



***START of file***

Secretary

2 MARCH 1990

SECRET

ANGLO IRISH SECTION  
WEEKLY BRIEF

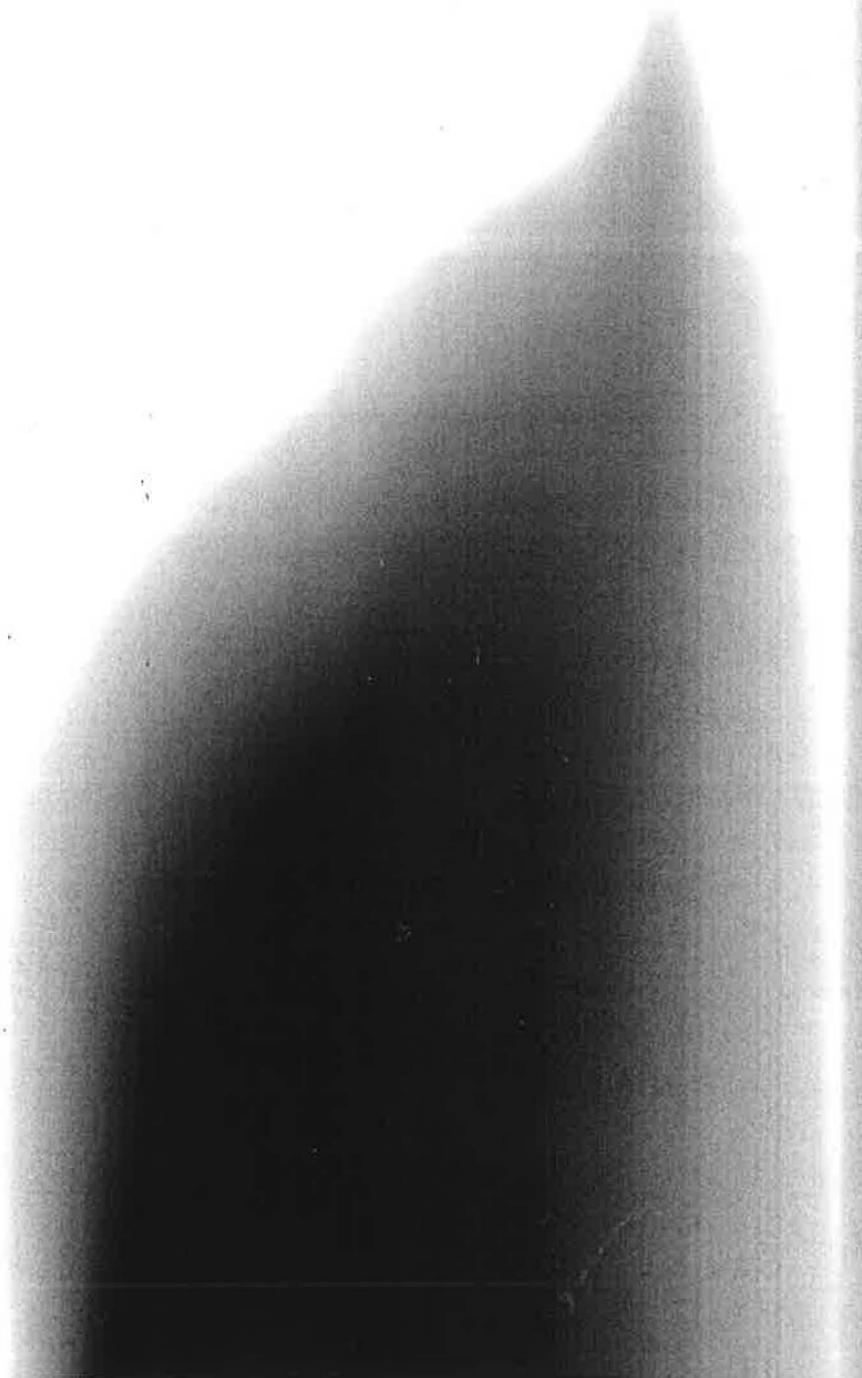


WEEK ENDING 2nd MARCH 1990



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Confidential

28 February 1990

Mr. Dermot Gallagher  
Assistant Secretary  
Anglo-Irish Division  
Department of Foreign Affairs

Dear Assistant Secretary

UDR/Panorama Programme

As you know, we have put the question of accompaniment of the UDR on the agenda for the Conference of 2 March in London. I have told Mr. Miles that our Minister is likely to use this heading to raise questions arising from the recent Panorama programme and the decision to issue plastic baton rounds to the UDR for an operation at Coalisland on 31 December 1989 (the operation involved a joint police/Army cordon around a find of weapons; three PBR guns were issued to specified, trained soldiers on this occasion in case of attack by New Year's Eve crowds; they were not used). The following may be helpful to you as a summary of a number of discussions which we have had here on these matters.

Irish Position

Without prejudice to our views on the use of PBRs which have had lethal results in Northern Ireland (14 fatalities, 7 of them children):

- We remain totally opposed to the issue of PBRs to the UDR.
- The issue of PBRs to the UDR at Coalisland has caused deep concern to us in particular because it may be seen as heralding a more widespread use of PBRs by the UDR than we understood from assurances of strict controls given at the Conference of 18 October.
- Granted that PBRs are essentially a weapon of crowd control, we fail to see how their issue to the UDR can be justified by the British Government in light of their own policy that the UDR should not be used in crowd control/riot situations.

- We believe the UDR should not be deployed in overwhelmingly nationalist areas such as Coalisland because confidence in the security authorities will be put at risk and situations of disturbance or riot may arise because of UDR presence.
  - If the policy of RUC accompaniment of the UDR were being adequately implemented on occasions where the UDR were likely to come into contact with the civilian population, there would be no need to provide PBR guns to the UDR for the protection purposes the British side say they are needed;
  - The additional controls which have been applied to the firing of PBRs by the UDR constitute a recognition of the longstanding poor relationship of the UDR with the nationalist community and indeed a recognition of the lower disciplinary standards achieved by the UDR compared to the regular Army and the RUC;
  - There will be serious controversy if PBRs are ever fired, and the chances must be, if they are issued, that they will be fired;
  - We are not impressed by the British argument that the decision to issue PBRs to the UDR should be understood in the context of their declining use; either PBRs are required for protection purposes or they are not; this British argument tends to confirm our view that PBRs were issued because it has been a point of resentment in the UDR that they have been denied them and because there is an inclination by the military authorities to deploy the UDR in nationalist areas;
  - Hermon's remark on the recent Panorama programme to the effect that whatever promise had been made at Hillsborough in 1985, he had not been given the resources to implement it, and had not attempted to do so, is further evidence of a breach of faith; it is intolerable that a public commitment given in a joint communique by the Taoiseach and Prime Minister on the occasion of the signing of an international Agreement of deep significance for Northern Ireland and the relations between our two countries should be treated so cavalierly by the chief police officer in Northern Ireland;
- The question of accompaniment was raised at virtually every meeting of the Anglo-Irish Conference since 1985 and we were assured repeatedly that efforts were being made to implement the policy; our Minister would want to be assured by the Secretary of State that urgent and serious efforts were now being made to make progress on this issue; (Note: A note which marks some advance will be before the Conference but the British side have been dragging their feet on a meeting of officials);

- Brigadier Ritchie's comment on Panorama that the UDR is briefed only on republican suspects can only confirm the nationalist perception of the UDR as a sectarian force; it has also aroused fear because the perceived basis for the comment is that the UDR cannot be trusted with information on loyalist paramilitaries; the British Government are seen as concerned that loyalists should not be tipped off but, unfortunately, they are not seen to be so concerned that information on republican suspects may be passed to loyalist paramilitaries; the appearance of a former UDR soldier on the programme expressing the view that the UDR and UVF are part of the same coin lent support to this view;
- The British side have been reluctant to provide much detail of the operation at Coalisland and our Minister may enquire further. They have told us only that three trucks of UDR soldiers were involved in a police/Army cordon around a find of arms, that each truck may have contained 6-12 UDR soldiers (they did not specify), that PBR guns were issued to a specific, trained soldier in each truck and that the UDR group was commanded at officer level (they would not specify rank);
- Our Minister may inquire as to the current position on the screening measures for the UDR introduced at the end of last year. (We noted that we had raised cases where the revetting process should have been applied but appeared not to have been).

