

Paper 2

INTERNAL MEASURES TO CURB TERRORIST VIOLENCE

INTRODUCTION

1. Although in general terms the security situation has not shown any tendency to deteriorate this year, as compared to previous years, a spate of terrorist violence late in the year, including the murder of a Unionist politician and the planting of a bomb outside Harrods in London, has generated a great deal of public concern. This concern, together with the more consistent criticisms of security policy which have been made over the year by political parties and their leaders, largely to serve their own political ends, has generated considerable pressure upon the Government to re-examine ways in which terrorist violence might be curbed.

2. For a number of reasons it is a propitious time for such an exercise. A UK-wide Bill on the Prevention of Terrorism is currently before Parliament and could be amended to take account of any extra security measures which are considered to be necessary. Sir George Baker is currently reviewing the workings of the Northern Ireland (Emergency Provisions) Act 1978; his report and any subsequent legislation could also take account of the need for any new measures. Finally the Government of the Republic has expressed its wish to act to combat terrorism and this offers scope for considering measures which we might take jointly to combat terrorism and for considering ways in which existing measures might be harmonised.

MEASURES TO CONSIDER

3. Annex A to Mr Bourn's paper of 21 December indicated a number of measures which should be considered as means of curbing terrorism. These are:

- (a) Increasing the resources available to the security forces;
Over recent years the numbers of regular Army troops in the Province has decreased steadily, as terrorist violence decreased and the capacity of the RUC, supported by the UDR, to curb terrorism increased. This trend has thrown a continually increasing operational burden upon the RUC. Moreover, over the years terrorists have become increasingly sophisticated and hardened, making it increasingly difficult

for the security forces to obtain the hard evidence, without which they cannot be brought to justice. The Chief Constable has proposed that the strength of the RUC be increased to allow them to meet this operational need and the Police Authority are currently considering this request. A separate submission is being made on this subject.

(b) Control of Explosives (see Annex A)

Home-made explosives continues to be easily available to terrorists and poses a considerable threat both to the security forces and the public at large. The note at Annex A examines this problem, but concludes that further controls should be discussed jointly with the authorities in the Republic, as any controls imposed unilaterally in NI would be ineffectual.

(c) Time to Trial (see Annex B)

Converted terrorists are an important means of bring terrorists to trial. Hence terrorist organisations use every means within their power to persuade them to withdraw their evidence; the longer the interval between the committal and trial of the accused, the more likely this pressure is to succeed. The paper at Annex B examines this problem briefly, and recommends that a further examination be carried out with the Law Officers' Departments, of the whole investigation, committal and trial process to identify and if possible rectify any bottlenecks.

(d) Selective Detention (see Annex C)

At moments when violence seems to be increasing there is frequently a view expressed that detention should be reintroduced, at least for the organisers of the campaign of violence. The note at Annex C concludes that, introduced unilaterally in NI, detention would be unlikely to curb violence and could well exacerbate it. However, the paper notes that if detention were to be introduced simultaneously in the Republic, not only would it increase the operational effectiveness of the measure but it would also minimise many of the political counter-productive effects. The paper suggests therefore that if this subject is to be re-examined it should be done jointly with the authorities

in the Republic, and then only on the understanding that this would be a contingency measure, to be used only as a last resort to contain rising violence.

4. These measures are not exhaustive and there may be scope for considering others, to be introduced on a UK-wide basis or in Northern Ireland alone or, alternatively, throughout Ireland as a whole. Although considerable work has been done over the past few years in examining measures to curb terrorism, any reconsideration of these measures in the current situation must include a wide number of interests, not least being those of the Attorney General and Lord Chancellor who have responsibility for the judicial processes which will give effect to any new measures.

5. Home Office officials do not consider that, following the Cabinet meeting on 22 December, there is any requirement for a wholesale review of existing legislative measures to curb violence or to consider new measures; for the moment the only requirement appears to be for the Law Officers to review the workings of the law on incitement.

CONCLUSION

6. There appear to be a number of measures which might, on examination, help to curb violence. As a first step consideration should be given to examining, with all other interests concerned, measures to curb violence in Northern Ireland. It may be that some measures would be more effective, or could only be effective, if they were implemented jointly both north and south of the border. The question of joint discussions on security measures is considered elsewhere; however, it is recommended that these should follow upon an internal examination of security measures, the conclusions of which could be used as the basis for further discussions with the Irish.

