

Cross Border Police Co-operation in Ireland



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This research is premised on the assumption that there is a need for police co-operation between states which share a common land border, a free travel area, and common economic, social and cultural interests. The free movement of persons across the border serves the criminal every bit as much as the ordinary citizen. Accordingly, it makes sense that police authorities on either side of the political and jurisdictional boundary might develop methods of co-operation which enable them to combat the cross border criminal more effectively. This is particularly germane in Ireland where persons accused of a very wide range of offences, such as sex assaults, thefts, drink driving and many others, often take advantage of the border in order to stay ahead of the law enforcement authorities.

The need for effective cross border police co-operation is by no means confined to the investigation and prosecution of crime. The capacity of the authorities (including the police) on either side of the border to respond to a major incident or emergency on the border will be enhanced significantly if they have joint disaster planning which is regularly rehearsed in joint exercises. ("Lockerbie is eleven minutes from Derry").

One of the most fundamental obstacles to the development of more effective cross border police co-operation on the island of Ireland is an information deficit. Not only are there gaps in literature and research in both jurisdictions, but virtually all of what is available has been produced for the needs of one jurisdiction only. Very little research has been carried out which addresses the law, procedures and practice in one jurisdiction with reference to that in the other. It is the objective of our work to attempt to fill this gap in order that any future cooperative strategies between the Garda Síochána and the Police Service of Northern Ireland might be better informed and hence, more effective. It is important therefore to state that this research does not address policing *per se* but rather is directed towards the aspects of policing which might either facilitate or impede co-operation between the two services in Ireland.

This Report is presented in six main sections. These are by no means discrete as there is necessarily overlap between them. The first deals with the background information on the two police services in Ireland in terms of their historical development. It covers the period from approximately 1920 to the implementation of the Anglo Irish Agreement in 1985. The second section outlines obstacles to cross border policing and discusses the formal and informal strategies developed to deal with them. The very fact that a political border has been drawn across the island of Ireland has obvious implications

for policing there. The practical issues of division, in terms of the extent to which they either impede or facilitate co-operation, are considered. Special attention is given to the Patten proposals, the recent inter Governmental Agreement on cross border police co-operation and the degree to which these developments are likely to affect policing in both parts of the island. Section three attempts to locate cross border policing in Ireland in a EU context.

Top-Down initiatives have had a major effect on the development of policing in Ireland. However, of equal significance in this regard, are the perceptions and attitudes of, and within, the two police services. That is the culture of the police themselves and that of the communities which they serve. We argue that these issues are just as important to co-operation as are any legal requirements and an approach to them constitutes section four. It became clear during the course of the research that an almost unanimous view of participants was that the whole area of training was of paramount importance in terms police co-operation. Section five is devoted to a study of current strategies and those proposed for future development.

While a significant amount of desk research was essential for this report, the methodology was characterised more by illuminative and qualitative work with participants in the field. In this regard we are grateful to *inter alia*

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We are especially grateful to Tracey Gleeson who did much more than simply structure and format this report

In order to place the question of co-operation between the Royal Ulster Constabulary and the Garda Síochána within a context, it is important to look at (among other things) the historical development of both forces, and in particular at those elements of their organisational and cultural structures that might be thought to facilitate or impede the development and evolution of that co-operation.

The Development of the Garda Síochána since 1922

The Royal Irish Constabulary (RIC), established in 1835, was the predecessor to The Garda Síochána and the Royal Ulster Constabulary, and many of the key ingredients that had contributed to the effectiveness of the RIC were incorporated into the new force when it was created in 1922. The RIC had been an armed, paramilitary force covering the island of Ireland (excluding Dublin which had its own separate force, the Dublin Metropolitan Police - DMP) with a total (in 1918) of 1,129 stations throughout the thirty-two counties. Its membership was, according to Brady (1974), three quarters Catholic: it was however largely managed by (usually Protestant) members of the Anglo-Irish ascendancy, and its managerial style and culture was established along the lines of other colonial paramilitary forces used by the British in Africa and India.

In February 1922, Michael Collins established a committee to consider the creation of a replacement force for the RIC. The Committee proposed a unified, unarmed force with a maximum strength of 4,300 men organised in 21 divisions, to police all of independent Ireland, and to be administered by a Commissioner who would be responsible to the government. The new force, 'The Garda Síochána' or 'Civic Guard', was announced in the Irish Independent on 7 March of that year.

The role envisioned for the new force in the Irish Free State would be a different one from that fulfilled by the RIC. Whereas a degree of organisational continuity was possible, a police force that would be conceived as a 'Peoples' Guard', rather than an instrument of colonial power, necessitated some fundamental changes that were both operational and conceptual. At one level this amounted to little more than changing the name and the badge: but, at a more profound level, it signalled an aspiration to establish and promote a new relationship between the new force and the local community. This was, however, further complicated by the divided and volatile post-revolutionary and post civil war state of the country, and the new force faced the thorny and longterm task of "rooting out militarism and stamping a civilian imprint on Irish culture." (Lee1989). Inevitably the force was perceived by some anti-treaty supporters as aligned with the provisional government, and therefore partisan in relation to the terms of the Anglo-Irish Treaty. These fears became manifest during what became known as the Kildare Mutiny in the summer of 1922 when recruits, dissatisfied with the level of RIC influence in the new force, threatened the authority of the provisional government.

A commission of inquiry, established after the mutiny, made a number of recommendations (Walsh 1998). It was decided to disband but not disperse the Civic Guard, and immediately by selective recruitment to reconstitute the force. More importantly, the decision was taken to disarm the force and to make the relationship between the people and the guards closer by involving them in a wider range of local government activities. The vision was of:

“a police body that shall be servants of the people neither militaristic nor coercive, above party and class, serving the Government of the people, no matter what Government alone” (Allen 1999)

The Garda Siochana Act (1924) that followed allowed for 4,918 gardai; 1,200 sergeants; 150 inspectors and superintendents; 27 chief officers and supervisory officers (Breathnach 1974). Shortly after this, the Police Forces Amalgamation Act (1925) merged the DMP and the Garda Siochana.

Not surprisingly the Irish Free State remained a volatile place during the 1920s (Breathnach 1974), and many have argued that the new police force constituted a major influence in the process of wooing a divided and often rebellious population in the direction of constitutional democracy. The force was often under-strength, under-armed and regularly under attack from paramilitary groups on both sides. A separate Special Branch was established in 1925, distinct from the uniformed force, to deal with political crime and attempts at subversion. But the fact that the uniformed force was unarmed appeared to represent the idealistic nature of the nascent state, and it also had the advantage of a dynamic - if occasionally unpredictable - leader in Commissioner Eoin O'Duffy.

In 1932 when Fianna Fail, led by Eamonn de Valera, came to power for the first time, the supposed apolitical integrity of the Garda was severely tested. Tensions between the pro- and anti-treaty sides had fluctuated throughout the twenties and into the thirties, and O'Duffy had used fairly extensive powers of repression to keep the peace, including the use of military tribunals in the place of normal courts and the proscription of 12 political groups (Saor Eire and the IRA among others). De Valera, representing those who did not agree to the Anglo-Irish treaty, sacked O'Duffy because he was “likely to be biased in his attitude because of past affiliations”¹.

Breathnach (1974) suggests that:

“Perhaps O'Duffy's ideas of a police force would be more appreciated today, but in the twenties the police were the right hand of the government and they could not be permitted to operate as a satellite army within an Ireland of so many satellite armies.”