#### British Position

The British side have reacted to our views with impatience and some emotion ("we thought we had dealt with all this") although they themselves make the point that it is important that our differences should be aired in the Secretariat. They have made the following points in reply:

- The UDR is an indispensable and integral part of the support provided by the British Army to the civil power; there is neither scope for radical change in the UDR's role and deployment nor any need for a comprehensive review of its basis;
- The decision to issue PBRs was an operational decision taken for operational reasons; it will not be rescinded;
- It was taken against the background of decrease in the use of PBRs especially by the Army (the total fired last year was 937 which is the lowest since 1983);
- PBRs were subject to strict accountability; they had to be signed for by the soldier to whom they were issued; they might be fired only on the instructions of the Patrol Commander; and a report was submitted to Army headquarters following each firing incident;

- In the case of of the UDR, PBR guns would only be deployed on specific patrols on the authority - which could not be delegated - of the Battalion Commanding Officer; the PBR gun would be issued to a specific trained soldier and would only be loaded or fired on the direct orders of the patrol Commander who must also nominate the target;
- In the case of the firing of a PBR by the UDR, there would be a personal debriefing by the Battalion Operations Officer and written statements would have to be made; Mr. Brooke had given a personal commitment to see what could be done about consultation with the RUC in regard to the issue of PBRs to a UDR patrol. (We have been informed that in the case of Coalisland, the RUC were consulted and gave agreement);
- The British side were concerned last October and still are concerned that our side took an overly sanguine view of the effect of the additional controls for the UDR, i.e., the view that their combined effect would mean that, in practice, PBRs would not be issued to UDR patrols;
- The British side reject our view that since the PBR gun is a crowd control weapon, its issue to the UDR is inconsistent with British policy not to deploy the regiment for crowd control or situations of riot or disturbance; in relation to Coalisland, the British side see deployment of the UDR on that occasion as justified because the object of the exercise was to protect an arms find, not to control a riot or disturbance; they accept that disturbance could have arisen but the purpose of issuing the PBRs was not to control such a disturbance, rather it was to provide a means of self-protection and an alternative to the use of live ammunition;
- Brigadier Ritchie accepts he was "wrongfooted" on Panorama; the British side believe it was the object of the exercise to "wrongfoot" him and are severely critical of the motives behind the programme. In response to our query as to whether there was any element in Ritchie's other remarks (not broadcast) which would show a different perspective, the British side have said only that the Chief Constable has no difficulty in explaining the basis of policy for use of the UDR and may take the opportunity to do so at the Conference.

Ministers here have been made personally aware of our concern about the Panorama programme and the Coalisland incident. They would prefer that any discussion of these matters should take place in the restricted session. We have insisted, however, that the item on accompaniment must be maintained on the agenda of the plenary.

Yours sincerely,

Declan O' Donovan  
Joint Secretary

REVIEW OF EMERGENCY PROVISIONS ACT IN NORTHERN IRELAND

MEETING WITH LORD COLVILLE, 26 FEBRUARY 1990 IN SECRETARIAT

Lord Colville was accompanied by his Private Secretary, Mr. Robert West, and the Irish side was led by the Joint Secretary, Mr. O'Donovan, accompanied by Mr. N. Ryan and Mr. A. Harwood of the Secretariat and Mr. M. Collins and Mr. J. Dillon of the Department. Lord Colville has been appointed by the Secretary of State for Northern Ireland to conduct a special review of the Emergency Provisions Acts of 1978 and 1987. His full terms of reference are:

"to review the operation of the Northern Ireland (Emergency Provisions) Acts 1978 and 1987, and to consider -

- (a) whether any of these temporary provisions can safely be allowed to lapse in 1990;

and taking into account the need to ensure that there are both effective powers to deal with terrorist violence and adequate safeguards for the individual,

- (b) what changes to existing provisions should be made when the time comes to replace the two Acts;

and

- (c) whether it would be appropriate to consolidate into new legislation applying only to Northern Ireland any of the provisions relating to Northern Ireland in the PTA 1989 (either in their present or some modified form);

and to report".

Opening the meeting, Mr. O'Donovan welcomed Lord Colville to the Secretariat for discussion of his review of the Emergency Provisions Acts in Northern Ireland. He said the Irish side would let him have an aide-memoire later to assist his consideration of our views. Lord Colville said he would welcome

28 February 1990

Mr. Dermot Gallagher  
Assistant Secretary  
Anglo-Irish Division  
Department of Foreign Affairs

Dear Assistant Secretary

Meeting with Lord Colville on Emergency Legislation  
in Northern Ireland

I enclose a note prepared by Mr. Harwood on our meeting with Lord Colville, who is conducting a review of the EPA, in the Secretariat on the 26th inst.

We pressed Colville fairly hard on a number of points - the political desirability of moving away from emergency laws towards the ordinary criminal law as quickly as possible, reducing the detention period from 7 days to 4 (at max) (there was some argument as to whether this was within his terms of reference because the legal provision is in the PTA), the introduction of three-judge Diplock courts, changing the rules of confession evidence so as to eliminate the positive encouragement there is to the police to use oppression and inducements, and the introduction of tape and video recording of police interrogations.

Lord Colville was, as usual, helpful in his general comments but he left us with the clear impression that it was unlikely that he would recommend any of the more important changes we urged on him.

We promised Lord Colville a paper setting out our views in more detail and he asked us to let him have it within a week. I know that Mr. Collins and Mr. Dillon have been working on a draft - we have given some views - and it would be appreciated if we could have this as soon as possible.

Yours/sincerely



Noel Ryan  
Assistant Secretary

this at an early date as he had to finish his review by Easter. After consultation with the members of the Department present, Mr. O'Donovan said we hoped to let him have an aide-memoire by the end of next week.

Mr. O'Donovan began with three general points in relation to Lord Colville's terms of reference. First, the emergency provisions and consolidated measures were contained in such a variety of different pieces of legislation that it was difficult even for experts to keep track. On that basis alone there was need for consolidation. Lord Colville agreed with the general point and said that there were some specific provisions which he was considering, such as sections 14 and 21 and schedules 3, 4 and 7. He said these were real candidates for inclusion in any consolidating Act.

Second, his terms of reference in regard to consolidation into new legislation applying only to Northern Ireland any of the provisions in the PTA 1989 (either in their present or some modified form) seemed to give him some leeway to make recommendations in regard to powers, notably powers of detention in the PTA. (Lord Colville indicated that he did not take this view of his terms of reference. He did however engage in some discussion- see below).

Third, Mr. O'Donovan said that, although no society wanted emergency powers, where they were introduced there was a tendency for the police to use them in situations where ordinary legislation would suffice. Emergency legislation tended to be used, simply because it was there and the necessity to have it must therefore be rigorously examined. Lord Colville agreed and said that he was trying to prevent this type of situation from happening. Mr. O'Donovan said that when the EPA was first introduced, the general law might have been thought to have been deficient in some respects to meet the threat from terrorism. Since the enactment of PACE, however, the ordinary law had 'caught up' and it was now time to take a very close look at the emergency powers in the context of the PACE Act. For instance, if PACE allows for a person to be detained for 96 hours, is the 7-day provision in the PTA really necessary? Lord Colville repeated that his terms of reference confined him to the EPA and he could not, therefore, do anything about the detention period since this was in the PTA. He asked, however, if the Irish side would be happy with a reduction from 7 to 5 days. Mr. O'Donovan replied that 4 days would be the more appropriate target in the light of International norms and Strasbourg's decision in the Brogan case. He said that reducing the period seemed to be a less difficult proposition for the British system than bringing a judge into the

process, Mr. Ryan said that the Irish side were not convinced of the need for the additional three days. Experience in the South indicated that most suspects were not amenable to persuasion no matter how long they were detained. Lord Colville agreed on this point but said that nowadays the longer period was needed more for 'forensics' than to obtain confessions. Mr. Ryan said that the police can normally manage with four days detention in serious non-terrorist cases where forensics played an important role, i.e. rape/murders. What he would call organised ordinary crime was not much different from the terrorist kind, yet the police manage with much shorter periods of detention. The maximum period allowed in the Offences against the State Act in the South was 48 hours.

Mr. Ryan said there were three broad headings under which he thought it might be helpful to look at the provisions of the EPA: (1) powers to stop, search, arrest and detain, (2) bail arrangements, and (3) court, mode of trial, and trial procedures including rules of evidence.

#### Arrest Powers

Mr. Ryan said that PACE had wide provisions in respect of this category and wondered to what extent more were required. A comparison of PACE and EPA powers under this heading showed that they were not all that different. He asked whether PACE could not adequately cater for arrest powers and powers to enter and search, covered by section 11 of the EPA. Lord Colville said he would take a look at this. Mr. Ryan said that the same argument would apply to sections 13 and 14 of the EPA. The latter should be restricted to serious arrestable offences as defined by the PACE Order. Lord Colville said that without the provisions of section 14 the Army would only have the power of an ordinary citizen. In reply to Mr. O'Donovan's query as to the frequency with which section 14 was invoked, Lord Colville replied that it was used quite often in respect of areas in which the police could not readily go. Mr. O'Donovan asked if this were the main justification for the provision - was it not possible under ordinary powers for soldiers to make arrests? Lord Colville said that without special provisions, soldiers only had an ordinary citizen's power of arrest. On the question of applying the PACE provisions to

the Army, the problem was essentially one of training - it would be difficult to get soldiers to remember exactly what constituted a serious arrestable offence which was how the PACE law was framed.

