



## An Chartlann Náisiúnta National Archives

<b>Reference Code:</b>	2021/45/285
<b>Creator(s):</b>	Department of Foreign Affairs
<b>Accession Conditions:</b>	Open
<b>Copyright:</b>	National Archives, Ireland. May only be reproduced with the written permission of the Director of the National Archives.

Confidential

Conversations on security issues at the BIA

The following points of interest in relation to the use of lethal force, inquests and the UDR/Rangers merger arose in conversations at this year's BIA Conference with Tom Hadden (QUB) and Brigadier Mike Jackson (Army).

(1) Use of lethal force

Arising from the draft code of practice which it published earlier this year, SACHR has had one or two meetings with NIO officials on this subject.

According to Tom Hadden, the NIO's main concern relates to a difference potentially emerging between the law in NI in this area and that in Britain. They are unhappy with a separate regime for NI and, on the other hand, do not feel that the number of incidents in Britain yet warrants introducing new arrangements for the UK as a whole. They are also concerned about any distinction being made between the use of lethal force by members of the security forces and its use by anyone else.

As regards the draft code, they did not object to this in principle but merely disputed some of the wording in SACHR's draft. They indicated that they would consult with the Army, the MOD, the RUC, PANI and other bodies about it. The main problem, they suggested, would be to persuade MOD to accept a significant operational restriction of this kind for the Army.

Brigadier Jackson echoed this latter point in private conversation. Underlining the relatively low IQ of junior ranks in the Army, he expressed concern that a code of practice might have a confusing effect and that a soldier, nervous about offending against it, might end up getting himself killed. He thought that it would be extremely difficult to devise language which would cover every situation in which a soldier might find himself. An unclear text could have an unsettling effect, with possibly fatal consequences. Jackson was therefore against any formalisation of the Yellow Card guidelines (which is essentially what the SACHR draft sets out to do).

As he indicated in the WG on the Rule of Law, Jackson is firmly in favour of a manslaughter charge in instances involving the unreasonable use of lethal force by the security forces. His reasoning is that, as things stands, no distinction is made between the premeditated murder committed by a terrorist and the lesser, albeit very serious, offence of unreasonable lethal force being used by a soldier or policeman. Both are perceived as operating on the same level

cc Mr Kelleher  
Mr Farrell

ccid

M.S

19/7/94

and this is unfair vis-a-vis the soldier or policeman.

The NIO, on the other hand, has deep reservations about a manslaughter charge (according to Tom Hadden). They also do not like a solution such as 'culpable homicide' as the British approach to criminal law involves making no distinction between different kinds of homicide.

As regards the suggestion that a soldier responsible for a controversial killing should be automatically suspended or transferred to other duties, Brigadier Jackson saw various difficulties but was not opposed in principle. Even if some innocuous phrase such as 'transferred to desk duties' were employed, he regarded it as inevitable that guilt would attach to the soldier concerned. The commanding officer decides what is to be done on a pragmatic, case-by-case basis. In the case of the six soldiers recently charged in connection with the killing of two joy-riders last year, they had been transferred to Germany for a period of several months prior to the DPP's decision - but this was for technical reasons related to the company in which they happened to be serving. Because of the inevitable connotation of guilt, and the consequences for morale which a premature judgment of this kind would have, Jackson does not favour a practice of automatic suspension or transfer for soldiers involved in these incidents. He recognizes the point being made, however, and could clearly contemplate this approach being applied in specific cases.

In relation to the joy-rider case, Jackson speculated that the defence counsel would recall that another soldier from the same company had been killed by a joy-rider several months previously. He privately accepts, however, that the soldiers could have tried to shoot out the tyres of the Peake/Reilly car. He is plainly unhappy with this case (and with the John Kearney case) and makes a distinction between these joy-rider shootings and the other cases highlighted by the recent Panorama programme (where, he feels, the soldiers concerned are on stronger ground). Brian Feeney, it is worth mentioning, expects that the soldiers concerned will be acquitted on the murder charge but convicted of conspiracy to pervert the course of justice.

## (2) Inquests

Tom Hadden provided the attached tabulation of delays in the holding of inquests. He told me that consultations are underway at present between SACHR, the Law Society and the Bar Council with a view to seeing what can be done both to reduce these delays and to improve the inquest rules. In the latter respect, he highlighted the non-compellability of security force witnesses (Rule 92) and the non-attribution of guilt in the coroner's verdict. (He would prefer either the British system, which allows the coroner to record a verdict of

'unlawful killing'', or the Scottish system, which prescribes automatic statutory inquiries for certain categories of deaths).