By 1932 all political prisoners had been released, and many of these joined the police and the army. In April 1933, an organisation called the ‘Army Comrades Association’ (ACA), led by O'Duffy after his dismissal, began to wear a uniform of blue shirts in public, and announced plans to march 20,000 men to the capital in protest against de Valera's government. One consequence of these paramilitary stirrings was that, in 1933, 367 new recruits were admitted to the Gardai to help keep order in the

¹ Dail Debates vol. 46 col. 764, 14 Mar 1933

increasingly fractious conditions created by the two groups. Clashes between 'mildly fascist' Blueshirts and 'mildly communist' IRA members became more numerous and violent. However, the guards emerged from this period of Irish history with a reputation as an impartial force, having acted with equal severity towards both IRA members and Blueshirts.

Supported by a new Offences Against the State Act (1939) the Garda Síochána moved strongly against the IRA in 1940 and consequently suffered a number of fatalities. However by 1945 the IRA had been largely defeated. With the Free State now at peace with itself, the remainder of the history of the force is tied less to the development of the state than to the internal development of the organisation.

The structures and procedures of the force were largely reformed in the early 1960s. Up to then, it could be argued that the twenty-six county state was policed by a force designed to meet the exigencies of nineteenth-century Ireland (Griffin 1999). The Garda Síochána was highly centralised and controlled by its administration headquarters in Phoenix Park, Dublin. The Garda Commissioner, who was the head of the force, was appointed by the government, and remains responsible to the Minister of Justice. Breathnach (1974) claims that this political association, which is at once so important and precarious, has never seriously been questioned or defined.

Clearly this strong centralised and hierarchical structure had advantages, for example of "ensuring that the force functions as an integral unit, rather than as an unwieldy body of individuals" (Walsh 1998). Further benefits included a coherent system of governance during the thirty years after independence when the state was under threat. However its garrison-like nature had begun to cause dissatisfaction among its members, especially as a result of its perceived isolation from the rest of the community. An article in the *Garda Review* in September 1939 demonstrates the point:

"we have now a force held together by rigid bonds of discipline, lacking the beneficent welding influence of social life."

An Interdepartmental Inquiry set up in 1950 was intended to examine Garda strength. The committee set about modernising the force by removing some of its extraneous duties and introducing automobiles to selected districts. It also found it possible to shed 714 men in a re-organised force of 6,683 (Allen 1999). Releasing guards from antiquated rural duties dramatically altered the nature of the police service, freeing guards from the compulsion to return every few hours to their station.

Figure 1 Garda Numbers 1922 -1970

| Garda Numbers 1922 – 1970 | |
|---------------------------|-------|
| 1922 | 2,960 |
| 1935 | 7,516 |
| 1945 | 7,485 |
| 1968 | 6,554 |
| 1970 | 6,546 |

Source: Breathnach 1974

In 1952, for the first time since 1943, 174 new recruits were brought in to the force to replace some of the guards who had retired, or who had joined the United Nations contingent in 1956². In 1958 the first *banghardaí* (female officers)³ were recruited. This second generation of guards proved quite unlike its predecessors. This was reflected in 1959 when the guards gained the right to negotiate directly with the authorities over pay. The Joint Representative Body went to arbitration and gained a modest rise in salary. Younger guards were however excluded from the offer and this caused a significant degree of dissatisfaction,

On 4th November 1961, in an unprecedented attack by the guards on what they perceived as the authoritarianism of the organisation, a number of officers attended a meeting at which it was decided to implement a go-slow to highlight the failure of officers to obtain a pay rise. Charles Haughey, the Minister for Justice, issued a statement saying that if discipline was restored a full examination would be undertaken into the negotiation procedures for increases in the salaries of younger guards. Unfortunately, on the same day, the then Commissioner issued letters of dismissal to the eleven ringleaders, which had the predictable effect of increasing support for their case, to such an extent that they were all immediately reinstated. As a result, the Joint Representative Bodies of the Force gained in status and conditions for serving members improved. Further confrontations between the commissioner and the guards led to the setting up of the Conroy Commission in 1968, to examine every aspect of the Garda Síochána⁴. The commission strongly urged a review of the relationship between the Garda Síochána and the Department of Justice as it felt the latter exercised too much control. It also introduced the idea of creating a Research And Planning Unit.

“[This unit] launched ambitious plans to computerise the administrative and forensic science records, and among other projects devised schemes for rural policing adopted in the eighties, and for regionalisation of the management structure, long delayed but eventually introduced in the following decade.” (Allen 1999)

The unit was also responsible for the codification of the Garda regulations and revision of the Garda guide, ending one aspect of the organisation’s link to the colonial past. By 1969, the actual strength of

² 500 guards left the service in the first five years of the 1950’s for these reasons.

³ By 1996 seven per cent of the force were women (McNiffe1999). The term *banghardaí* has not been used since 1991.

⁴ Throughout the Sixties the guards were improving their service. In 1960 tracker dogs were introduced. In 1963 a juvenile liaison scheme was established. A sub-aqua unit was created in the mid-sixties and Templemore Training College in County Tipperary was opened.

the Garda Síochána was about 6,500. There were just five women sergeants and twenty-three women of garda rank (McNiffe 1997).

The 1970s was a time of significant change for the Garda Síochána. The job became increasingly more dangerous as violence in Northern Ireland escalated and spread into the Republic. The crime rate also increased dramatically. The 1977 figure for indictable crime was two and a-half times the 1968 figure. The nature of crime also altered. Criminal activity became more organised and vicious armed robberies became more common. In response the number of gardai was increased by almost 50%, so that by 1979 the total strength of the force was nearly 9,500 (McNiffe 1997).

By 1981 the Garda Síochána had approximately 10,000 members and in 1984 this had risen to 11,200. The number of women in the force, while remaining small, had also risen. In 1983 there were 300 women⁵, an increase from 35 in 1977. The decade also saw the passing of a Garda Síochána (Complaints) Act in 1986. This set out the procedures to be followed in the investigation of complaints by members of the public against individual guards. Walsh (1998) states that the Act was passed in the wake of a number of incidents, which were deemed by public opinion to have been treated in a heavy handed manner. Its focus was on satisfying the public that allegations of abuse by the police, in the exercise of new powers granted to them to combat terrorism, would be fairly investigated.

By 1996 the global picture of the Garda Síochána had changed quite dramatically in terms of its structures, its size, and its place within the general community. The overall structure however remained hierarchical. The country was divided into six Regions, each commanded by a Regional Assistant Commissioner. Each Region was divided into Districts commanded by a Chief Superintendent, and each District was divided into Divisions commanded by a Superintendent, assisted by Inspectors. Districts were in turn divided into sub-Districts commanded by a Sergeant who oversaw (usually) one station consisting of between three and one hundred men.

In relation to size, there are now 703 Garda Stations throughout the country, a total of 11,230 members in the force, including 1,700 detectives who operate in civilian attire. In addition there are 500 civilian staff⁶. As to the place of the force within the community, the civil war legacy is clearly finally gone, and the overall satisfaction rate with the force is believed to be high. However the many social changes – among others the increase in crime, drugs, and new migration patterns - have inevitably made the role of the guards more complex and multifaceted, and it is clear that new levels of sophistication will be necessary to deal with these in the future. Relationships with the Police Service of Northern Ireland in the wake of the Good Friday Agreement, and the Patten Report, may add to this complexity.

⁵ This included three inspectors and eight sergeants.

⁶ As posted on <http://www.irlgov.ie/garda/> at May 28th 2001.