Mr. O'Donovan suggested that section 11 (arrest and enter and search) could be repealed since the PACE provisions appeared wide enough to cater for the powers therein. Lord Colville disagreed, saying that section 19 of PACE was limited to serious arrestable offences and did not cover a person suspected of being a terrorist. The police could be accused of wrongful imprisonment if they relied exclusively on section 19 of PACE.

With regard to section 13, Mr. O'Donovan recalled that Lord Colville had recommended that this power should lapse in his 1988 Annual Report. Lord Colville said he had changed his mind on this as its repeal would create difficulties and had indicated this in his 1989 report just submitted. The police could not arrest people under anything but section 13 without a warrant.

#### Bail

On the question of bail, Mr. Dillon adverted to the desirability of providing for a right to appeal against a refusal to grant bail. Lord Colville said that there was no-one to appeal to - it would not make sense to have an Appeal Court judge sitting again to hear an appeal from a judge of the High Court. Mr. O'Donovan said that the absence of a right of appeal was a curiosity, but he conceded that there was not a significant level of complaint against High Court judges' decisions in bail cases. Mr. Ryan observed that the 1978 Act had a provision which safeguarded "any right of appeal" that existed but that had been taken out by the 1987 Act. Lord Colville thought that there had never been a right of appeal. He thought that the issue did not warrant a hearing before a three-judge Appeal Court.

Mr. Dillon noted that, whereas the Act does not allow for bail applications to be heard by Resident Magistrates in the case of civilians, a Resident Magistrate is the judicial authority for bail applications for members of the security forces and he asked the reason for this distinction. Lord Colville said that a Resident Magistrate would not need to be protected from members of the security forces. On the other hand, a Magistrate might feel vulnerable in cases where he is dealing with local terrorism.

Mr. Dillon said that Irish legislation expressly forbade the judge to refuse bail on the basis that the accused was likely to commit further offences while on bail but this was not the case with the EPA. Lord Colville said that he was amazed at the grounds on which bail is granted in Northern Ireland - the situation in England was much more stringent. Mr. O'Donovan said the Irish views were offered in the context of bail practice in the South which could be considered more liberal than in Northern Ireland.

#### Mode of Trial

Moving on to the mode of trial for scheduled offences (section 7), Mr. O'Donovan recalled that the Irish side had given Lord Colville a paper on the issue of three-judge courts in December. Lord Colville said that he had read it and found it helpful but it was his view that nothing would be changed for the moment. He would go into the issues involved to some extent in the next report but he did not consider it worthwhile running it fully again. In any case, it had been comprehensively dealt with in the Baker Report. The real problem (i.e. with three judges) was not the manpower issue (i.e. with three judges) but the question of written judgements which would reveal dissension among the judges. Mr. Ryan said that the view in Northern Ireland seemed to be that if you had a dissenting judgement word of it would get out and this would undermine the majority judgement. This problem had never arisen in the South where there was a prohibition on disclosing any dissenting judgement. Mr. O'Donovan said that the basic reason for using three judges was to correct any, perhaps inadvertent, prejudices on the part of a single judge. The Irish side, he added, did not accept the manning argument - we had got over this by using one senior judge (High Court) and one each from the Circuit Court and the District Court and a similar system could operate in Northern Ireland.

#### Rules of evidence

Turning to section 8 (admission of confession evidence), Mr. Ryan said that the differences between PACE and the EPA were very serious. Confessions that would be ruled inadmissible under PACE could be given in evidence under the EPA. Lord Colville said that this was precisely what was intended. Mr. Ryan said that the rules positively encouraged the police to use oppression (falling short of torture) and inducements and, in the light of recent

happenings in England, there must be a serious risk of wrongful convictions arising because of confessions obtained in this manner. Reliability was the key concept in Southern legislation and also under PACE but not so in Northern Ireland under the EPA. Lord Colville said that he would be looking at this area again but stressed that he regarded section 8 as a key piece of legislation for the police in combatting terrorism. The judiciary were also, he thought, very keen on it.

#### Audio/Video-recording

Mr. Ryan asked if the point would ever be reached where audio and video-recordings would be used in the questioning of suspects. Lord Colville said he could imagine a scenario where a video without sound would be used but the authorities would never accept the use of sound tapes. He felt, however, that the video was definitely a runner. He indicated however that he had been persuaded by the police that the video camera must not make the detainee's face recognisable - a camera positioned over the head of the detainee could be the answer. Mr. Ryan pointed out that a soundless video would probably prevent physical ill-treatment but would not rule out verbal abuse and intimidation. Lord Colville repeated that he could not envisage the use of audio tapes as the arguments against them were too powerful. The Defence would insist on having them which could cause (intelligence) problems; and if they were edited they would be useless in Court.

#### Conclusion

As Lord Colville was due to leave for another pressing engagement, the meeting adjourned without considering the remaining sections of the Act. However, Mr. O'Donovan informed Lord Colville that the Irish views would be included in the aide-memoire and thanked him for coming to the Secretariat for what had been a useful discussion.



Andrew Harwood

Secretariat

27-02-20

CONFIDENTIAL

28 February, 1990.

Mr D. Gallagher,  
Assistant Secretary,  
Department of Foreign Affairs.

Dear Assistant Secretary,

Lord Colville: Review of the Emergency Provisions Acts

Mr Ryan has written to you enclosing a report of our meeting here with Lord Colville on Monday 26 February, 1990. The following are a few additional comments:

- I would not expect too much from the Review. Lord Colville has been assiduously tutored by the police and army during his stay here this month and has been subjected to relatively less pressure from persons likely to urge a liberal opinion on him. For example, the Bar Library has told him it has no views to offer.
- He was glad of his meeting with the SDLP last week but observed that Mr Mallon spoke little and that the discussion was a technical one with Mr Eugene Grant, Mr Rory McShane and Ms Angela Hegarty (he expressed no views on Mr Grant or Mr McShane but held Ms Hegarty in low esteem). He was much more taken with views which were vigorously expressed in Derry by both SDLP and Sinn Fein Councillors. It is worth noting that the views of the police, army and other authorities here are most likely to be balanced in his mind by the of views of political representatives and others with first hand experience of the operation of the emergency powers. In this respect, Lord Colville is grateful for the assistance we have given in arranging a personal meeting with Seamus Mallon.
- He has received or is about to receive submissions from the two Unionists parties.

- As previously reported, he would like to meet Cardinal O Fiaich who has not replied to his request for a meeting . He has, however, had a conversation with Bishop Cahal Daly whom he regarded as well briefed ("lots of notes"). He said he had not been invited to meet Bishop Edward Daly on this occasion, but expressed no particular wish to do so.

Our meeting with Lord Colville on Monday was cut a little short because of an engagement he had elsewhere. The provision of an aide memoire - which we have also provided on previous occasions - is therefore of more than usual importance.

It would desirable to ensure that past precedent is followed and that Lord Colville does not attribute views to us directly in his report. This point could be made in the aide memoire.

Yours sincerely,



Declan O'Donovan,  
Joint Secretary.



**No documents present in section 2**

**Niamh McDonnell, Senior Archivist, AGS,  
19 December 2020**



23. 2. 1990

To: Belfast

From: HQ

For: Joint Secretary

From: M. Collins

Subject: Plastic Baton Rounds/Coalisland

Ref: Your Confidential Telex of 20 February

As you know, from the very beginning we have objected strenuously to the decision to issue BRGs to the UDR - a decision which we have all along considered to be insensitive and ill-considered. We had assumed that the original decision was based on purely military considerations, though we have been unable to understand why, after 20 years when the UDR operated without plastic bullets, it should now be necessary to change the rules. It was clear to us that in arriving at this decision, little or no account could have been taken of the serious political implications of the decision. For this reason, we had understood the formula put forward by the Secretary of State at the Conference meeting of 18 October to represent a means whereby due weight was, now being given to the negative consequences of the earlier decision, which would now be effectively reversed without loss of face. The Coalisland incident suggests that the British Army are unwilling to be dissuaded from their earlier decision and that the NIO are now "testing the water" with this incident in Coalisland.

The response of the other side to the concerns we raised about the Coalisland incident is unsatisfactory on a number of fronts and we would not wish to leave the matter on this basis. We would be grateful therefore if you would raise the matter again drawing to their attention our further views which are:

The UDR should not be deployed in areas like Coalisland, which is almost 100 per cent nationalist.

You might refer to the agreed joint record of the Conference meeting of 18 October 1989 where in Paragraph 7, the British side indicated quite clearly that "there is no intention to deploy the

UDR on riot or crowd control duties". We are at a loss as to how this undertaking can be reconciled with the reasons given by them for the issue of BRGs in Coalisland - viz. - "It was anticipated that the soldiers might be attacked by revellers (there had been previous incidents)" - your telex O116C of 8 February 1990 refers.