MEASURES TO CURB VIOLENCE

CONTROL OF EXPLOSIVES1. Problem

Home-made explosives (HME) derived from nitrogen-based fertilisers (ammonium nitrate, urea etc) have formed a large part of PIRA's arsenal in its campaign of violence since 1969. Such fertilisers are important if not essential to the agricultural industries of both the South and North of Ireland. Chemical additives, such as chalk, diminishes the explosive force of nitrogenous-fertiliser based HME, but can be easily removed. In particular, large explosive devices made from HME restrict the mobility of the security forces particularly in border areas, where their presence is most vital.

2. Aim

To diminish the availability to terrorists, and the effectiveness as an element in explosives, of nitrogenous fertilisers.

3. Existing Measures

(a) All commercial explosives, detonators, fuse etc are subject to control in Ireland throughout manufacture, storage, distribution and use. All explosives are marked to distinguish NI materials from those used in the Republic and detonators and explosives are marked to enable their source to be traced. In NI all transactions are subject to written consent by the police.

(b) Materials used in the manufacture of powerful explosives - pure ammonium nitrate, sodium chlorate and nitro benzene - are subject to similar controls and security force supervision as commercial explosives, except that these substances are not marked or identified. Essential users are granted licences, subject to secure storage and proper records.

(c) Materials which can be used in the manufacture of less powerful explosives - potassium nitrate, sodium nitrate, sodium nitrite, sodium chlorite - can only be used under licence and subject to secure storage and proper records being kept.

CONFIDENTIAL

(d) Fertilisers are subject to an upper limit of 79% on the proportion of ammonium nitrate they can contain.

4. Comment

(a) The paper of 12 December 1983 submitted by the Chief Constable and GOC to SPM on 20 December, outlines the need for further tightening of controls to prevent the terrorists obtaining large quantities of nitrogenous fertilisers which can easily be converted to HME.

(b) However, any controls which are implement in NI will be largely useless unless they are replicated in the Republic, as this is where much of the processing of HME is carried out.

5. Proposal

That further consideration be given to devising joint measures to reduce the availability and/or effectiveness of nitrogenous fertilisers as a base for the manufacture of HME by terrorists, both in Northern Ireland and the Republic. (It should be noted that such consideration should not carry with it any implication that we consider the measures already taken in the Republic to have been anything other than entirely welcome.) This consideration could form part of a review of measures to combat terrorism conducted jointly with the authorities in the Republic.

CONFIDENTIAL

MEASURES TO CURB VIOLENCE

CUTTING TIME TO TRIAL1. Problem

The Crown has always experienced great difficulty in obtaining useable evidence against terrorists, but over the past 18 months there has been a welcome increase in the number of terrorists who have been persuaded to give evidence against their former associates and accomplices in crime. Such 'converted terrorists' (CTs) are subjected to intense pressure by the paramilitary organisations they have betrayed and this pressure is channelled through many routes; eg the families of the CT may be pressured or persuaded to dissuade him from giving evidence, as might his solicitors, his fellow inmates if he is in prison and even his priest or spiritual counsellor. At every appearance in court the CT will almost certainly be subjected to pressure from those accused and from the public in court. The longer the period between the charging and trial of those accused on the basis of the CT's evidence, the more likely it is that this pressure will succeed and that he will withdraw his evidence.

2. Aim

To safeguard and protect CTs from pressures which are calculated to coerce or persuade him to withdraw from giving evidence.

3. Existing Measures

A working group considered this problem last year. There are at present three ways in which informers are protected from pressures:

(a) Voluntary Bills of Indictment:

If the DPP is aware that a CT will be faced with severe intimidation in a Magistrate's Court, he may make an application to a judge under the Grand Jury (Abolition) Act (NI) 1969 to present an indictment direct to the Crown Court. This bypasses the preliminary hearings in the lower courts, thus minimising the opportunities for pressure to be put upon the CT. However such moves are strongly opposed by civil rights groups who are concerned, rightly, about the

CONFIDENTIAL

length of time spent in custody by those charged with scheduled offences, and object to the bypassing of this relatively early opportunity to challenge the prosecution's case.

(b) Special Custody Arrangements:

Where a CT is himself charged with terrorist offences and is remanded in custody, special measures have been taken to protect him from pressure (including physical violence) from other prisoners. Such CTs are held in a separate secure area of Belfast Prison. Consideration has been given to other similar arrangements, such as designating a 'safe house' as a prison, but these have been rejected as being impracticable for a variety of reasons (a note is attached at Appendix A). Solicitors and family have access to such prisoners, and hence pressure can still be brought to bear upon them.