The Development of the RUC/PSNI since 1922

Northern Ireland was brought into being by the Government of Ireland Act of 1920, which partitioned the country and provided for two parliaments, one in Dublin and one in Belfast. Despite the ongoing and extremely violent Anglo Irish war being fought between British forces and Irish Volunteers (later known as the Irish Republican Army) mainly but not wholly in the Southern part of the country, a new Parliament for Northern Ireland was opened in Belfast on 22 June 1921. Shortly after this, on 9th July 1921, a truce was agreed between London and the IRA, followed by the signing of an Anglo Irish Treaty in London on 6th December 1921. This accepted the reality of the partition of the country. For one section of the Irish population this represented an enormous betrayal, and very quickly a vicious Civil War between pro and anti treaty factions began, which lasted until April 1923.

The whole period was one of great uncertainty and instability in all parts of the island of Ireland. In the North, the newly elected unionist government was faced with regular sectarian rioting within its own borders, with – for example – the violent expulsion of Catholics from the Belfast shipyards, and continuing attacks from the IRA both internally and across its new border with the south, leading to further unrest and disruption. Unionist vigilante groups emerged, largely composed of members of the Ulster Volunteer Force, an armed militia dedicated to maintaining the integrity of the new administration's status within the United Kingdom. The new Unionist state felt itself under threat from the south, which still laid claim to the north, and from the Catholic minority within its borders who did not accept, and felt betrayed by, the new arrangements. To help counter this threat and to bring the various irregular vigilante groups under control, the Ulster Special Constabulary was formed. In response to the continuing violence, there were two meetings between Craig and Collins in early 1922, leading to pacts to establish a working relationship with the aim of restoring law and order. These produced a plan for an advisory committee to oversee increased Catholic recruitment to the police. A commitment was also given to deploy units which were 50% Catholic and 50% Protestant in mixed areas or on arms searches. Because of opposition from within the Unionist Party this agreement was never honoured. More generally the meetings had no significant effect on the violence from either side.

The Royal Ulster Constabulary (RUC) was formed in 1922 when responsibility for internal security was devolved from Westminster to Belfast. Like the RIC, it was centralised and under direct political control with the Inspector General answerable to the Unionist Minister of Home Affairs in the Northern Irish Government. He commanded a police force of 3000, backed up by a part-time B Special force. The basic organisational unit, outside Belfast, was the County, which was divided into six or eight districts headed by a county inspector assisted by a head constable. Belfast was divided into five districts and headed by a City Commissioner.

It was intended initially that Catholics would comprise one third of the new force, and this was intended to represent the proportion of Catholics in the population of the new region. Not for the last time this aspiration was not fulfilled, and Ryder (2000) provides a number of explanations for this failure: Catholics were afraid of being ostracised by their own communities; inter-recruitment between

the Specials (in the main former UVF members) and the police disadvantaged Catholics; the orange culture in the RUC intimidated them; and, most importantly, the Unionist Government urged on by a diehard minister of Home Affairs (Dawson Bates) did not want more Catholics in the police force and vacancies were most often filled from the ranks of the USC. According to McGarry and O'Leary (1999),

"Catholic representation 1923 peaked at 21 per cent in 1923, fell to 17 per cent by 1927 and to 10 per cent by the outbreak of the present round of conflict in 1969."

From the beginning the RUC was an armed force, paramilitary in nature, with many of its members also members of the Orange Order (Ellison and Smyth 2000). It had little autonomy in its own right, and was controlled by the Government - in effect the Unionist Party - through the Minister of Home Affairs. This structure of authority lasted without a break, from the establishment of Northern Ireland in 1922 until 1972. During this time the unionist government was composed exclusively of Protestants, the majority of whom were members of the Orange Order. The Government saw the role of the RUC in political terms, that is primarily – and with some justification - as defenders of the state against attacks from the IRA and similar anti-partitionist groups. The minority Catholic community as a whole was also perceived to be essentially disloyal and antagonistic to the police, and was therefore often included indiscriminately as part of such groups. The Government made little attempt to attract the support of the minority, with the inevitable result that many of them felt obliged to accept the role to which they had been assigned.

To assist the police in their perceived role as defenders of the state, the government in 1922 passed a 'Special Powers Act', which gave wide powers of search and arrest and allowed internment without trial, suspension of inquests, and the imposition of curfews. An inquiry into policing by the British National Council for Civil Liberties in 1936 was critical of the RUC's political role. It reported that the police did not act impartially when dealing with marches or protests and consistently favoured Protestants at the expense of Catholics.

Despite these difficulties the Catholic minority within Northern Ireland did not always demonstrate their unconditional opposition to the state or the Government. For example, when the IRA began a new campaign of violence between 1954 and 1962, it quite clearly failed to win the support of the wider Catholic community. This evidence of growing acceptance of the *status quo*, however, appeared to make little impact upon the bulk of the unionist community, or their practices and suspicions. There was little unionist support for reforms aimed at the complaints of the Catholic community. Nevertheless, during the late fifties and early sixties a number of public unionist voices began to speak out in favour of change and new trust, but with little success.

The authority of the Unionist Government was therefore not seriously challenged until the Civil Rights protests began in 1968. From the beginning, the leaders of this campaign emphasised that they were not opposing the existence of the government, but were looking for the establishment of British patterns of social justice within the governance of Northern Ireland. This was demonstrated, for

example, when - unlike practices in the past - appeals for change and reform were directed towards Belfast and London rather than Dublin, indicating a disposition to accept the legitimacy of the government.

However, the combination of insecurity and long practice among unionists meant that the civil rights leaders were immediately branded as anti-partitionists whose real agenda was to destroy the state. The first line of their defence was inevitably the RUC, with the result that the series of civil rights marches during 1968 – '69 in Dungannon, Belfast, Armagh and Derry were treated by the police as an attack on the state. At the least, the policing of the disturbances that resulted exposed the failure of the police and specials to act impartially. Bardon (1992) writes:

“Images of unrestrained police batoning unarmed demonstrators including MPs, ‘without justification or excuse’, as the Cameron Commission judged later, flashed across the world.”

The sequence of events that followed is well known. In substance, the rioting that followed the Apprentice Boys march in Derry in August 1969 spread to Belfast and other places, until it was evident that the police could no longer control the situation. As a result the British army was called in, in support of the police, and assumed a control of the security operations that lasted for the next eight years, with the police playing a secondary role. A committee led by Lord Hunt investigated the policing of the disturbances. Hunt's recommendations included, the disarming of the police, the Repeal of the Special Powers Act, the disbandment of the Ulster Special Constabulary and the establishment of the Police Authority of Northern Ireland.

These and other changes meant that grass-roots unionists and loyalists, especially in Belfast, had all their suspicions confirmed, that the whole business was a clever nationalist plot to destroy Northern Ireland's place in the United Kingdom. The acceptance of the Hunt Report therefore led to loyalist rioting on Belfast's Shankill Road in which the first policeman of the troubles was killed. The civilianisation of the police force proposed by Hunt was almost immediately undermined by the emergence of the provisional IRA and a deteriorating security situation. Within a few weeks the police had to be re-armed, and a new RUC Reserve force was created to assist the police to control civil disturbances. The Ulster Defence Regiment was formed in 1970 to patrol borders and protect the state, and recruited many members of the disbanded Ulster Special Force (B Specials). The Special Powers Act was replaced by Emergency Provisions Act (1973) and reinforced by the Prevention of Terrorism Act (1974). These gave the police greater powers than they had enjoyed under the old Special Powers Act. They suspended the right to jury trial, reintroduced internment and gave the police wider powers of arrest.