We are concerned at the explanation given as to why the issue of BRGs had not been confined to the RUC who were present at the incident in Coalisland, and by the statement that "BRGs would not necessarily be restricted to the RUC in the case of an accompanied patrol . . . . and that it could happen that an accompanied UDR patrol would have a BRG assigned to one of its members rather than to the police accompaniment".

It is clear from the same joint record referred to above that the British side, in recognition of the obvious dangers inherent in issuing BRGs to a member of the UDR, built in a number of safeguards, additional to those which apply to members of the regular army. The understanding which we took away from that meeting of the Conference was, that given the number and level of additional safeguards, in practice BRGs would issue to UDR patrols rarely, if ever. Clearly the decision to issue three BRGs to three separate units of between 6 and 12 members of the UDR during the incident in Coalisland marks a serious and worrying development.

Many of the additional safeguards are centred on the patrol commander. With the type of small units deployed in the Coalisland operation, one must assume that the patrol commander for each of the three small patrols was no more than possibly a lance-corporal. It is hardly realistic to expect anyone to be reassured by "safeguards" exercised at that level: and particularly not in the case of the UDR.



Paper handed out in the  
Secretariat today.  
AA. 1/3/90

Appointments to public bodies in Northern Ireland

1. Paragraph 12 of the Review of the Working of the Conference states:

"The two Governments agree on the importance of the principle that public bodies in Northern Ireland should be so constituted as to enjoy the widest possible respect and acceptance throughout the community. Exchanges will continue on ways in which this objective can be furthered. The Irish Government will continue to put forward views and proposals on the role and composition of such bodies for consideration by the British side, which will be ready to consider what means may be available to remedy imbalances arising from the use by others of their existing nominating powers without due regard to fairness or balance".

The Irish side welcomed this language as signalling a declaration of intent by the British side to accelerate movement in the public appointments area. This paper outlines the Irish side's views on the urgency of proceeding with measures to give effect to the principle set out in the Review.

2. The Irish side is encouraged by a number of positive moves in this area by the British Government since the conclusion of the Review. In particular, we welcomed the decision by the British Government to reject the nominations by Belfast City Council of two Unionist Councillors for places on the Eastern Health and Social Services Board (replacing them with Alliance and SDLP Councillors) and the nomination by Craigavon District Council of one Unionist Councillor for the Southern Health and Social Services Board (replacing him with an SDLP Councillor). We also noted the issue of a letter on 3 August last by the NIO to all Government Departments advising them that the Association of Local Authorities of Northern Ireland (ALANI) was not regarded as

representative of all District Councils and should not be assumed to reflect the views of nationalist councillors. (The role of AlANI is a matter to which we had adverted in an earlier submission on the public appointments issue).

3. Notwithstanding these indications of some measure of progress, we continue to regard the present position on public appointments as far from satisfactory. The serious concern of nationalists about policy in this area was highlighted again recently by the controversy surrounding the appointment of the Chief Executive of Coleraine District Council to the Local Government Staff Commission. Given the Staff Commission's crucial role in monitoring employment practices in District Councils it seems to many nationalists extraordinary that the Chief Executive of Coleraine Council should be appointed to its Board; only a matter of weeks previously the Fair Employment Commission had adjudged Coleraine Council itself to be seriously discriminatory against Catholics in its own recruitment practices. We share the concern expressed by a number of SDLP representatives about the matter and regard it as a good illustration of the urgent need for reform in this area.
  
4. We reiterate our deep disappointment at the rate of success of our nominations from the nationalist community. According to our figures, we have proposed 62 nominations to the British side since the signing of the Agreement, only 8 of which were fully successful (i.e. where the Irish nominee was appointed to the position for which he/she had been nominated). We acknowledge that 15 other persons who were nominated by the Irish side received appointments other than those for which they were nominated; this is not, however, how the Irish side envisages the procedure operating - particularly since several of these appointments were to positions of lesser status than those for which the

individuals had been nominated by the Irish side. The credibility of the Irish Government's participation in the nomination process has been undermined by the poor success rate of the our nominees. This in turn has acted as a further disincentive to nationalists to allow their names to go forward for appointment to bodies which they continue to regard as pervasively unionist.

5. As our earlier submissions highlighted, nationalist under-representation is particularly pronounced in the area of public appointments made on the nomination of District Councils. This was confirmed by statistics provided in the past few months by the British side in the Secretariat, which showed that of 172 District Councillors represented on public bodies 123 are unionist and 38 nationalist, i. e. unionists hold 71% of the places and nationalist 22%. The measures announced last August in regard to the Eastern and Southern Health and Social Services Boards, therefore, while welcome, have made very little impact on the overall picture.
6. These figures, in our view, underline again the urgent need for the consideration of a system of proportionality in relation to nominations by District Councils. We appreciate the potential difficulties attaching to a system of proportionality, particularly in regard to the position of Sinn Féin; we believe, however, that these difficulties have to be weighed very carefully against the unacceptability of allowing the present position to continue unchanged.
7. The unsatisfactory situation in regard to District Council nominations is compounded by the fact that a significant proportion of public appointments lies within the remit of special interest groups (trade and professional bodies .

etc.); the membership of many of these organisations is overwhelmingly unionist and this tends to be reflected in the nominations to public bodies emanating from these groups.

8. Even in the category of appointments over which the British Government has direct control - the nominees of the Secretary of State, which form about 30% of all public appointments - the Irish side feels that the situation is far from satisfactory; while many of the Secretary of State's nominees are Catholic, the majority of these are not perceived as reflecting the nationalist position. This raises the question of the definition of the "minority community" for the purposes of appointments to public bodies. There has been no consensus on this point between the Irish and British sides. The British side has argued that "minority" has to be taken as meaning "Catholic", whereas the Irish side believes that it must be "nationalist". The Irish side feels that a resolution of this issue is essential to progress on the public appointments question generally.
  
9. While the Irish side acknowledges that there are difficulties and sensitivities about any demarcation on a political basis, the reality is that the divisions in society in Northern Ireland are fundamentally political (rather than religious); this must surely be taken into account in arriving at decisions on public appointments. If the principle referred to in the Review that "public bodies in Northern Ireland should be so constituted as to enjoy the widest possible respect and acceptance throughout the community" is to be fulfilled, it is crucial that there be a demonstrable balance in political terms between the representation of the two sides of that community.

10. Associated with this discussion lies the question of the position of SDLP members and supporters. In the past, the British side has referred, with negative undertones, to the Irish side's nomination of what the British side described as "SDLP types". The Irish side is concerned at the implications of this observation. While the Irish side is by no means arguing that nationalist representation on public bodies should be drawn exclusively from the SDLP and its supporters, it regards it as unacceptable that there should be any suggestion of a predisposition against appointments from the party and its supporters. Given the desirability of encouraging participation in public life on as wide a basis as possible and given the courageous efforts and example of the SDLP in this regard for almost 20 years in the most difficult of circumstances, it cannot be acceptable that SDLP participation on public bodies should be regarded in any way as undesirable.
11. The Irish side reiterates its acknowledgement of the difficulties and sensitivities attaching to a greater emphasis on the political background of nominees to public bodies. We do not believe, however, that these difficulties are insuperable. We suggest that with closer consultation and co-operation with the British side, both in relation to the wider aspects of the issue and in relation to specific appointments, much progress can be made. In our view, insufficient emphasis has been placed to date by the British side on the need for affirmative measures to achieve the goal of greater nationalist participation on public bodies. Other factors which the Irish side fully acknowledges must be taken thoroughly into account - such as the need for efficiency, expert skills, a fair representation in terms of sex and age, the desire to give appointees at least two terms in office etc. - generally seem to outweigh the need for greater nationalist participation. If, however, this latter consideration is

not given greater weight in terms of the ordering of priorities, little progress is likely to be made on the issue. That is why the Irish side believes that specific affirmative measures are now required to move the situation forward and to give practical effect to the principle outlined in paragraph 12 of the Review.

12. Proposals

To that end, the Irish side would welcome an early opportunity to discuss the issue with the British side in greater detail, and to learn of the measures which the British side proposes to give effect to the provision of Paragraph 12 of the Review. We suggests that the discussions between the two sides should encompass the following general areas:

- the question of a system of proportionality in relation to nominations by public bodies needs to be urgently examined;
- a fresh attempt needs be made by the Irish and British sides to reach a consensus on the definition of "minority";
- the most important public bodies should be identified and initially the emphasis would be on seeking ways to achieve a greater balance between the two communities on these bodies;
- efforts should be made to find agreement between the two sides on the modalities of the Irish side's participation in the nomination process [the Irish side's wish is to nominate specific people for specific posts, whereas the British side favour proposals for the central bank of names maintained by the Central

Appointments Unit of the NIO]. The Irish side will also be pressing for a considerably increased rate of acceptance for its nominations;

- a specific time frame should be agreed within which progress would be made;
- the question of the role of specific public bodies needs to be looked at in greater depth. Thus far the emphasis in discussions has been on the composition of public bodies but the Agreement and the Review also refer to their role;
- after due consideration of the various issues at official level we would suggest that a joint paper should be prepared for submission to the Conference; we consider it important both in terms of affirmation of direction and public perception that the issue be examined at an early date at Conference level.

