



From Lieutenant General
Sir Frank King KCB MBE

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The Rt Hon S C Silkin QC MP
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I was very glad you were able to find time in what must have been a very crowded programme to visit my Headquarters last Wednesday. Although the time available to us was shorter than our agenda I was grateful for the opportunity to air a number of problems with you and to have a stimulating discussion and useful exchange of views.

On the subject of the prosecution of soldiers, I believe it would help, following our meeting, if I were to set down what I believe to be the crucial points and invite you to consider possible courses of action.

So far as the lines of communication are concerned, I am very pleased that you propose to continue the arrangements under which Sir Peter Rawlinson undertook to inform me of proposed prosecutions in the most serious cases against soldiers and allow me the opportunity of making representations to you. In this connection, I hope to be able very soon to reply specifically to your letter to me of 21st March about the case of Lance Corporal Nicoll; though this letter is, in a sense, a general reply. Of course, the object of the arrangements concluded with Sir Peter was directed to future individual cases as they arose. The ideas we ventilated with you last Wednesday were of very general application and relate to some extent to existing as well as to future cases.

I believe I am right in saying that when you left us after your visit you were in no doubt about the extent of my problem and my deep concern about the way in which the situation is likely to deteriorate unless action is taken. My apprehension is that if a series of prosecutions of soldiers in the civil courts, arising out of operational incidents, were to result in several soldiers being convicted and sent to prison, the effect on operational efficiency and morale of the army in Northern Ireland would be extremely serious. It would not be over-stating the position to say that the whole method of operations of the army in the Province would need careful reappraisal. The public interest considerations in such event are clear.

It seems to me that the problem permits two approaches: first, in the short term, can anything be done about those cases in which the DPP has already directed the prosecution of soldiers but which have not yet come to trial, and those cases which he is currently considering or about to consider? Secondly, as a longer term solution, can policies be adopted or changes made to existing policies which could take our difficulties more into account and which could prevent a crisis situation developing in the future? There is, of course, some overlap between these two approaches and perhaps I could deal with the longer term approach first.

The Longer Term Approach

As I indicated to you on March 27th, whilst entirely accepting the integrity and impartial sense of duty of those who rule that prosecutions of soldiers in operational cases must proceed, I find myself wondering whether the right criteria are indeed being applied in these cases. I have great difficulty in finding attractive or convincing the proposition that equality before the law means, in the present circumstances in Northern Ireland, that the status of the potential accused should be disregarded. In this, as in so many other aspects of life here, I fear it is not being acknowledged that the army is engaged in fighting an enemy, in suppressing an insurrection, in effect in conducting a war. To argue that the law keepers are to be regarded no differently from the law breakers, that the forces of law and order and the forces of the enemy are to be on the same footing, is, in my view, to play directly into the enemy's hands.

Similarly incongruous is the way in which the domestic or civilian concept of the right to use force in self-defence is apparently applied to soldiers engaged in operations here. This principle implies unwillingness to act aggressively. In practical terms, it implies waiting for the opponents to strike first. It concedes much of the initiative to the enemy. By emphasising the mentality of defence against an assailant rather than attack against an enemy, it imposes upon us a keenness to disengage. All this is anathema to basic military training, tactics and operating procedures; and it seems to me to be another factor which should more robustly be taken into account when deciding whether prosecutions of the law keepers should be mounted.

I would strongly urge in this abnormal situation that the strictly technical and normal approach to prosecutions - namely, that the evidence indicates a prima facie case - is not meeting the requirements of the public interest. As I advocated when we met, I see a bold and confident stand that the law keepers will not be thrown into the arena of the civil courts except where there is the clearest evidence of gross misbehaviour, as being positively in the interest of those members of the public who wish to see the end of violence in this Province.

Another facet of the question whether equality before the law means ignoring the status of the accused is the subject of trial by jury for members of the security forces. I understand that this matter is now under scrutiny as a result of the action involving a soldier.

which the RUC took some weeks ago. Whilst I understand the arguments in law and logic that the mode of trial must relate to the offence rather than the offender, I believe there to be strong public interest reasons for isolating those accused of terrorism, where the fabric of the State is being struck at, and for restoring normal trial conditions to others.

Whilst the proposition I put to you that military jurisdiction should be exercised over soldiers accused of offences arising out of operations is clearly fraught with substantial political difficulty, it may come to be the only answer if the other ideas suggested in this letter receive no support. Except in relation to homicide cases, no change to the Army Act would be required. I am strongly of the belief that many of the cases against soldiers which are brought before the civil courts at present, some of them with marginal civil interests, could perfectly well be dealt with by disciplinary proceedings under the Army Act without detriment to, and possibly with advantage to, the public interest in its widest sense. A Court Martial may very well be a more appropriate tribunal than a civil court for considering cases against soldiers arising out of the situation here; and a greater willingness on the part of the civil authorities to concede jurisdiction to the military authorities could substantially contribute to the containment of my difficulties. Among the merits of trial by Court Martial would be not only adjudication by officers who have insight into the Northern Ireland military situation, but also a clear demonstration of the army's concern about its own operational activities and discipline and, on the basis of an analysis of certain past cases, a higher probability that the truly guilty will be convicted and adequately punished.

The Short Term Approach

On the latest information I have, there are nearly twenty outstanding cases in which DPP has already directed prosecution and which might be described broadly as arising out of operational situations. I have attached a list of these as an Annexure to this letter. There may be as many more cases in the pipeline, either still with DPP, or on the way to him from the RUC, or still with the RUC, which on past form could produce directions to prosecute. Some of the cases are fairly minor, even trivial, allegations of assault which are likely to be tried by a magistrate. Others involve more serious assaults and there are several cases arising out of fatal shootings. My request is that all these cases be examined or re-examined in the light of our discussions; the basis of the examination or re-examination being whether the public interest really requires a trial at all or, if it does, whether it would not be served equally appropriately by the exercise of military jurisdiction in those non-homicide cases which the Army Act currently permits to be tried under military law in the United Kingdom.

Some of the outstanding prosecutions worry me much more than others, either because of the thoroughly border-line nature of the evidence, or their eminently "war-like operation" context, or the long delay in pursuing them. In particular, I would ask you to give very careful re-consideration to the cases of Private Ross, Private Spencer, Private Gordon, Lance Corporal Molyneux, Lance Corporal Todd and Lance Corporal Haggarty and Private Madden.

I am sorry that I have had to write at such length; but I believe

the suggestions I have advanced merit fairly detailed treatment, and such is the extent of my concern about the position which we may reach later in the year. May I ask you to be good enough to give close consideration to the various matters we put forward at Lisburn last week and which I have outlined again in this letter.