Following the Hunt Report, the Police Act (1970) established an independent Police Authority for Northern Ireland, as a means of increasing police accountability to the public, and to distance the police from political control. In theory the act gave the Police Authority important powers over the

police but in a deteriorating security situation they were never effectively applied. Weitzer (1995) pointed out that:

“On those few occasions when the Authority has pressed for a wider remit or asserted itself against the decisions of the Chief Constable, it usually has encountered stiff resistance. In 1976 it was denied a request to attend security meetings at the Northern Ireland Office and it was also refused access to files on complaints against officers. In a submission to a task force on complaints, the Authority claimed a right to such files under the Police Act and complained that its role in monitoring how complaints were being handled was being thwarted by the RUC”

By 1971 the IRA had gone on the offensive with a bombing campaign all over Northern Ireland, but mainly in Belfast and Derry. The reintroduction of internment without trial by the Faulkner government in 1972, followed by allegations of ill treatment of internees, and the shooting dead of 13 civilians by British paratroopers at a civil rights demonstration in Derry (Bloody Sunday) served to increase recruitment to the provisional IRA. A number of vigilante groups were policing both communities and there was pressure from unionist ranks for a ‘third force’ to defeat the IRA. In March 1972 the Northern Ireland parliament was dissolved and direct rule imposed from Westminster.

After 1969 the RUC, in practice, assisted the army whose security policy was governed by reaction to events. The army’s strategy was solely a military one and the ongoing conflict resulted in fortification of police stations and further militarisation of the police. Non-jury courts presided over by one judge, as recommended by the Diplock Report (1972), were able to consider as evidence confessions obtained in the interrogation centres at Castlereagh and Gough Barracks. Complaints about ill-treatment of prisoners were investigated and reported upon by Amnesty International in 1978. They found sufficient evidence of maltreatment of suspected terrorists to warrant a public enquiry. This was corroborated by the Bennett Report (1979) which also found evidence of ill treatment.

By 1976 the policy of police primacy was recognised as ‘the way ahead’ and the RUC resumed a central role in policing. The new Chief Constable, Sir Kenneth Newman saw his task as restoring the police to a central role, developing a counter-insurgency strategy and enshrining impartiality as a guiding principle of the police force. Events on the street undermined this ideal. The RUC were under attack from all sides and normal policing at this time was simply not an option. For their own protection the police had to be armed and travel in heavily armoured vehicles. The Police Federation protested increasingly that the use of a civil police force for military duty was inappropriate. Nevertheless, on January 1st 1977 the new policy of police primacy was firmly established under a joint directive signed by the new GOC Lt-General Creasey and Chief Constable Newman.

Crucial to this counter insurgency strategy was effective intelligence gathering. One consequence of this emphasis was the emergence of the ‘supergrass’ - a person who was prepared to give evidence in exchange for immunity from prosecution and/or financial inducement. Convictions were often made in Diplock courts, on unreliable evidence that did not require corroboration. Many informants retracted

their evidence and strong protests came from both sides of the community. As a result the RUC and security forces ceased to rely on the strategy.

Alleged collusion between the security forces and loyalist paramilitaries has been an ongoing issue and has instigated inquiries by, among others, Stalker, Samson and Stevens. The Stevens Inquiry (1989) concluded that while there was no evidence of institutionalised collusion with loyalist groups there was evidence of security documents reaching loyalists through members of the security forces.

Meanwhile, increasingly successful operations against Protestant paramilitaries, and the policing of banned orange parades and demonstrations, led Protestants to complain that the RUC was no longer 'their police service'. The police were confused, attacked from all sides and racked by allegations of shoot-to-kill policies and collusion with loyalist groups. By the end of 1998, 302 policemen and women had been killed and thousands maimed and injured.

In April 1998 the Good Friday Agreement was agreed by the majority of the political parties in Northern Ireland. The difficult and contentious issue of policing was an important element within the Agreement, and it was agreed that an independent commission on policing would be set up. This was quickly put in place under the chairmanship of Chris Patten, and was charged with making recommendations for a future police service that would be:

"Professional, effective and efficient, fair and impartial, free from partisan political control; accountable both under the law for its actions and to the community it serves; representative of the society it polices and operates within a coherent and co-operative criminal justice system, which conforms with human rights norms."

The commission consulted widely, held public meetings, and received letters and petitions from a great many groups and individuals from all parts of Ireland, the UK, and wider afield. Members also visited other police services in the Republic of Ireland, Britain, Canada, South Africa, the United States and Spain.

The key changes recommended in the commission's final report included, a new name and symbols for the police service, a new Policing Board to replace the current Police Authority, comprehensive action to focus policing on human rights, new District Policing Partnership Boards to carry out local consultation on policing, and unique arrangements for recruitment designed to redress religious imbalances in the composition of the police service.⁷

Prior to the Good Friday Agreement, the RUC was described as a tripartite system, the three major elements of which were the Chief Constable, the Secretary of State for Northern Ireland, and the Police Authority. Within this system the Chief Constable was held to have operational independence, but also to be responsible (or answerable) to the Police Authority in relation to administrative and financial matters. In practical terms this appeared to mean that the Chief Constable was not in any

⁷ Police Authority for Northern Ireland, Annual Report 1999/2000

meaningful way under the control of the Authority. The Secretary of State was the final arbiter in the case of disputes. The managerial structure was that the force was headed by a Chief Constable, assisted by two Deputy Chief Constables: Northern Ireland was then divided into three regions each headed by an Assistant Chief Constable, 12 divisions headed by Chief Superintendents, and 38 subdivisions headed by Superintendents.

The new Police Service of Northern Ireland (resulting in the main, but not entirely, from the Patten proposals) is organised on a continuing tripartite system designed to assist transparency and accountability. The Secretary of State is responsible for producing long-term objectives and principles. While the Chief Constable has operational responsibility, he has also an obligation to report to the Policing Board and may be asked to explain operational decisions. The Policing Board is composed of 19 members, 10 elected members drawn from the Assembly, and 9 independent members representative of the community who are appointed initially by the Secretary of State in consultation with the first and second ministers. The Police Board will set objectives and priorities for a 3-5 year period, hold the chief constable and the police service to account, negotiate a budget, and present an annual policing plan. They will also be responsible for appointing the Chief Constable subject to the approval of the Secretary of State. The Board may follow up any report from Chief Constable by instigating an inquiry by the Ombudsman, Her Majesty's Inspector of Constabulary or the Audit Office.⁸

The new divisional structures have been replaced by District Command Units (DCUs) that are aligned with the local council areas. Each DCU is further divided into sectors, and the policing team for each sector is committed to working towards involving the community in a problem solving approach to policing. Each council is to establish a District Policing Partnership Board (DPPB). It will be made up of a majority of elected members, along with a number of independent members to be selected by the local council with the agreement of Policing Board. The position of chairperson of each DPPB is to rotate between the political parties, and each DPPB must submit an annual report to the District Council and to the Policing Board.

History of Cross-border Co-operation between the Two Police Forces

The political circumstances leading to the establishment of Northern Ireland, the creation of a land border, the existence of illegal organisations and private armies, continuing bitter political disagreements and disputes between governments (right down to comparatively recently), all contributed to an atmosphere - and a set of practical realities - that made co-operation between the two police forces difficult. In addition, as we have seen, the two forces emerged within societies with quite different cultural and political aspirations and senses of institutional identity. They also developed different organisational structures, different relationships with their various communities, and different attitudes to and understandings of their roles and responsibilities.