27 February, 1990

W3780



National Archives Act, 1986, Regulations, 1988

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Name: Mary Doyle

Grade: CO

Department: *Foreign Affairs*

Date: 02/12/20

The UDR

- Mallon's comments mainly focussed on Richie's remarks on the Panorama programme suggesting that the UDR were only tasked on Republican suspects. This did not surprise him. He felt that Richie had made a fool of himself and that the British should not be surprised that Catholic membership of the force at this stage was reduced to the size of a camogie team. The UDR is rarely accompanied in Armagh.

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Secretariat. Full detail

Emergency Legislation

- Mallon said that his meeting earlier in the week with Lord Colville regarding the Review of the Emergency Legislation in 1992 had gone well. The meeting had taken place in SDLP HQ in Belfast. Mallon was joined by several legal personalities who presented a paper to Colville on the practical operation of the EPA from a lawyer's point of view. Mallon confined his comments to more broadly based political concerns. He is to meet Colville again in London sometime in the near future.

Sinn Fein Ard Fheis

- Mallon remarked that the local Provisional Sinn Fein element led by Jim Mc Allister did not attend this year's Ard Fheis in Dublin. He felt that this was a symptom of tensions which currently existed within the organisation. Mc Allister and the Armagh Unit generally would represent a more hardline element.

### Silverbridge Incident

- Mallon referred to comments he made on Radio Ulster earlier in the week about the incident at Silverbridge where he was critical not only of the security forces operation in and around the area following an arms find on 20 February 1990 but also of the Provisional IRA. Some of his constituents were surprised by his uncharacteristic even-handedness. He said that he deliberately did not confine his criticism to the British Army. After all there had been a major arms find in the area. He was tempted to be damning about the security forces operation which allowed several suspects to escape from custody but he had chosen to restrain himself. He differentiated himself from the comments of SDLP Councillor John Fee. He emphasised that although Fee works in his constituency office in Newry it can not always be presumed that he is speaking on Mallon's behalf.

### Succession to Harold McCusker

- Mallon commented that all the more obvious successors to Harold McCusker seem to be debarred from public office for five years arising from the controversy surrounding Craigavon District Council's behaviour after the signing of the AI Agreement and the court case involving St. Peter's GAA Club.

### Parliamentary Tier

- Mallon is a member of the Anglo-Irish Parliamentary Body. He said that he had not paid too much attention to it in the past, but saw that it had potential further down the line. Up to now he had not had much contact with the other members of the body and had not received any briefing material from Westminster. He asked that we should try to look after his needs on a discrete basis. I said that we would look into this.

West Belfast

- While he is a close associate of Hendron's, Mallon said that his selection for the SDLP in W Belfast almost guarantees that the seat will not be won from Adams. Hendron is very badly organised and fails to capitalise on local issues. He commented, almost despairingly, that Hendron was even late for the meeting with Brooke. If he recognises that there is a problem with Hendron, Mallon clearly does not see the solution in Brian Feeney who he appears to dislike.

Reelection

- Mallon is beginning to work on his own reelection campaign. He is having computers installed in his constituency office and is trying to move his operation onto a far more sophisticated plane. He is assiduously working on the postal vote.

  
M Collins

27 February 1990

cc A/Sec Gallagher  
Counsellors AI  
Box

National Archives Act, 1986, Regulations, 1988

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Mary Doyle

Name: Mary Doyle

Grade: CO

Department: *Foreign Affairs*

Date: 02/12/20



## Security Situation February, 1990

### 1. Fatalities

There were no security related fatalities in February, compared with 8 in January, 1990, and 10 in February, 1989. This is the first month without security related fatalities since July, 1985. The number of fatalities for January - February 1989 was 14.

### 2. Other Violent Incidents

#### Injury to Persons.

A part time member of the RUC reserve suffered serious leg and facial injuries when a booby trap bomb exploded on his farm at Lack near Omagh. Three British soldiers were injured, one sustaining a broken spine, when their Gazelle helicopter made a forced landing near Augher, Co Tyrone, after it had been fired on by the IRA. Despite media speculation that the attack was mounted from south of the border, it was established by the RUC that the shots were fired at the helicopter from a location within Northern Ireland.

Plastic bullets were fired by the RUC (for the first time at a soccer match) when sectarian violence broke out between supporters of Linfield and Donegal Celtic at Windsor Park. According to press reports, up to 70 people were treated in hospital, including 20 RUC officers, for injuries sustained in the rioting during and after the game. (The RUC's policing of the game and their use of plastic bullets at close range against one section of the crowd only, have been raised with the British authorities through the Secretariat.)

A part time member of the UDR was shot in the head while driving his tractor near Cookstown, Co Tyrone, and a taxi driver was shot in the head in an apparent random sectarian assassination attempt in North Belfast. Both men survived the attacks. A 23 year old joyrider was shot by a British Army patrol in the Lenadoon area of West Belfast, and he remains critically ill in hospital.

A 19 year old was shot in the thigh by an off-duty UDR soldier in a fracas in Newcastle, Co. Down. (The incident has been raised

through the Secretariat.) Reports that two British Army patrols opened fire on one another near Ardboe, Co. Tyrone, have also been raised through the Secretariat. There was rioting in Derry after a disco during which one plastic bullet was fired. Four punishment shootings were reported; two in Belfast, one in Derry and one in Newry.

#### Explosions and Damage to Property.

There were explosions at the Castlecourt shopping complex and at Shorts Brothers in Belfast. The IRA warned Shorts workers dealing with military products that they would, in future, be regarded as legitimate targets. This provoked a counter warning from the Protestant Action Force that two Catholics would be killed in reprisal for each Shorts worker killed by the IRA.

A mortar bomb attack on Kinawley RUC station, Co. Fermanagh, caused damage to nearby houses and the local Catholic church. A bomb attack on the Slieve Donard Hotel at Newcastle Co. Down disrupted the ICTU annual women's conference. A 600 lb. bomb was defused near Lurgan, and earlier in the month the wind was reported to have caused the premature detonation of a booby trap bomb left under the car of a Portadown building contractor. A similar booby trap device was defused after being found under the car of a member of the security forces at his home in Castleberg and a 1.5 lb. device found in a car park in Cookstown is believed to have fallen off a car belonging to a member of the security forces.

#### 3. Explosions in England

A bomb exploded after falling off the back of an army vehicle in Leicester and five days later a bomb was put through the letterbox of an Army recruiting office in Halifax. No injuries were caused by the explosions.

#### Anglo-Irish Section

2 March, 1989

CC. Mr. Gallagher, Counsellors A.I., Secretariat, Mr. O'Brien, Mr. Brosnan (D/Justice), Embassies Canberra, London, Washington, Box.

Fatalities in Northern Ireland 1969-end February 1990<sup>1</sup>

	Civilians <sup>2</sup> (ie non-security forces)	Army	UDR	RUC	Total Security Forces Fatalities	Total Fatalities
1969	12	-	-	1	1	13
1970	23	-	-	2	2	25
1971	115	43	5	11	59	174
1972	322	103	26	17	146	468
1973	171	58	8	13	79	250
1974	166	28	7	15	50	216
1975	216	14	6	11	31	247
1976	245	14	15	23	52	297
1977	69	15	14	14	43	112
1978	50	14	7	10	31	81
1979	51	38	10	14	62	113
1980	50	8	8	9	25	75
1981	57	10	13	21	44	101
1982	57	21	7	12	40	97
1983	44	5	10	18	33	77
1984	36	9	10	9	28	64
1985	25	2	4	23	29	54
1986	37	4	8	12	24	61
1987	66	3	8	16	27	93
1988	54	22	12	6	40	94 <sup>3</sup>
1989	41	12	2	9	23	64 <sup>4</sup>
1990	6		1	1	2	8
Total	1913(69%)	423 (15%)	181 (6.5%)	267 (9.5%)	871(31%)	2784

<sup>1</sup>Source: Westminster PQ replies and Section records.

<sup>2</sup>For breakdown see Table 2. This column includes 26 prison officers.

<sup>3</sup>In addition, 3 IRA members killed by British security forces in Gibraltar on 6 March, 3 British soldiers killed by the IRA in the Netherlands on 1 May, 1 British soldier killed by the IRA in London on 1 August and 1 British soldier killed by the IRA in Belgium on 12 August 1988.

<sup>4</sup>In addition, 1 British soldier killed in FRG on 2 July 1989, wife of British soldier killed in FRG on 7 September, 11 British soldiers killed as a result of explosion in Deal Barracks, Kent on 22 September, RAF corporal and his six-month-old daughter killed at Wildenrath, FRG on 28 October.

