

SMYTH EXTRADITION: OUTLINE OF EVIDENCE BY ARMY WITNESSAIM OF EVIDENCE

- To assist to rebut the judge's presumptions that:

"Catholic Irish nationals accused or found guilty of offenses against members of the security forces or prison officials are subject systematically to retaliatory harm, physical intimidation and potential death in Northern Ireland."

and that:

"Members of the security forces in Northern Ireland either participate directly or tacitly endorse these actions."

In order to achieve this aim, it is necessary to demonstrate that the Army is a disciplined and well-trained force, properly accountable to Parliament and the law, operating impartially, with restraint and sensitivity, within the law, in support of, and to the tasking of, the RUC.

Secondary aim

- To show terrorist organisations in their true light, and to undermine their pretensions to be an "Army", or to command general support in their community.

Description of current responsibilities/CV

Responsible to GOC for conduct of military operations in support of the RUC. Direct command of all military units operating in support of RUC.

In relation to Security Policy, subject to direction from Chief Constable and SSNI. Meet DCC Ops at least weekly to discuss operational policy. In relation to military aspects of support to RUC, GOC answerable to CGS and through him to S of S Defence.

Previous experience includes command of 1 STAFFORDS in NI (198?), Commander of Army brigade in NI with responsibility for Army operations in Belfast and East of Province 1986-87, RCDS 1988. [Any areas not for disclosure?]

Nature of terrorist attacks.

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Nature of terrorist attacks such as to require Army to act in support of police to enable them to carry out normal policing duties. eg attacks on police stations with VBIEDs, home made mortars; attacks on police vehicles with landmines, off route mines, HMG; shooting and grenade attacks on RUC on foot, and off duty.

Role of Army in NI.

Police therefore need Army support, both in order to carry out normal policing duties and to deal specifically with terrorist crime.

Army has specific military skills which are appropriate to task - eg providing protection to police officers so that they can carry out normal policing duties; carrying out searches for terrorist explosives etc; making safe terrorist explosive devices.

In addition, Army has resources which police need; eg manpower to supplement police in carrying out tasks such as VCPs; helicopters to allow movement of policemen into stations in areas of high terrorist threat where routine road movement not practicable.

Role of Army is to support RUC in deterring terrorist attacks, providing reassurance to community generally, and achieving reduction in terrorist capability through arrests, seizure of terrorist equipment.

RUC primacy.

Army works in very close support of police, but with police clearly in the lead. Police therefore direct what tasks are to be carried out; Army decide how tasks allocated to it will be undertaken, and with what military resources. Army does not operate to its own agenda.

All Army's operations carried out in order to meet requirements set by RUC. Army's tasks agreed in advance by RUC and, in majority of cases, operations carried out jointly with RUC, especially where there is likely to be contact with the public - eg VCPs, house searches.

Accountability

Police primacy is consistent with the principle that terrorism is dealt with under the criminal law. Where there are grounds for doing so, terrorists are arrested, charged, brought before the courts and either convicted or acquitted. Equally, every soldier remains accountable to the law, both on and off duty, in the same way as every other citizen of the UK.

In addition to their accountability to the law, military commanders are subject to political control; consequently, through the SSNI and the Defence Secretary, there is accountability to Parliament for the conduct of military operations in support of the RUC in NI.

Organisation.

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Organisation of Army reflects role to support police. Areas of responsibility of three Army brigades conform to police regions. At lower levels, area of responsibility of Army battalions conforms to police division or subdivision. At all levels of command, there is constant liaison between Army and police, and Army acts to local police tasking.

Army operations

Nature of operations is selective eg

- in many parts of NI no routine patrolling by Army because low level of terrorist threat means that police can operate without Army support.

- occupied houses searched only on RUC tasking and authority of commissioned military officer and where there is "reasonable suspicion".

- persons arrested only where there is reasonable suspicion of an offence (planned arrests carried out by RUC).

To illustrate selective nature of operations, statistics show very small number of arrests made by Army as opposed to police, limited number of house searches carried out by Army on behalf of RUC.

Operations include:

- vehicle check points; police take lead in dealing with public when possible; aim is to deter and disrupt movement of terrorists and their arms and ammunition; such checks have led to the recovery of arms and ammunition, the prevention of VBIED attacks, and the arrest of terrorists - ie they help to save lives. [Recent examples?]

- providing military escorts in vehicles or on foot to allow normal police duties to be carried out throughout NI;

- searches of property or vehicles for terrorist munitions etc;

- manning observation posts in areas of high terrorist threat;

- making safe terrorist explosive devices.

Operational environment

Terrorists are ordinary people for most of the time; only committing terrorist offences for which can be arrested for very small proportion of the time. Not an organised or recognisable formed "army".

Soldiers required to operate in highly complex environment, with continual and unpredictable threat. Attacks may occur at any time and take a wide variety of forms:

- mortar attack against Army base;

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- VBIED attack against Army base, police station or shopping centre;
- CWIED or RCIED attack against vehicle or foot patrol;
- sniper attack against foot patrol.
- "coffee jar" bomb thrown at foot patrol.