⁸ The Patten Report 1999 and the Implementation Plan 2000

It is therefore probably true to say that complex and sophisticated sets of inter-force relationships did not tend to emerge during the first 60 or so years of their existence. Individual members of the two forces agree that this was indeed the case, but they also argue that relationships at various levels of efficiency and depth nevertheless did exist for the mutual benefit of both police services and their immediate communities, although often covert and unpublicised. At its weakest, this often meant that near to the border, the local Garda and RUC man knew each other personally, and co-operated in relation to ordinary criminal activity, petty crime and local difficulties. At other more complex levels, examples of co-operation were cited in relation both to larger civil and criminal offences (murder, armed robbery, smuggling), and also to the activities of illegal paramilitary organisations. These organisations often constituted a threat to the equilibrium of the local community, and sometimes to the lives of police personnel from both sides. For example, during the 1956 IRA campaign, co-operation continued to depend on the relationships and friendships that had been built up at border stations.

When the civil rights disturbances began in the late 1960s however, and the Northern Ireland government used the police to suppress dissent, there was a cooling in cross border relationships even at the local and informal level. The subsequent campaign of the Provisional IRA, the devolution of the Stormont Government, and the imposition of direct rule from Westminster gradually brought recognition from the British Government that the problems in Northern Ireland had an Irish dimension. The Sunningdale talks (1973) were the first official indication of this. As a result of these talks, the initial steps towards more formal co-operation in policing were taken at a meeting between Garda and RUC officers at a military airfield at Baldonnell, outside Dublin. It was agreed to set up a series of study groups to examine, *inter alia*, the improvement of radio communication, exchanges of intelligence and more co-ordinated border patrols. The talks were wide ranging and created a basis for future co-operation within the Anglo Irish Agreement. Border superintendents were appointed in Northern Ireland in 1978 to further enhance the system of formal co-operation.

It was suggested to us that the 'shoot to kill', and other controversies, engendered a distrust of the RUC among the Guards,. The perception that terrorists could live with impunity in the Republic of Ireland, led to a similar lack of confidence in the Gardai. Both resulted in a decline in co-operation between the two services. The Anglo Irish Agreement (1985) was to return co-operation to a firmer footing. This agreement provided for regular meetings between the two police services at all levels. It also suggested shared training facilities and exchanges of personnel, and recommended that the criminal law should be examined to find areas that could be harmonised to the benefit of both jurisdictions.

These regular meetings were successful in creating good working relationships but made little progress in the suggested areas of training, personnel exchanges and harmonisation of criminal law. Fourteen years later, in 1999, Patten still the need to point out that arrangements for co-operation between the Garda Síochána and the RUC are more *ad hoc* and dependent on personal relationships than, for example, the arrangements between Kent County Constabulary and its neighbours in France

and Belgium. The Patten Commission also confirmed that co-operation across the broader range of police activities has been less developed than one would have expected. The Commission has made a series of recommendations that reflect those of the Anglo Irish Agreement and that, if implemented, will establish a level of co-operation not formerly enjoyed between the two jurisdictions.

Obstacles to Cross-Border Policing

There is a perception that differences in law, police powers and police procedures between Ireland and Northern Ireland produce gaps through which criminals can escape justice. A Chief Superintendent of the Garda Síochána recently claimed that borders tend to assist criminals rather than restrict them.⁹ Criminal activity, he added:

“is facilitated by different Criminal Justice Systems in almost every country and by the reluctance of individual countries to co-operate with each other in the area of criminal investigation and criminal prosecution and extradition.”¹⁰

A senior PSNI officer in Derry pointed out that the situation is made worse in Ireland because there are no longer any official checkpoints, and sometimes it is difficult to know when one has crossed the border. He claimed that such easy access further facilitates the criminal. In this regard, an Assistant Chief Commissioner in the PSNI expressed his hope for a time when ‘no criminal could use political boundaries to hide from the law.’¹¹

Undoubtedly the existence of the border is a hindrance to effective law enforcement and the delivery of an efficient police service. The jurisdictional limits of police officers on either side of the border are such that they cannot cross the border to exercise their powers or discharge their duties as police officers. The implications of this can be assessed in several contexts, namely:

- the prevention of crime,
- the investigation and detection of crime,
- the prosecution of offenders,
- the enforcement of criminal penalties and
- the delivery of an efficient police service.

The Prevention of Crime

There are circumstances in which a police force in one State will have a legitimate interest in keeping individuals and gangs under surveillance or investigation in another State. It may be, for example, that an individual or a criminal or terrorist gang based in one State is suspected of planning and preparing the commission of criminal acts in the other. In order to prevent the acts taking place the latter may wish to keep the individuals or gangs under surveillance or to carry out investigations into their background and activities. Given the jurisdictional limitations of the border they will normally have to pursue this objective from within the State. They will not be able to carry out the investigation and

Association of Chief Superintendents - An Garda Síochána Conference 2000, ‘The Challenge of Change, Reforming Progress’, a paper given by Tom Monaghan.

Ibid.

Interview with ACC, 27th November 2001.

surveillance unilaterally on the territory of the other State or access the criminal records of the other State. Police forces on one side of the Irish border have no legal authority or general permission to carry out operations of this nature on the other side. They also do not have access to each other's criminal records or intelligence databases. It follows that they will be heavily dependant on the active co-operation of the law enforcement authorities in the other State in these matters. Even when such co-operation is forthcoming it will have to operate within the legal constraints imposed by measures such as the data protection legislation. It will be seen later that developments at EU level have facilitated the cross-border surveillance and investigation of criminal and terrorist activities.

The Investigation and Detection of Crime

The existence of the border impedes the investigation and detection of crime by virtue of the fact that police officers cannot pursue suspects across the border in hot pursuit, they cannot cross the border to apprehend a person whom they witness committing an offence, they cannot cross the border to arrest and detain a suspect for investigation about the commission of a criminal offence and they cannot cross the border unilaterally to gather evidence in pursuit of a criminal investigation. In all of these situations the officers on one side of the border must act through the officers on the other side. Essential pre-requisites for such action are a mutual willingness between the two police forces to cooperate and excellent channels of communication on the ground and at management level. Even where these pre-requisites are satisfied additional obstacles may be presented in the form of differences in criminal law and procedure between the two jurisdictions.

Conduct which constitutes a criminal offence in one jurisdiction may not necessarily be a criminal offence in the other. It is highly likely that cross border police co-operation in a criminal matter will be confined to conduct which is recognised as a criminal offence in both jurisdictions. In practice this should not give rise to any significant difficulty. The criminal law in both jurisdictions has developed from a common source. While the substance of criminal law in both jurisdictions has been shaped separately by several major and minor statutory enactments since 1921, in practice the changes have tended to track each other. Even though there are now many differences in detail between the two sets of criminal law, there are not many basic forms of conduct which would attract a criminal penalty in one jurisdiction while being lawful in the other. Currently, examples can be found within the general areas of: abortion, theft (broadly defined), public order and terrorism. Even there the similarities are more substantial than the differences. Moreover, such differences as there were in the offences of robbery and burglary were specifically resolved by the Criminal Law (Jurisdiction) Act, 1976.

The detection of crime and the apprehension of offenders will often require the exercise of police powers of arrest, detention, questioning, entry, search, seizure etc. These are generally exercisable only where the police are investigating a criminal offence with a view to bringing charges before the courts in their own jurisdiction. Setting aside developments in EU law for the moment, they cannot generally be used to gather evidence for the purpose of a criminal investigation or prosecution in another State.

It will be seen in the following chapter that current developments at EU level will significantly enhance the capacity of a police force in one jurisdiction to advance a criminal investigation with the co-operation of the authorities in another jurisdiction. It is worth noting here, however, that there are now well established procedures in domestic law, consequent on EU measures, whereby the police and judicial authorities on one side of the border can gather evidence at the request of the authorities on the other side of the border for use in a prosecution on the other side of the border.