TABLE 2

## Breakdown of Civilian (i. e. non-security forces) fatalities

1969-end February 1990<sup>1</sup>

	Prov. IRA	INLA	Off. IRA	UDA/ UFF	UVF/ PAF	U. R. <sup>2</sup>	Non- Paramil.	TOTAL
1969	0	0	1	0	0	0	13	14
1970	5	0	0	0	0	0	18	23
1971	16	0	2	0	0	0	96	114
1972	58	0	8	8	2	0	251	327
1973	28	0	4	6	2	0	133	173
1974	14	0	3	2	2	0	147	168
1975	9	1	7	7	11	0	179	214
1976	14	0	0	4	1	0	224	243
1977	5	1	0	4	2	0	58	70
1978	6	2	0	0	0	0	37	45
1979	4	0	0	0	0	0	45	49
1980	3	1	0	1	0	0	44	49
1981	11	5	0	3	0	0	47	66
1982	7	2	0	2	2	0	42	55
1983	2	4	1	1	1	0	35	44
1984	11	1	0	1	0	0	21	34
1985	5	0	0	0	0	0	19	24
1986	5	0	0	0	1	0	33	39
1987	14	9	0	3	1	0	39	66
1988	9	1	0	2	2	0	40	54
1989	4	0	0	0	5	2	30	41
1990				1			5	6

Total: 230(12%) 27(1.5%) 26(1.5%) 45(2.5%) 32(1.5%) 2(0.01%) 1556(81%) 1918

<sup>1</sup>Statistics 1969-1986: Irish Information Partnership  
1986-date: Section records

(Note: Because of some differences in the way they compile their statistics, there are slight disparities between the figures produced by the RUC and the IIP; hence the totals above do not tally fully with Table 1 preceding.)

<sup>2</sup>Ulster Resistance

TABLE 3

Breakdown of all fatalities by Agency Responsible,  
1969-end February 1990\*

	RUC	British Army	UDR	Prov. IRA	INLA	Off. IRA	Other Nationst.	UDA/UFF	UVF/PAF	Non-spec. Loyalist
1969	7	2	0	0	0	0	4	0	0	2
1970	0	5	0	6	0	0	12	0	0	2
1971	1	40	0	57	0	3	33	0	0	21
1972	6	69	1	208	1	5	42	3	1	98
1973	1	29	2	111	0	1	17	14	1	66
1974	2	15	0	81	0	3	15	5	3	86
1975	0	7	0	51	3	2	45	8	17	91
1976	3	13	0	81	1	0	62	5	2	106
1977	2	7	0	47	0	0	23	3	2	20
1978	0	11	0	38	0	0	17	0	0	7
1979	0	1	0	50	2	0	38	1	0	12
1980	2	7	0	36	2	0	12	3	0	10
1981	6	11	1	46	11	1	20	3	1	7
1982	7	4	0	40	30	0	3	0	1	10
1983	6	5	1	41	6	0	3	0	1	9
1984	2	8	0	37	3	0	2	2	1	5
1985	1	3	2	43	2	0	0	1	1	0
1986	2	4	0	37	2	0	2	5	3	8
1987	0	9	0	54	10	0	1	3	1	10
1988	2	5	0	61	1	0	2	6	8	9
1989	2	2	0	38	0	0	4	4	9	5
1990		3		4					1	
Total	52	260	7	1167	74	15	357	66	53	584
(2635)	(2%)	(10%)	(0.25%)	(44%)	(3%)	(0.5%)	(13.5%)	(2.5%)	(2%)	(22.5%)

\* Source: Statistics 1969-1986, Irish Information Partnership  
Statistics 1987-date, Section records.

The footnote to Table 2 also applies to this Table

Agency responsible for fatalities 1969-end February 1990:Breakdown by category of victim<sup>1</sup>

<u>Category of Victim</u>	<u>Agency Responsible</u>		
	<u>Security Forces</u>	<u>Nationalist Paramilitaries</u>	<u>Loyalist Paramilitaries</u>
Security Forces	16	842	10
Nationalist Para.	116	140	19
Loyalist Para.	13	17	39
Civilians	174	588	634
Prison Officers	0	26	2
TOTAL	<u>319</u>	<u>1613</u>	<u>704</u>
As % of Total	(12)	(61)	(27)

<sup>1</sup>Source: Statistics 1969-1986: Irish Information Partnership;  
Statistics 1986-date: Section records.

It should be noted that in addition to the above, there were about 160 fatalities for which the agency responsible is unknown.

TABLE 5

Breakdown of Catholic fatalities in Northern Ireland  
by Agency Responsible

(a) 1969 - end February 1990<sup>1</sup>

Agency Responsible	No. killed	% of total
Nationalist paramilitaries	448	37%
Loyalist paramilitaries	566	46%
Security forces	210	17%
TOTAL	1224	

(b) 1978 - end February 1990

Agency Responsible	No. killed	% of total
Nationalist paramilitaries	122	36.5%
Loyalist paramilitaries	121	36%
Security forces	92	27.5%
TOTAL	335	

<sup>1</sup>Primary source: Irish Information Partnership. For further background on the breakdown of the statistics on the period 1969 - date, see Table 6 following.

TABLE 6Breakdown of Catholic fatalities inNorthern Ireland by category of victim 1969 - end February 1990<sup>1</sup>

<u>Category of Victim</u>	<u>No. Killed</u>	<u>approx. % of Total</u>
Civilians killed by security forces	94	8%
Civilians killed by Nationalist paramilitaries in "mistake" operations	123	10%
Catholics killed by loyalist paramilitaries	566	46%
Nationalist paramilitaries killed in "own goal" operations	109	9%
Nationalist paramilitaries killed by security forces	116	10%
Catholics killed by Nationalist paramilitaries in "punishment/discipline" operations (alleged informers etc.)	175	14%
Catholic members of security forces killed by Nationalist paramilitaries	41	3%
<b>TOTAL</b>	<b>1224</b>	<b>100%</b>

<sup>1</sup>Source: Irish Information Partnership and Section records.

TABLE 7

Fatalities arising from incidents in border areas<sup>1</sup>

Fatality	<u>1990</u>	<u>1989</u>	<u>1988</u>	<u>1987</u>	<u>1986</u>
RUC	1	5	3	3	10
UDR	1	1	4	1	4
Army	-	9	2	1	3
IRA	-	1	2	4	3
INLA	-	-	1	4	-
Civilian(cath. )	1	4	3	2	2
Civilian(prot. )	-	-	6	7	3
<b>Total</b>	<b>3</b>	<b>20<sup>2</sup></b>	<b>21</b>	<b>22</b>	<b>25</b>

Fatalities in border areas: Breakdown by County

County	<u>1990</u>	<u>1989</u>	<u>1988</u>	<u>1987</u>	<u>1986</u>
Down		4	1	5	5
Armagh	1	6	10	7	9
Tyrone	1	3	4	-	4
Fermanagh		2	5	2	5
Derry	1	5	1	8	2
<b>Total</b>	<b>3</b>	<b>20<sup>2</sup></b>	<b>21</b>	<b>22</b>	<b>25</b>

<sup>1</sup>Border areas are defined as areas lying within a 10 mile radius of the border and include, therefore, the urban areas of Derry, Strabane, Armagh and Newry. The above tables are based on statistics which the Section has been compiling since 1986.

<sup>2</sup>This does not include the Protestant ex-RUC man shot dead by the IRA at Ballintra, Co. Donegal, on 15 January.



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**CONFIDENTIAL**

28 February 1990

Mr Dermot Gallagher  
Assistant Secretary  
Anglo Irish Division  
Department of Foreign Affairs  
Dublin

Dear Assistant Secretary,

**HOME OFFICE VIEW ON THE BIRMINGHAM SIX**

I called on Mr Bob Baxter, Head of the Division at the Home Office which deals with alleged wrongful convictions, yesterday. Mr Baxter advised the previous Home Secretary on referring the Guildford Four case to the Court of Appeal and is currently dealing with the new evidence presented by Ms Gareth Pierce in the Birmingham Six case. Our exchange was "off the record".

Baxter told me that he was not particularly impressed by the new evidence and was not sure that it contained sufficient new facts to justify re-opening the case. He will write to Gareth Pierce in the near future asking her if she wishes to supplement what she has submitted. He gave what appeared to be a hint when he said that he was surprised that the defence had not to date made an issue of the failure of the West Midlands Police to keep custody records for the Six. This might be brought to the attention of Ms Pierce.

The Home Secretary had not yet made up his mind on how to proceed. His officials hope to persuade him to ask the Chief Constable of the West Midlands Police to investigate some aspects of the new evidence. This would involve another police force being called in to do the investigation. Baxter pointed out that it was from such an investigation that the evidence which freed the Guildford Four came to light and that it was not this evidence which the police had been directed to look for in the first instance. He did not accept that the West Midlands Police's policy of shredding documents made it unlikely that anything of value could now be turned up. He also provided background on the process by which the former Home Secretary, Douglas Hurd, had come to his decision in the Guildford Four case which underlined the importance that political and security considerations had played in the process. Hurd

had, for example, deferred his decision firstly because of some IRA bombings and then to wait until after a Conservative Party conference.