Often these attacks endanger civilians and result in deaths and injury to civilians, as well as destruction of civilian property; in all cases, both Protestants and Catholics are at risk.

Attacks occur with no warning, in an otherwise normal street in a town or village, with ordinary members of the public also present. One of the terrorists' primary aims is to escape safely after an attack. Even when an attack occurs, a soldier will only rarely be in a position where it is both practicable and lawful for him to open fire against a terrorist, without the risk of killing or injuring innocent members of the public.

[To illustrate level of restraint and discipline of soldiers: statistics for number of soldiers killed/injured v terrorists killed; number of attacks on soldiers v number of times soldiers have opened/returned fire.]

#### Training.

Prior to deployment to NI, units carry out intensive training. For key personnel, training begins 6 months before deployment. Whole unit concentrates exclusively on training for about 4 months before deployment to NI. Training covers all aspects of NI operations, and includes in particular soldiers' powers under the law and rules of engagement for opening fire. RUC play key part in pre-NI training for soldiers. Training also covers relations with the local community. In addition, many officers and senior NCOs have served on several previous tours in NI, and have considerable experience in operating there in support of the RUC.

#### Relations with the community

The Army's attitude towards the public is based on the fact that the vast majority of both the unionist and nationalist communities are law abiding people, and are completely opposed to terrorism in all its forms. The Army recognises the importance of maintaining and, if possible, improving public support and acceptance. Considerable attention is therefore given to ensuring that law abiding citizens are subject to the minimum inconvenience, consistent with ensuring security. For example, fibre optic equipment is used as much as possible in house searches, in order to minimise damage to property resulting from the need to search for terrorist munitions. Soldiers are required to be polite and impartial at all times when dealing with the public, and this aspect of their duties is given particular emphasis in training.

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Complaints procedures.

As part of efforts to maintain good relations with the community, Army has system for receiving and investigating complaints from the public. Military patrols have a patrol identification card which is given to any member of the public who wishes to make a complaint. Complaints may be made to the RUC or direct to the Army. Where the allegation is of a criminal nature, it is investigated by the RUC; a criminal prosecution may follow. Where the complaint is non-criminal, it is investigated by the Army. Where a soldier is found to have acted improperly (but not unlawfully), he may be subject to sanctions under military discipline. All complaints are fully investigated and the complainant is informed of the outcome. In 1992 the Government appointed an Independent Assessor of Military Complaints Procedures, who is responsible for examining and reviewing the Army's system for dealing with non-criminal complaints and makes an annual report to the SSNI. Where damage results from military operations, there are effective arrangements for providing fair and prompt compensation to those affected. [Statistics/examples.]

Operations under the law.

Soldiers required to operate in accordance with the law at all times. If they break the law, they are liable to prosecution in the courts, in the same way as anyone else. Soldiers have no special position under the law. In particular they are subject to the normal criminal law on the use of force, including lethal force. As well as being subject to the law of the land, soldiers are also subject to military discipline at all times.

Soldiers have additional powers under EPA, in order to enable them to carry out duties in support of the police; these include powers of arrest; stop and search vehicles and persons; search of property for explosives etc. These powers are strictly limited; eg arrested persons must be handed over to police as soon as possible, and may be detained no more than 4 hours; soldiers have no power to question arrested persons, and it is policy for them not to do so; reasonable force may be used in exercise of most powers, but failure to do so may lead to prosecution for assault; search of dwelling houses requires reasonable suspicion and authority of officer.

Use of force: ROE

The law provides that any person "may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or in assisting in the lawful arrest of offenders or suspected offenders.." The law applies to soldiers just as it applies to any other citizen. This applies equally to use of lethal force. If soldiers use excessive force, they are liable to prosecution. Any shooting incident resulting in death or injury is automatically investigated by RUC, and file submitted to independent DPP.

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The armed forces in NI are therefore issued with specific guidance on opening fire, which is designed to help them to keep within the law. These rules of engagement - "Yellow Card" - apply to all soldiers. The Yellow Card states, for example, that firearms are a last resort and may be used only when life is in danger and there is no other way of preventing the danger; if it is essential to open fire, only aimed shots should be fired, and no more rounds should be fired than is necessary; and, when practicable, a warning should be given before opening fire. There is of course no requirement under the law or the "Yellow Card" that soldiers must shoot second, and thereby endanger their own lives and those of others whom it is their duty to protect.

Following the Yellow Card does not in itself provide any immunity from prosecution, nor does a breach of it necessarily constitute a breach of the law. But whenever a soldier opens fire, he may subsequently be called upon to account for his actions in court. It will then be necessary to show that what he did was reasonable in all the circumstances of the particular case, and that the degree of force used was reasonable. In every case, it will be for the court to decide these issues.

Army well aware of dangers of opening fire when not justified. As a measure of seriousness with which this is treated, any unauthorised opening fire, even if not resulting in criminal prosecution and even if no injury results, is likely to lead to disciplinary action for "negligent discharge".