Even where the police authorities in one jurisdiction can lawfully act to gather evidence on behalf of a criminal investigation in another jurisdiction, problems can arise as a result of differences in criminal procedure, particularly on the rules governing the admissibility of evidence in a criminal trial. While there are many similarities in the legal and administrative procedures governing the acquisition of evidence and in the legal principles governing the subsequent admissibility of that evidence in the two jurisdictions, there are also many differences. The net result is that evidence obtained by the police in one jurisdiction, in accordance with the law and procedure pertaining to that jurisdiction, for the purpose of criminal proceedings in the other jurisdiction will not necessarily be admissible in that other jurisdiction. This problem cannot always be solved by gathering the evidence in one jurisdiction in accordance with the rules and principles of the jurisdiction in which it is intended to be used. Such action may be restrained in circumstances where the methods used do not comply with the law of the jurisdiction in which the evidence is being taken.

The Prosecution of Offenders

The prosecution of offenders in one State can be inhibited by the need to gather and use evidence from the other State. The difficulties associated with the investigation and detection of crime in this context are also relevant to the prosecution. A further difficulty can arise in respect of the prosecution where the actual accused is located in the State other than that in which he is to be tried. The jurisdictional limits to their powers ensures that the police cannot simply enter the other State to arrest the accused and bring him back for trial. There are, however, procedures for dealing with this situation, namely extradition and the extra-territorial jurisdiction of the courts in both Ireland and Northern Ireland.

The current extradition procedure between Ireland and Northern Ireland dates from 1965. Prior to that it operated on the basis of a backing of warrants procedure, whereby an arrest warrant issued in Northern Ireland could be endorsed for execution in Ireland on the authority of the Garda Commissioner. Once arrested the suspect could be delivered into the custody of the RUC. The procedure was judicialised in 1965 as a result of an over-zealous attempt on the part of gardai to cooperate with the law enforcement authorities in the United Kingdom in the case of *State (Quinn) v Ryan* [1965] IR 70. In that case a warrant had been issued by the London Metropolitan Police for the suspect who was located in Ireland. The warrant was delivered to the Garda Síochána for execution. Once arrested, and before delivery to the RUC, the suspect challenged his arrest and detention successfully in the High Court on the basis that the warrant was defective. The High Court ordered his release. Unknown to the High Court the Garda Síochána was in receipt of a fresh warrant which had

been issued by the London Metropolitan Police. They arrested the suspect on the steps of the High Court pursuant to the fresh warrant, bundled him into a car, drove him directly to the border and delivered him into the custody of the RUC. The net effect was that the suspect was denied any opportunity to challenge the validity of the fresh warrant before the High Court. The Extradition Act, 1965 was enacted in response. Similar legislation was enacted in the United Kingdom. It retains the backing of warrants procedure, but adds the requirement that the suspect should be brought on arrest before the District/Magistrates Court for an order for his extradition. This also provides the suspect with the guaranteed opportunity to challenge the application for his extradition in the District/Magistrates Court. If unsuccessful he can proceed to the High Court and from there on appeal to the Supreme Court in Ireland and, in Northern Ireland, the Court of Appeal and House of Lords. In 1987 a further procedural requirement was added in Ireland. As a result a warrant can only be executed if the Attorney General has issued a direction to the effect that he is satisfied that there is a clear intention on the part of the U.K. authorities to prosecute the person in question and that that intention is founded on the existence of sufficient evidence.

The extradition procedures are not available for all offences. They apply to all indictable offences and to all summary offences which are punishable by a term of imprisonment of at least six months. It follows that most minor regulatory offences are not covered. Specifically excluded are: political offences and offences connected with political offences, military offences, revenue offences and offences in one State which are not offences in the other. Also extradition can be granted only for the purpose of the trial of the person concerned for the offence or offences specified in the extradition request. These exclusions and the special procedures applicable to extradition can delay and even frustrate the prosecution of a suspect who has crossed the border. Indeed, the public perception of extradition as an effective mechanism for cross-border law enforcement has been tarnished by the political controversy which has raged over terrorist cases in the 1970s and 1980s. This may have conveyed the mistaken impression that extradition was not capable of achieving the surrender of offenders from Ireland to Northern Ireland for the purpose of being tried for serious offences. The reality, of course, is that before, during and after this period extradition was, is and continues to be very successful in its objective. Indeed, it is more readily available and works more satisfactorily between the two jurisdictions in Ireland than in many other parts of Europe. The difficulties that there have been relate only to a small number of cases which were deemed to involve political offences and a few in which the United Kingdom authorities were sloppy in the preparation of the paperwork. These must be set against the reality of a steady surrender of suspects in either direction in cases which do not attract public notice. It is also worth noting that relevant judicial interpretations and legislative enactments implementing relevant European Conventions has so narrowed the political offence exception to the extent that it does not seem to create any significant obstacles in practice. Later it will be seen that the adoption of the European arrest warrant will lower even further the capacity of the jurisdictional border to function as a barrier to bringing suspects to trial.

The political difficulties associated with extradition between Ireland and Northern Ireland in the 1970s resulted in the enactment of legislation which makes a significant contribution to the prosecution of

offences on an all Ireland basis. The Criminal Law (Jurisdiction) Act, 1976, and its United Kingdom counterpart, the Criminal Jurisdiction Act 1975, expands the extra-territorial jurisdiction of the courts in each jurisdiction with respect to offences committed in the other. Broadly, the offences in question cover: serious offences against the person; arson; explosives and firearms offences; robbery; burglary; the unlawful seizure of aircraft or vehicles; and escaping from lawful custody. Where any such offence is committed in one jurisdiction in circumstances where it would constitute an offence in the other if committed in the latter, then it is considered to be an offence in the latter. Accordingly, it can be tried in the latter but only if the person charged with it in the latter opts to have it dealt with there instead of in the jurisdiction where it was allegedly committed. In any such trial, it would be normal for police officers and witnesses from the jurisdiction in which the offence was allegedly committed to appear in the court of trial for the purpose of giving their evidence. Equally, however, there is provision for evidence to be taken before a judge of the High Court in the jurisdiction where the offence was allegedly committed for use in the trial proceedings in the other jurisdiction. Such evidence will normally be admissible in the latter proceedings.

Although these extra-territorial proceedings have not always satisfied those in Northern Ireland who prefer extradition, the reality is that they have been used regularly and with success over the past 25 years. Accordingly, they have made a significant contribution to overcoming the prosecution obstacles presented by the border. Further progress has been made in overcoming these obstacles pursuant to EU legislation. This is dealt with later.

The extradition and extra-territorial procedures have now been supplemented by EU wide procedures for gathering evidence on one side of the border for use in criminal prosecutions for a range of offences on the other side. The relevant provisions are to be found in the Criminal Justice Act, 1994 in Ireland, and the Criminal Justice Order 1994 in the UK in the U.K. They make provision for the authorities in one State, acting on the request of the authorities in another, to issue and execute a warrant for entry, search and seizure and transmit the evidence seized for use in criminal proceedings in the latter, to take sworn evidence (documentary and oral) in the former for use in criminal proceedings the latter and to serve a summons on a person in the former obliging him to appear and give evidence in criminal proceedings in the latter.

The Enforcement of Criminal Penalties

The border poses a particular problem with respect to the enforcement of criminal penalties. Since the jurisdiction of the executive authorities responsible for the enforcement of punishments is confined to their own jurisdiction, they will have difficulty enforcing a punishment against an offender who has crossed the border out of that jurisdiction. Ironically the difficulty increases as the gravity of the punishment decreases. If an offender crosses the border to escape having to serve a sentence of imprisonment extradition will normally be available to secure his or her return to serve the sentence. If, however, the sentence is non-custodial that option will not be available. This has proved a particular problem with respect to on-the-spot fines for minor traffic violations. In the Louth and Meath divisions, of 9,500 cars caught on fixed camera, only 4,500 were from the Republic of Ireland. 40% of the

speeding fines were issued to out of state drivers and many of those fined could not be subsequently traced or further pursued¹². Of 3,217 tickets issued to non-residents of the Republic of Ireland 1,477 were not paid¹³. A Garda Inspector of the Dundalk Speeding Unit stated that there is presently no incentive for a resident of Northern Ireland to pay a speeding fine issued in the Republic.