I asked Baxter about the Home Secretary's reported statement in the House of Commons a few days earlier to the effect that he could request the Shaw Enquiry to be extended back to the Birmingham Six case; this conflicted with what I had been told some time ago by the Police Complaints Authority, to which I had been referred on this point by Baxter himself. He said that it was not, as Gareth Pierce believed, a question of a distinction between a complaint and an alleged offence by the police; rather, it was that the Home Secretary could ask Shaw to investigate the careers of police officers involved in the B6 case. If they were shown to have been guilty of malpractice in other cases, it would clearly have a bearing on the attitude which would be taken in the B6 case. (Note: I had not seen Hansard when I saw Baxter. Now that I have, I am not convinced that this is the sense of what the Home Secretary actually said and would propose to raise this again with Baxter).

Baxter believes that it will be much more difficult to get the present Home Secretary to act than it would have been with his predecessor. Hurd brought an open approach to the Home Secretaryship: he believed that, if there was a problem with public confidence in the administration of justice, it had to be tackled. Waddington, on the other hand, as a Tory rightwinger and a lawyer, did not want to tamper with the system. He was a friend - and would want to stick by - such as Michael Havers, who had prosecuted the Birmingham Six. Baxter did not think, for example, that Waddington would have given the May Enquiry the very broad terms of reference as Hurd had done.

In these circumstances, Waddington is much less likely to face down the opposition of the judiciary, in particular the Court of Appeal. Lord Lane is being "touchy" and refusing to meet the Home Secretary until he has made a decision in Birmingham Six case. Baxter took my point about the different interpretation which might now be put on some of the evidence which was rejected by the Court of Appeal in 1987 (eg, the Reade Schedule) but, said that the Court would not now reverse a previous interpretation of the same facts; it would only consider new facts.

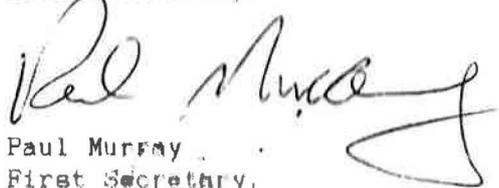
There is also a much more deeply-rooted conviction of the guilt of the Birmingham Six than had been the case with the Guildford Four. Baxter did not say so, but I wonder if there are confidential intelligence reports in relation to the Six which have never come to light but are nevertheless shaping official opinion in this case. He did say that the Irish "intelligence service" would have information on the man whom some of the Six had met at "McDaid's house" on the morning of the bombings. Indeed, according to Baxter, Chris Mullin had done great damage to the cause of the Six by revealing this fact in his book and unwittingly providing what is seen as a vital missing piece of the jigsaw of the events preceding the bombing. It is believed by the Home Office that the two of the Six who went to the house did so to receive orders for the bombings from the director of operations. [I assume that the incident referred to is on page 18 of the paperback version of

Mullin's book where Hunter and Power called on Hunter's cousin, Seamus McLoughlin, at Holland Road, Aston, where McDaid's widow was staying].

Baxter does not accept the argument that the Six were unlikely terrorists; he claims that the IRA was not at that time the sophisticated organisation it became later in the 1970's and did use building-site labourers in bombings. In response to my point that those responsible for the Birmingham bombs had to be responsible also for a whole series of bombings, he replied that it was necessary only for the series to have been organised by the same group.

It is difficult to interpret clearly exactly what the Home Office view in this case is. On the one hand, Baxter declared that he was convinced of the guilt of the Six; on the other, he stated that he and his Under Secretary were attempting to convince the Home Secretary to order a new police investigation. Mr Waddington's statement in the Commons last week had opened up a new vista and this hardly makes sense if his inclinations are negative. Ultimately, I hold to the view that I have formed over the last few months: the official level would like to get the case out of the way but that the political level is wary of taking on the judiciary and anxious about the political fall-out. Baxter may have been deliberately negative to prepare us for the worst if that should happen; if it does not, then our expectations may have been lowered to accept something less than the kind of action taken in the Guildford Four case. At the same time, it would be foolish to discount the very real obstacles that lie in the path of vindicating the Six.

Yours sincerely,



Paul Murray  
First Secretary.



IRISH EMBASSY, LONDON

CONFIDENTIAL

cc  
PSC: AG  
Mr Nally: PSC  
Mr Matthews; Mr Jarron  
Carragher B1  
SK

26 February 1990

Mr Dermot Gallagher  
Assistant Secretary  
Anglo Irish Division  
Department of Foreign Affairs  
Dublin

Dear Assistant Secretary

**BIRMINGHAM SIX: CURRENT VIEWS OF GARETH PIERCE**

I called to Ms Pierce at her home over the weekend to discuss a number of aspects of the Birmingham Six case:

**New Evidence**

Ms Pierce is becoming increasingly frustrated at the delay by the Home Office in coming to a decision on the new evidence which she presented before Christmas. I had attempted to contact the Home Office on Friday but the relevant official, Mr Bob Baxter, was not there; I have arranged to call on him tomorrow. My own feeling is that the delay is not necessarily bad in that at least it is not a negative decision. I made the point to Ms Pierce, without pressing it too hard, that the Home Secretary was probably waiting to see how the early decisions of the Court of Appeal in relation to the Shaw Enquiry/WMSCS would go; in this connection the Hassan Khan verdict appear hopeful. Pierce, incidentally, has a copy of a statement which Khan made to his solicitor alleging that West Midlands Serious Crimes Squad officers boasted to him of what they had done to the Birmingham Six and threatened him with a similar fate if he did not cooperate. Ms Pierce had no doubt that the Khan decision would have been different prior to the Guildford Four judgment. As you are no doubt aware, today's London *Independent* carries a story to the effect that the Home Secretary will order a new police investigation into the new B6 evidence.

National Archives Act, 1986, Regulations, 1988

ABSTRACTION OF PART(S) OF A RECORD PURSUANT TO REGULATION 8

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- (i) Reference number of the separate cover under which the abstracted part has been filed:  
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- (iv) The description of each document: Confidential information relating to private individuals
- (v) Reason(s) why the part has been abstracted for retention: 8(4)(b)

Mary Doyle

Name: Mary Doyle

Grade: CO

Department: *Foreign Affairs*

Date: 02/12/20

### Extension of the Shaw Enquiry to the B6

I mentioned to Ms Pierce the Home Secretary's reported comments in the House of Commons last week to the effect that the Shaw Enquiry could be extended back to the Birmingham Six case, notwithstanding the fact that the Police Complaints Authority had previously indicated to us that this could not be done. According to Ms Pierce, Shaw could investigate an alleged offence (eg, police perjury) as opposed to a complaint against the police which they could not investigate under the Police and Criminal Evidence Act and previous legislation.

Ms Pierce is convinced, from queries based on Home Office sources to her from journalists, that the Home Office does not understand the relative importance of the various elements of the new evidence she has presented. Noting the trenchant criticism by Ludovic Kennedy of Lord Lane and the other judges of the Court of Appeal in *The Sunday Times* of 25/2/90, she believes that the failure of Lord Lane to disqualify himself from the 1987 appeal hearing may be a trump card; she thinks that the European Court of Human Rights found against the Danish Government in an analogous case last year. She is wondering whether to make public the new evidence to dispel the misapprehensions which are developing around it.

### Deal with Irish Government Rumour

Ms Pierce had heard from Chris Mullin MP a rumour which he, in turn, credited to Christine Cawley and other MEP's, that a deal had been done between the British and Irish Governments on the B6. This would involve a quiet "back door" release after the Irish Presidency, in return for which we would keep silent on "Irish Sea" issues (presumably Sellafield, etc: Ms Pierce was not clear about this). I told Ms Pierce that I had no knowledge of any such deal which was undoubtedly entirely speculative.

This is  
Newspaper  
24/9

### Cardinal Hume

While the Cardinal had publicly supported that Six around Christmas, Ms Pierce feels that he does not want to become too vocal on the issue, for fear of damaging his credibility on the Guildford Four/Maguire cases. His intervention in the Guildford case with former Home Secretary Hurd had, of course, been absolutely critical. Ms Pierce was wondering if she should attempt to see the Home Secretary herself. She may explore with the Cardinal whether he and/or herself might make such a request.

### Congressional Hearings

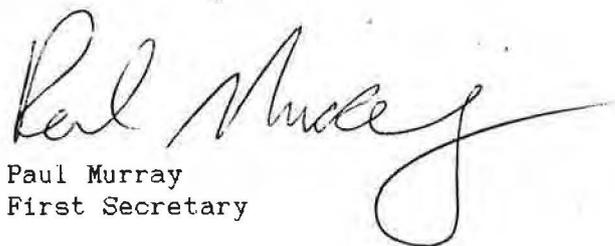
I gave Ms Pierce the information which I had about the Human Rights Caucus hearings on 13 March. She had heard that the British Embassy in Washington had "got at" the Chairman and instigated a cut back in the hearing which rendered it virtually meaningless. This, together with the cost of the fare, was making her doubtful about the value of appearing. I wonder if the Department could provide:

- [1] an assessment of the value of attendance by Ms Pierce;
- [2] any ideas on assisting Ms Pierce get there: would Aer Lingus, for example, be willing to help?
- [3] if she did go, would the Washington Embassy and, possibly, the Consulate in New York, think of providing media contacts for her?