(3) The UDR/Rangers merger

Jackson said that the merger will take effect from 1 July 1992. Not least because it was an entirely military decision (which had been under consideration since October 1990), it has been greatly welcomed in Army circles. It 'kills a number of birds with one stone'. While it will not solve all the problems connected with the present UDR, it satisfies all those (Jackson included) who have wanted to 'do something' about the UDR for a long time.

If Jackson had his way, the part-time element in the UDR would be removed 'overnight'. However, the politicians are anxious for political reasons to phase out the part-timers very slowly. He speculated that the number of battalions eligible for overseas service would be gradually increased and that this would give ever greater influence within the new Regiment to the more professionally oriented (and motivated) members. He anticipated a growing dichotomy between the younger, full-time members anxious to make a career for themselves (and well-disposed towards overseas service) and the older, part-time members who see the job more as a 'vocation'.

DD.  
David Donoghue  
17 September 1991

A tabulation of delays in holding inquests in cases involving killings by the security forces since November 1982

Case	Date of Death	Deceased	Criminal case	Date of inquest
1.	11 Nov 1982	McKerr	May 1984	Not yet completed
		Toman		
		Burns		
2.	24 Nov 1982	Tighe	Jan 1985	?
3.	12 Dec 1982	Grew	March 1984	?
		Carroll		
4.	27 Dec-1982	Elliot	-	Sept 1983
5.	9 Jan 1983	McColgan	-	Dec-1984
6.	3 Feb 1983	McMonagle	-	April 1984
		Duffy		
7.	16 Mar 1983	Millar	-	Sept 1985
8.	26 July 1983	O'Hare	-	?
9.	30 July 1983	Malone	Nov 1984	None
10.	9 Aug 1983	Reilly	Nov 1984	None
11.	13 Aug 1983	Mallon	-	?
		Convery		
12.	28 Nov 1983	Foster	-	Sept 1984
13.	4 Dec 1983	Campbell	-	March 1985
		McGirr		
14.	30 Jan 1984	Marron	-	Dec 1984
15.	21 Feb 1984	Martin	-	May 1986
		Hogan		
16.	14 May 1984	Fitzsimons	-	?
17.	15 June 1984	McCann	-	May 1987
18.	13 July 1984	Price	-	June 1986
19.	12 Aug 1984	Downes	?	None
20.	19 Oct 1984	Jackson	-	May 1986
21.	2 Dec 1984	McBride	-	? Mar/Aug 1986
22.	6 Dec 1984	Fleming	-	Dec 1986
		Doherty		
23.	17 Dec 1984	McIlvenna	-	?
24.	15 Jan 1985	Kelly	-	Feb 1986
25.	7 Feb 1985	Logue	-	Nov 1985
26.	23 Feb 1985	Breslin	-	Not yet completed
		Devine		(opened Feb 1985)
		Devine		
27.	18 Feb 1986	Bradley	-	?
28.	23 Feb 1986	Gough	-	?
29.	31 March 1986	White	-	Sept 1987
30.	26 April 1986	McElwaine	-	?
31.	14 Sept 1986	McKernan	-	Jul/ Aug 1987
32.	8 May 1987	9 victims	-	?
		(Loughgall)		
33.	21 Feb 1988	McEnespie	Charge withdrawn	?
34.	14 Mar 1988	McCracken	-	Jul 1990
35.	1 July 1988	Stronge	-	?

36.	30 Aug 1988	Harte	-	?
		Harte		
		Mullin		
37.	15 June 1989	Gilbert*	-	Aug 1990
38.	9 Aug 1988	Duffy	-	June 1990
39.	9 Sept 1989	Robinson	-	?
40.	9 Nov 1989	Johnstone*	-	Feb 1991
41.	13 Jan 1990	McNeill	-	?
		Hale		
		Thompson		
42.	April 1990	Corrigan	-	?
43.	30 Sept 1990	Reilly	Charged	?
		Peake	Aug 1991	?
44.	9 Oct 1990	Grew	-	?
		McCaughey		
45.	12 Nov 1990	Patterson	-	?
46.	30 Dec 1990	Caraher	?	?
47.	10 April 1991	Marks	?	?
48.	3 June 1991	McNally	?	?
		Ryan		
		Doris		

\* Member of security forces killed by other members on duty

(Information from Amnesty International Report in 1988, updated by Committee on the Administration of Justice)

( missing  
Plastic bullet cases, 5/1981 )