(c) Immunity:

In certain cases where the evidence of a CT is likely to be particularly important and the difficulties of protecting him and his family both before and after the trial are likely to be severe, the DPP may grant immunity from prosecution. The CT, and his family if necessary, can then be protected by the police before the trial and resettled, with a new identity, afterwards. Even in these circumstances, however, there may be considerable pressure upon the CT, particularly from his family, to withdraw his evidence and return to his own community.

4. Comment

(a) Notwithstanding the arrangements outlined above, there is considerable pressure upon a CT to recant before the trial of those accused upon his evidence. It is therefore important to minimise this time interval.

(b) A working party in 1978 considered ways in which 'time to trial' of those accused of scheduled offences could be reduced. This time is dependent upon:

- (i) the numbers being arrested and charged by the RUC,
- (ii) the time taken by the RUC to process and prepare reports to the DPP,
- (iii) the rate at which the DPP processes these files to the committal stage,
- (iv) the rate at which the courts deal with the cases committed to trial.

(c) At that time the number of judges dealing with scheduled offences had been raised to 6 and a new Court's Service had been set up to minimise administrative delays. The DPP's staff was strengthened, as was the RUC's staff in the CID, to speed the processing of cases. Nevertheless, the time taken to bring to trial those accused of scheduled offences still gives cause for concern, and particularly where there are a number of defendants being tried jointly (as there usually are in CT cases). The reasons for these delays are seldom clear cut. The preparation involved in trying large numbers together are much more difficult at every stage than in the trial of individuals. Delays may be caused by the relatively small number of experienced defence counsel, or by the small number of suitable courts and the inordinate length of time taken to complete each trial. On the other hand it may well be that the police and the DPP take more time to prepare cases against large numbers of defendants.

5. Proposal

(a) That the time taken to bring those accused of scheduled offences on the evidence of CTs be re-examined by officials with a view to determining where any delays could be minimised by the application of more resources or new procedures.

MEASURES TO CURB VIOLENCE

SELECTIVE DETENTION1. Problem

Although security force intelligence on terrorist leaders is in many cases comprehensive and well founded, this intelligence cannot be deployed as evidence in court, because of the danger of exposing sources and the rules of evidence which preclude hearsay. Over the years special rules and new offences have been introduced to try to facilitate the prosecution of these terrorists, but all have met with limited, if any, success.

2. Aim

In the event of continuing or escalating violence, to devise a means of arresting and detaining indefinitely the known leaders and perpetrators of such violence, in order to safeguard lives and property; in doing so it would be important to ensure that the courts and judicial procedures are not brought into disrepute.

3. Existing Powers

(a) Careful consideration has been given to this problem in the past and successive studies have concluded that, if the courts are to continue functioning properly during and after the present terrorist campaign, they cannot be used to ensure the detention of known terrorists against whom there is insufficient evidence to sustain a prosecution.

(b) Powers of Detention - EPA Schedule 1

The only existing alternative would be for the Secretary of State to exercise his powers under Schedule 1 of the Northern Ireland (Emergency Provisions) Act 1978 to authorise the arrest and, subject to advice, the continued detention of terrorists.

4. Comment

(a) There is no reliable evidence that the arrest of a finite member of terrorists would have anything more than a temporary effect upon

the current terrorist campaign of violence. As leaders are arrested others come forward to take their place and Republican terrorist groups seem to have experienced no difficulty in the past in recruiting 'active members' to fill the gaps left in their ranks by the activities of the security forces. Some sections of the minority community may be grateful if the leading 'trouble makers' were arrested, but many more would be incensed and a wide range of political parties could be expected to be antagonistic. On balance the introduction of detention could lead to a surge of sympathy for the terrorist groups and an upsurge of violence (as happened in 1971/72 after the introduction of internment) rather than a diminution of violence.

(b) If detention were to be introduced it would be largely ineffective if it were introduced unilaterally in NI. Many of those organising and perpetrating violence would (if they escaped capture in the initial round up) continue their campaign from the Republic; and they would be joined there by those recruited to replace those who were arrested. If detention were to be introduced simultaneously in the Republic, the terrorists would be denied a 'safe haven'. Moreover many of the political and presentational disadvantages of introducing detention would be diminished if the UK were to be seen to be acting in concert with the South rather than unilaterally.

5. Proposal

(a) If any further consideration is to be given to the reintroduction of detention of terrorists, this should be done, if at all possible, in concert with the authorities in the Republic of Ireland, as part, say, of an overall review of contingency measures to combat terrorism which could be introduced jointly. It should be made clear at the outset that such a step would be seen by us as a matter of last resort to curb seriously mounting violence.