Gerry Conlon

According to Pierce, Conlon is currently in Tunisia writing his book with David Pallister of *The Guardian*. It appears that there is something of a race between himself and Paul Hill to be the first to publish. There has also been intense competition among London publishers, with Conlon contracted to Penguin/Hamish Hamilton and Hill to Doubleday. Both books are expected to be published in the autumn.

Yours sincerely,



Paul Murray  
First Secretary

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a book but not  
feasible  
27/4



IRISH EMBASSY, LONDON.

17 Grosvenor Place,  
London SW1X 7HR.

February, 1990.

cc Mr. Mills; JFF  
Connelly A1  
BER

Mr. Dermot Gallagher,  
Assistant Secretary,  
Department of Foreign Affairs,  
Dublin.

Conversations with Kevin McNamara M.P., Jim Marshall M.P.  
and Lord Prys-Davies

Dear Assistant Secretary,

I had dinner on 20 February with Kevin McNamara. We were joined in the course of the evening by Lord Prys-Davies, Labour NI spokesman in the House of Lords and Jim Marshall, MP for Leicester South and a member of McNamara's NI front bench team with responsibility for economic and social issues.

Discussion centred principally on McNamara's visit to Dublin. It appears to have been an unqualified success from McNamara's point of view. He was very grateful for the arrangements made and was writing, he said, to all concerned to thank them for their efforts. He found the meeting with the Taoiseach most useful. The fact that the Taoiseach made time to see him has done a great deal for McNamara. It has added an important dimension of credibility to his role as front bench spokesman at a time when his exclusion from the Labour team for the Inter-Parliamentary Body was being seized on by his critics as evidence of his lack of standing with the leadership. The visit to Dublin, in particular the call on the Taoiseach, provided a much needed boost.

Marshall chose to interpret our arrangements for McNamara as reflecting a growing sense of awareness in Dublin that Labour might now be in with a real chance of forming the next Government. He remarked that "opinion polls concentrate the mind wonderfully". I told him that the opposition spokesman on Northern Ireland had always been made welcome in Dublin irrespective of the opinion polls.

National Archives Act, 1986, Regulations, 1988

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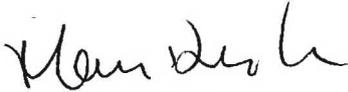
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Name: Mary Doyle

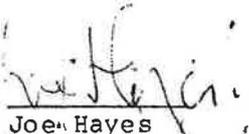
Grade: CO

Department: *Foreign Affairs*

Date: 02/12/20

Both McNamara and Marshall admitted to a degree of uncertainty as to how to react to recent developments in Northern Ireland. They are clearly afraid of being wrong-footed by appearing to be critical of a process of dialogue which may lead somewhere. Until things are clearer however it is likely that the Labour strategy will be to concentrate on individual issues. On 21 February, for example, McNamara in a speech delivered in Epsom, made a number of proposals for reform of the UDR.

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Joe Hayes  
Counsellor



IRISH EMBASSY, LONDON.

17 Grosvenor Place,  
London SW1X 7HR.

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*BeX*

23 February, 1990.

Mr. Dermot Gallagher,  
Assistant Secretary,  
Department of Foreign Affairs,  
Dublin.

Conversation with David Madel, M.P.

Dear Assistant Secretary,

I had lunch on 20 February with David Madel, Conservative MP for Bedfordshire South West, a prominent member of the Select Committee on European legislation and an associate member of the Inter-Parliamentary Body. Madel's wife Susan is one of the Connolly Carew family from Donadea, Co. Kildare.

EPC Ministerial Meeting

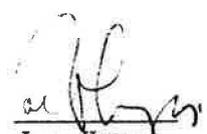
He was warm in his praise of the Minister's handling of the previous day's EPC Ministerial meeting in Dublin. He, and other members of the Select Committee on European legislation, had been in Dublin the previous week on a two day fact finding mission. The Committee makes a point of visiting each Presidency capital. They had been well received in Dublin and had a number of very useful meetings.

He and his Conservative colleagues on the Committee were dismayed at the Government's handling of the sanctions issue. They fully endorsed, he said, our Minister's "sound words" on the risk posed to the entire EPC process by British intransigence. He was pleased to see that the Minister's comments had received wide, and he felt, positive coverage in the British media. There were many who would agree with him. To put Madel's remarks into context, it should be noted that the Tory membership of the Select Committee on EC legislation is almost exclusively composed of fervent EC supporters. Later in the week, Hugh Dykes, another prominent member of the Committee told me at length how he and other like minded MPs on the Government side have managed in successive years to pack the membership heavily with pro-Europeans.

Birmingham Six

Madel is very pleased to be associated with the Parliamentary Body and anxious to develop his interest in Irish affairs. He asked about the Birmingham Six, displaying a surprising awareness of the background and a sympathy with the case. He felt that if the judgement in the Hassan Khan case went against the state it would add greatly to the prospect of a favourable outcome. (Hassan Khan was convicted in 1987 of a bank robbery on foot of a confession made to members of the West Midlands Serious Crimes Squad in the back of a police car. His case has been before the Appeal Court and since my meeting with Madel, judgement has been given in his favour.) He remarked on the fact that the campaign in support of the Six lacked the establishment clout of the Guildford Four campaign. Nonetheless, he said, as each day brought fresh revelations of wrong-doing by the West Midlands police, a growing number of fair-minded people on both sides of House were becoming increasingly concerned.

Yours sincerely,

  
Joe Hayes  
Counsellor



IRISH EMBASSY, LONDON

*Mr Waddy: PJS  
Counselor #1  
Frank*

28 February 1990

Mr Dermot Gallagher  
Assistant Secretary  
Anglo-Irish Division

Dear Assistant Secretary

Lunch with Richard Ford, The Times

Formerly his paper's correspondent in Belfast, Ford covers Irish issues at Westminster for the Times.

The following points of interest arose:

Political situation in NI

- Ford believes that the British Government is quite wrong in its assessment that the Unionists may be disposed to relaxing their position on talks.
- Some NIO officials seem to him to be attaching too much importance to the views of second-tier Unionists and to be wilfully ignoring the unpleasant reality of the party leader's complete opposition to devolution. Molyneaux, according to Ford, is merely going through the motions of talks with the Secretary of State. Neither he nor Paisley has any intention of modifying the position they have taken hitherto. The supreme practitioner of "masterly inactivity", the OUP leader simply wants to create the illusion of movement.
- With a bye-election pending in Upper Bann and with the possibility of a Conservative challenge there (as elsewhere in NI), Molyneaux is conscious that his party has to "sound the right notes" with an electorate which, on the whole, favours political movement. For this reason, Ford believes, Molyneaux will resort to his time-honoured device of hinting that great developments are at hand and that Unionists must bear with him until he is in a position to reveal all. Once an Official Unionist candidate is safely elected in Upper Bann, Molyneaux will "retreat into his shell" once again.

Paisley, in Ford's view, is equally determined to stick to the status quo and make no concessions on the Agreement. In a private conversation with Ford recently, he emphasised that he is looking for "suspension and nothing else".

- In conclusion, therefore, Ford commented that, although the NIO is "bending over backwards" to get talks underway in NI, the effort is misplaced and doomed to failure as neither of the principals on the Unionist side is genuinely interested.

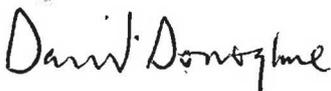
#### Upper Bann

- The writ for the Upper Bann bye-election is expected to be moved shortly after Easter. Ford has heard that McCusker's widow may not, after all, be a candidate. Among the various names mentioned, Drew Nelson (whom John Taylor is promoting) seems the strongest possibility.
- Ken Maginnis indicated to Ford recently that he would ideally like Frank Millar to be the candidate. He is naturally anxious to add another devolutionist voice to the group of Unionist MPs. It is, however, highly unlikely that Millar, even if he went forward, would be selected. There is a strong sense locally that McCusker's successor should be from the area and preferably with Orange credentials.
- Paisley told Ford last week that he does not plan to field a DUP candidate.

#### British-Irish Inter-Parliamentary Body

- Noting suggestions that Martin Smyth may be more favourably disposed towards the Body than other Unionists, Ford mentioned that this would be entirely consistent with the emphasis laid by Smyth, at the briefing lunch which he and Willie Ross hosted recently, on the desirability of a "federation of the British Isles" and of the greatest possible cooperation on the East/West axis.

Yours sincerely



David Donoghue  
Press and Information Officer

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