Differences in criminal law and procedure can also be significant here, particularly in the context of road traffic. In Northern Ireland there is provision for a penalty points system which can result in a driver losing his or her licence and having to resit the driving test. Penalty points imposed in Northern Ireland have no official status or consequence in Ireland, unless of course they result in the driver losing his or her licence altogether. There are proposals to introduce a penalty points system in Ireland, but as yet they have not materialised into law. When they are introduced it is important that provision is made for mutual recognition of penalty points imposed on either side of the border.

As will be seen later developments at EU level will facilitate the cross border enforcement of criminal penalties in certain circumstances. Indeed, it is worth noting that cross border confiscation and forfeiture of criminal assets is already available pursuant to the Criminal Justice Act, 1994 in Ireland and its equivalent in the U.K.

Delivery of an Efficient Police Service

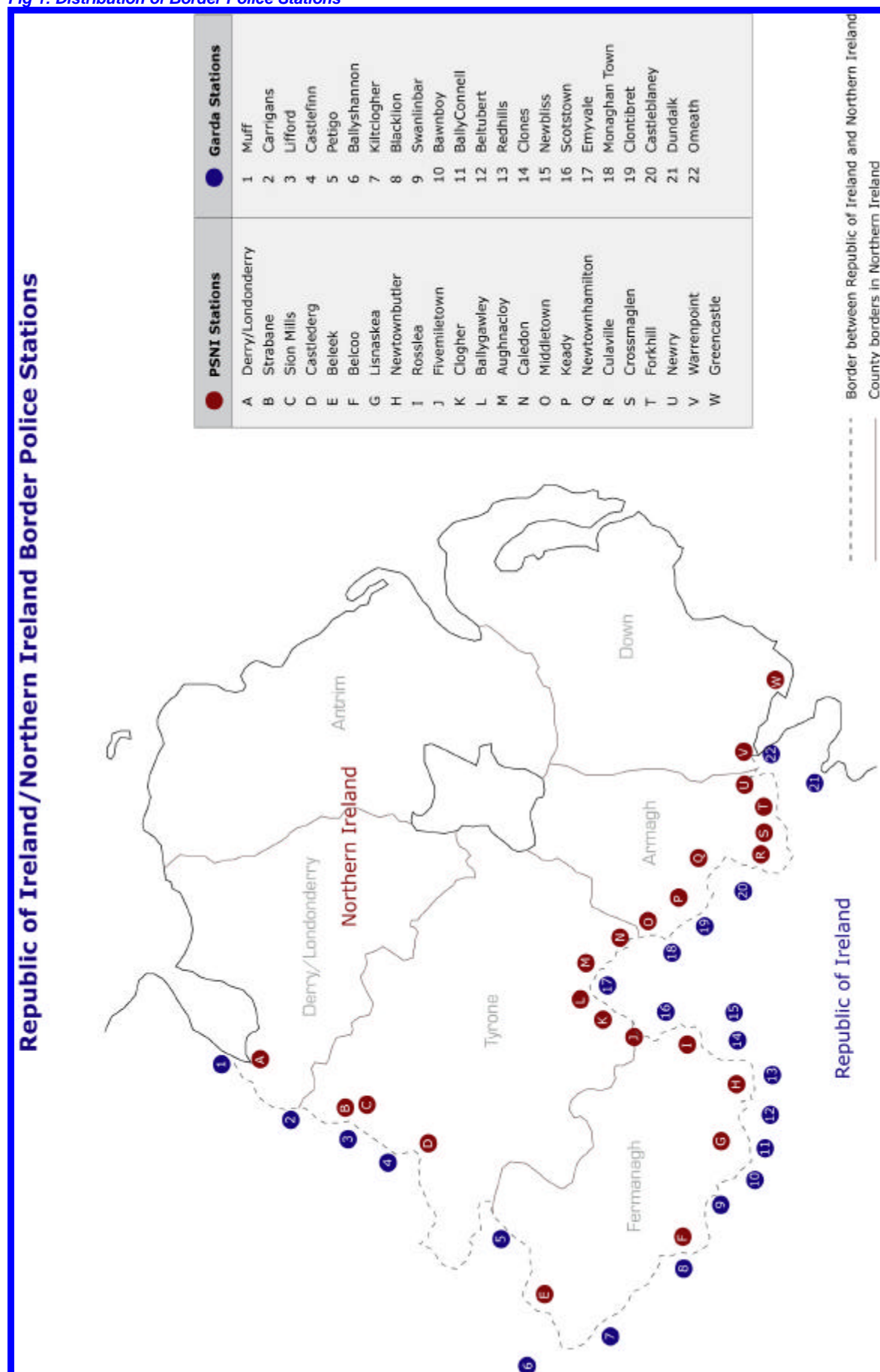
The delivery of an efficient police service is not confined to the prevention and detection of crime and the maintenance of public order. Much police time is spent responding to calls for assistance from members of the public. This can take the form of individuals coming to the police station or officers calling to private residences, businesses, schools, leisure facilities etc. A different type of example would be the policing of a public event or public emergency. These are regular aspects of the police function on both sides of the border. The existence of the border, however, can hamper the delivery of such services. Police stations are located primarily to serve the needs of the local population within a single jurisdiction. Even when they are located close to the border they take little or no account of population distribution on the other side of the border. It is not unusual therefore to find police stations located very close to each other on either side of a border. Indeed, in the map of police stations along the Irish border this pattern is clearly evident. If it was not for the existence of the border there would not normally be a need to have police stations in such close proximity to each other. More often than not, one of the two police stations in each locality would be sufficient to serve the needs of that locality.

The map of police stations along the border also reveals large areas on one side of the border where the nearest police station is located on the other side of the border. The delivery of an efficient police service in these localities could most effectively be served by the police stations on the other side of the border. The presence of the jurisdictional border, however, means that the needs of the local

Dail Eireann Reports number 513 (1) 26th January 2000 columns 413-414.
Ibid.

community in these situations must be served by a police station which may be located up to 30 miles away instead of one which may be only about 5 miles away on the other side of the border.

Fig 1: Distribution of Border Police Stations



Framework for Cross-Border Cooperation

While the methods and procedures described above make a substantial contribution to overcoming the law enforcement obstacles posed by the border they clearly are not a complete solution. Much more is needed. It has always been recognised from within both police forces that police co-operation across the border is vital to combat crime. As an assistant Chief Constable in the PSNI put it:

“It does not affect sovereignty of any part of the island to deny the criminal the capacity to use the differences between the two jurisdictions to hide from the law. Co-operation between the two police services is a sign of maturity not weakness.”

However, the cultural and political realities have proved a powerful deterrent from the establishment of the Northern Ireland as a separate jurisdiction at least up until the end of the twentieth century. The idea of the Garda Síochána setting up road blocks and arresting suspects north of the border, or the RUC doing likewise south of the border, would have strong symbolic overtones of a political nature. Even co-operation in non-operational policing matters has never developed to the extent that one would expect on this small island. The demands of sovereignty, historical tensions between the two jurisdictions, internal divisions within Northern Ireland, constitutional identities, the particular role which the RUC has played in securing Northern Ireland, and the stresses and strains posed by terrorism and counter-terrorist measures, have all ensured that even the discussion of cross-border policing has proved difficult. More recently, cross border co-operation in policing has come to be seen as an advantage on both sides of the border.