Currently [19000] soldiers serving in NI. On average day [ ] soldiers likely to be armed for duties. Against this background, number of occasions when soldiers open fire is very low indeed. Number of occasions when soldiers open fire and cause death or injury is much lower [statistics].

#### "Shoot to kill"

There is not and has not been a policy of "shoot to kill", ie of deliberately shooting terrorists in circumstances where they could be arrested without loss of life. All soldiers are required at all times to act both according to the law and their rules of engagement, which make clear that they should open fire only as a last resort. All soldiers know that, if they open fire contrary to the law and their rules of engagement, they run the risk of prosecution. They know that they may have to account for their actions before a court of law. In relation to incidents in the last few years, one soldier has been convicted of murder (joyriders - Clegg), and four others are currently remanded in [military] custody facing charges of murder (Caraher and McBride).

In a number of cases, soldiers have shot terrorists dead in circumstances which have caused controversy because it has been alleged that the terrorists should have been arrested. If this were the case, it would be both illegal and contrary to policy, which is to arrest terrorists, so that they can be brought before the courts in accordance with the criminal law. However, in a small number of cases when dealing with determined and armed terrorists, the actions of the terrorists have given soldiers no choice but to open or return fire in order to protect their own lives or those of others. In a very small

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number of incidents, terrorists have been shot dead [statistics for number of incidents/dead terrorists over last 10 years]. In some of these cases, it has also been possible to arrest terrorists when they no longer posed a threat to life. In very many more cases, terrorists have been arrested without the need to open fire at all.

Alleged collusion with "loyalists".

The Army impartially supports the RUC in dealing with terrorism from whichever community it originates. The Army fully recognises the threat which both republican and "loyalist" terrorism poses to the entire community. The Army also recognises that attacks by "loyalists" on Roman Catholics encourage support for republican terrorists, and provoke republican terrorists to mount attacks on the security forces, leading to the deaths of soldiers and policemen.

However, the pattern of Army operations in support of the RUC in dealing with republican terrorism is different from that in relation to "loyalist" terrorism. Republican terrorists continually seek to murder policemen as they carry out their normal duties, and the Army is therefore required to provide routine support to the RUC in areas where republican terrorists are active. By contrast, for the most part, "loyalist" terrorists do not directly attack the police, while the communities in which "loyalist" terrorists operate are generally supportive of law and order and accept the security forces; consequently the police have been able to operate freely against "loyalist" terrorists without the need for protection from the armed forces. Equally, the Army does not routinely operate in nationalist areas such as parts of North Antrim and South Down where republican terrorists are not normally active. At the same time, the Army provides support wherever the RUC need it, in dealing with both terrorism and public disorder by "loyalists".

It is not just a matter of policy but of reality that the Army acts impartially against "loyalist" as well as republican terrorists. Earlier this year, while defusing a "loyalist" IED targeted against a Roman Catholic, an ATO received injuries. Also this year, a "loyalist" under car booby trap explosive device was spotted by an alert soldier in West Belfast, which may well have saved the life of the owner, a [republican?].

[Allegations of collusion covered by RUC witness.] The Stevens inquiry found that collusion was "neither widespread nor institutionalised". The Army has implemented the recommendations made by Stevens to minimise the risks of collusion: [measures taken to protect montages and to improve screening arrangements etc].

UDR/R IRISH

UDR/R IRISH accused of being a "sectarian" force. When first set up, was approx 20% Catholic; number of Catholics rapidly reduced due to republican terrorist attacks, intimidation, and political pressures in nationalist community; PIRA set out to make UDR a sectarian force. Small number of Catholics have continued to serve in UDR/R IRISH; continue to seek to recruit more. [Statistics.]

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[Summary of UDR/R IRISH organisation and role.]

High threat to UDR/R IRISH - number of UDR/R IRISH murdered by republican terrorists; typical circumstances of murder - unarmed/off duty/at home/work/in front of wife, children etc.

Number of republicans shot by UDR/R IRISH; number of UDR/R IRISH convicted of murder in last 10 years. Confirms very high degree of restraint and ability to operate impartially.

Nelson case/Use of informers.

In supporting the RUC, the Army seeks to obtain information about terrorist organisations which will allow the RUC to arrest terrorists, and to save lives by preventing terrorist attacks. The Army is therefore authorised to use informers on behalf of the RUC in order to obtain such information. Such informers may be able to provide information about republican or "loyalist" terrorist organisations. The Army passes on to the RUC the information which it obtains in this way.

Informers and those who deal with them remain accountable to the law at all times; if they break the law, they are liable to prosecution. Brian Nelson was an Army agent who was convicted of a number of criminal offences in [January 1992]. Nelson's conviction is a matter of record, and the Army in no way condones those offences for which he was convicted. However, Nelson had also provided a great deal of information over a number of years which had enabled the RUC to take action to save the lives of a number of Roman Catholics.

ARMY WITNESS - AREAS NOT TO BE COVERED IN EVIDENCE

Sources, methods and structure of intelligence.  
Organisation, location, identity, training, operational methods, equipment of covert units.  
Specialist equipment - ECM, surveillance etc  
Information liable to facilitate terrorist attack on specific individuals or locations.

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