a car. Police officers wish to arrest him. They suspect that he has been involved in a crime of violence. He has a history of violent crime. It is believed that if he avoids arrest he will commit further offences of violence. The police try to stop his car and arrest him but he refuses to obey their signals and drives off. A common, even everyday, occurrence, in many countries.

accept that, in those circumstances, the use of lethal force to effect the arrest of the suspect would be difficult to justify.

By way of contrast, let us consider a second example.

Security forces observe a car which they reasonably believe to contain terrorists, who belong to a particular paramilitary organisation.

They know that that organisation proclaims the right to use violence to achieve its aims. The organisation and its adherents have displayed their commitment to violence by an unremitting campaign of terrorist atrocity over many years. It is, therefore, highly probable that those terrorists will continue to commit offences of violence.

Against that background - and with that knowledge - the security forces attempt to stop the car.

For the purposes of the example let us suppose that their attempt is met with ferocious resistance which serves only to enhance and fortify the belief of the soldiers that these are indeed dangerous terrorists.

In those circumstances, can it really be suggested that the security forces would never be justified in using force - even lethal force - to effect their arrest?

We submit that these two examples are illuminating in highlighting the essential difference between terrorist and non-terrorist crime.

A criminal who is not a terrorist but who has habitually engaged in violent crime is an obvious candidate for suspicion that he will repeat his offences of violence.

but a terrorist who is committed to violence, who is a member of an organisation whose primary weapon is violence, an organisation which has inflicted on a community an unrelenting campaign of violence, is no mere candidate for suspicion that he will engage in offences of violence. His raison d'etre - and that of his organisation - is violence.

That is why we submit that **all** the circumstances of each case must be assessed in addressing the question whether it is "absolutely necessary" to use lethal force to stop a car of suspected terrorists.

Even though they may not be suspected of actual offences of violence or of being about to commit a specific act of violence, if they are reasonably believed to belong to an organisation whose entire ethos is founded on violence - violence of the most cruel and ruthless kind - and if they combine that attribute with a vicious and determined attempt to avoid arrest then, in our submission, it must **surely** be open to the security forces to effect their arrest by lethal force if ultimately necessary.

12. In its decision on the admissibility in the Stewart case, the Commission emphasised the need to have regard to all the circumstances of the case in dealing with Article 2 of the Convention. This is equally important in Domestic Law where one must determine whether the use of force was no more than was "reasonable in the circumstances in the prevention of crime". This is emphasised in the speech of Lord Diplock in the Attorney-General's Reference where the imminence and gravity of the threat posed by the suspected terrorists if permitted to escape were clearly regarded by him as being highly material considerations.

It is, therefore, our strong submission that in the particular circumstances of the present case, the use of lethal force was justifiable not only under the 1967 Act but also under Article 2 of the Convention.

In its final question, the Commission asks about the Army Instructions for opening fire in Northern Ireland which are contained in what is known as the "Yellow Card". In particular, it has asked whether the instructions contained in the Card gave the soldiers adequate guidance as to the use of force in situations such as that arising in the present case.

Copies of the Yellow Card in force at the relevant time have been provided to the Commission as requested. The Commission has also been supplied with copies of the Pink Card which contains instructions for the guidance of soldiers when operating vehicle checkpoints.

Of course, these are not the only instructions which soldiers receive. They undergo considerable training in the manning of checkpoints and the firing of weapons. Against the background of that training, we strongly submit that the two cards read in conjunction provide adequate guidance as to the use of force in situations such as that with which these soldiers were faced.

On this topic, I rely on two points in particular. First, soldiers are clearly instructed in the Pink Card that they are not to fire on a vehicle or its occupants simply because it refuses to stop or avoids the checkpoint. They are instructed that the only circumstances in which they are entitled to open fire are those set out in the Yellow Card.

In paragraph 5 of the Yellow Card itself, soldiers are instructed that they may only open fire against a person in two events. The first event alone is material in this case. The guidance contained in these instructions could not be clearer or more specific. A soldier may only open fire if a person "is committing or about to commit an act likely to endanger life and there is no other way to prevent the danger". Three examples of acts where life could be endangered are then given, dependent always on the circumstances.

The second point is this. In the domestic proceedings, one of the central complaints made by the Plaintiffs was that the Army Authorities were negligent in giving inadequate instructions to the soldiers concerning the operation of checkpoints. As the Commission will see from pages 25-26 of the Judgment of Carswell J the soldiers were not only cross examined about the instructions contained in the Card but counsel for the plaintiffs made it clear that he was not attacking the drafting of the instructions. Rather, his complaint was that the soldiers should have received further instructions specifically directed to the operation of checkpoints. Of course, we know that soldiers do receive specific directions through the Pink Card. In particular, however, it was asserted on behalf of the plaintiffs that instructions should be given which would enable soldiers to identify different types of motorists who failed to stop at a checkpoint. The Trial Judge, having heard the evidence and the submissions made on it, rejected this complaint in terms. He said at page 26:

> "On the evidence before me I should not be prepared to hold that the Army Authorities were at fault in the giving of instructions to the soldiers. They clearly were trained and experienced in the operation of checkpoints, and I do not consider that it has been shown that they should have received more specific instructions than those contained in the Yellow Card."

Once again, it is our strong submission that very considerable weight should be given to this finding of the Trial Judge. It was made with the benefit of evidence and full submission and we submit that the Commission should be very slow indeed to conclude that the instructions given to the soldiers were inadequate.

The submission is further reinforced by the fact that in the Court of Appeal the plaintiffs raised this argument again. It was again claimed that instructions should have been given to soldiers to enable them to distinguish joyriders from

errorists. The Court of Appeal had no hesitation in rejecting this argument. It is noted in its Judgment that the Court invited the plaintiffs during the hearing to set out the precautions which they suggested ought to have been taken. That invitation was made because no evidence had been given at the trial on behalf of the plaintiffs of any such precautions. Despite that express request by the Court, the plaintiffs were unable to make a single suggestion in reply.

If an experienced Trial Judge in Northern Ireland considered that no more specific instructions than those contained in the Yellow Card could be given and the Court of Appeal was unable to think of any precautions which might have been taken, it is submitted that the Commission should experience no difficulty in accepting the adequacy of the guidance and instructions given to soldiers in the use of force in situations such as that which arose in the present case.