The broader political and cultural contexts have made it difficult to achieve the sort of cross-border co-operation that might be considered normal between two police forces on either side of a land border in the European Union. The progress that has been made in Ireland pre-Patten can be assessed under the headings of ‘Formal Procedure’ and ‘Informal Methods’. This will be followed by an account of the Patten recommendations and the progress which has been made to date in their implementation. Current developments at EU level will be considered separately in the following chapter.

Formal Procedures Pre-Patten

Political attempts to promote closer co-operation were virtually non-existent since the establishment of Northern Ireland as a separate jurisdiction up until the Sunningdale Agreement of 1973. The primary achievement of that Agreement in the context of law enforcement co-operation was the extra-territorial jurisdiction of the Courts. It was not until the Anglo-Irish Agreement 1985 that a formal basis for cross-border police co-operation was laid.

The Anglo-Irish Agreement made provision for the establishment of a forum in which ministers and officials of the Irish government and the Northern Irish administration could meet and discuss matters pertaining to the internal affairs of Northern Ireland. There was provision for the attendance of professional advisers such as the Garda Commissioner and the Chief Constable of the RUC. Police and security featured prominently within the remit of the Conference. For example, Article 8 of the Agreement obliges the Conference to deal with issues of common concern relating to the enforcement of the criminal law in both countries. In particular, it must consider whether there are areas of the criminal law that can be harmonised in both jurisdictions.

Article 9 is even more directly relevant to cross border co-operation in policing matters. It reads (in part):

"With a view to enhancing cross-border co-operation on security matters, the Conference shall set in hand a programme of work to be undertaken by the Commissioner of the Garda Síochána and the Chief Constable of the Royal Ulster Constabulary and, where appropriate, groups of officials in such areas as threat assessments, liaison structures, technical co-operation, training of personnel, and operational resources."

Even though it goes on to say that the Conference shall have no operational responsibilities in policing matters, there can be no doubt that this provision laid the foundation for the possible development of very far-reaching co-operation between the two police forces. For example, the Agreement placed informal cross-border meetings into a more formal regular setting. Joint meetings have since been held every three months between superintendents on either side of the border. On the Northern side, the RUC designated special 'Border Superintendents' to attend these meetings. The Garda Síochána do not have designated border superintendents but a Garda Detective Superintendent fulfills the border liaison role. There are Command Meetings every three months in Belfast or Dublin chaired by the Chief Constable of the PSNI and the Garda Commissioner (or their deputies) and attended by the PSNI Special Branch and 'C' Branch management from the Garda Síochána.¹⁴

There is no public record of these meetings. It has not been possible to identify changes in the law or developments in police procedure, methods or practices which can be attributed directly to them. It does not follow that the meetings are mere talking shops. The very fact that they happen facilitates dialogue and co-operation between the two forces. It is also understood that the meetings offer an

¹⁴ 'C' Branch is responsible for Crime, Security and Traffic.

opportunity to exchange intelligence and advice in combating terrorism and organized crime and in preparing for cross-border social and sporting events involving significant movements of people. It is not certain whether they are regularly used for the purpose of co-ordinating efforts in these areas or even to pursue joint investigations. There can be no doubt, however, that they facilitate such developments.

Informal Methods

There is no doubt, that police co-operation is governed by what is legally possible. On the other hand, police officers from both sides of the border repeatedly asserted that good co-operation is equally based on trust. A PSNI border Superintendent saw his job 'as creating and maintaining contacts' and claimed that this had been very successful. He believed that 'you will get real and valuable co-operation when the border superintendents and sergeants understand and trust each other.' There is some concern among police on the ground that formal procedures should not impede co-operation. A Superintendent in Derry said,

"Legislation that seeks to promote good relations can be good but formal procedures can also slow practices up. It is important not to create circumstances that make it impossible to have contacts on the other side."

It is evident from events such as the Greencastle robbery, which occurred on March 3rd 2001, that communication between the two police forces can be very effective. In this case, a nightclub six miles from Muff, County Donegal was robbed. Gardaí realised the thieves would attempt to escape back across the border and contacted the RUC who stopped them by deploying a stinger to puncture the tyres of the getaway car.

When constrained by what they perceive to be legislative or bureaucratic impediments, police prefer to wait for a suspect at large on the other side of the border to re-enter the jurisdiction rather than employ extradition process. One such case involved an elderly woman who was raped and murdered in a small town in Northern Ireland. The RUC took DNA samples from a number of young men and a match was made with a man living in a town close to the border of the adjoining jurisdiction. A garda familiar with the case said that the suspect was kept under surveillance and when he was spotted crossing the border, gardai alerted the RUC who moved immediately to arrest him .

It was pointed out that middle ranking Gardaí serving on the border would often be on first name terms with their counterparts in the Police Service of Northern Ireland. There were periods of mutual suspicion when this was not the case. Even in those times, however, policemen on the border generally retained a degree of professional respect for each other and in fact close-working relationships developed between members of the two forces. A Garda Superintendent remarked that the extent of this informal co-operation varies greatly at different points along the border. The close relationship that exists on the Donegal-Derry side of the border, where stations like Strabane and Lifford work so well together, is not always possible on the Louth-Armagh side of the border.

Authorities in Northern Ireland, until very recently, have considered the area north of Dundalk to be a high-risk region. In these areas, terrorist activity tended to overshadow all else. The result was that the pursuit of 'ordinary criminals' tended to be neglected.

As the peace process develops, this neglect would seem to be particularly ironic in areas where there is a disproportionately high representation of police officers in stations in close proximity on either side of the border. If increased police co-operation were envisaged, it would appear that this is an area where it might be most easily implemented. For example, a PSNI officer saw no reason why summonses could not be issued and fines collected on behalf of police officers in the adjoining jurisdiction. (See fig 1).

It should be noted that co-operation does take place between the two traffic branches. This generally takes the form of joint radio and television campaigns against speeding and drink driving, followed by increased police activity on both sides of the border.

The Patten Report and Recommendations

Despite the fact that officers from both police forces told the Patten Commission that co-operation could hardly be better the Commission was of the opinion that "a great deal more could be done to exploit the 'scope for structured cooperation'. In particular the Commission felt that co-operation between the two Irish police forces compared poorly with the degree of co-operation achieved between the Kent County Constabulary and its neighbours in France and Belgium. The Kent police have signed protocols with police services across the Channel and they participate in an annual Cross Channel Intelligence Conference with police services from France, Belgium and the Netherlands which has working groups dealing with issues such as smuggling, vehicle crime, organised crime and crime trends. They are also able to work with their counterparts in mainland European jurisdictions, in evidence gathering, including interviewing witnesses on both sides of the Channel. Kent police officers are based in France, and *vice versa* to facilitate liaison. By comparison, co-operation between the Garda Síochána and the RUC was found to be *ad hoc* and dependant on personal relationships.

The Patten Commission made the following recommendations aimed at enhancing co-operation

- a set of written protocols designed to facilitate enhanced co-operation;
- the establishment of an annual conference which would 'drive forward co-operation in areas of common concern';
- personnel exchanges which would enable officers to become familiar 'with the way their neighbours work';
- long term exchanges in specialist fields such as drugs or training;
- the posting of liaison officers from each service to the central headquarters and/or border areas;
- joint training co-operation;
- the formation of a joint disaster plan;

- the pooling of investigative teams after major incidents;
- The improvement of communication systems through improved radio links and through compatible information technology systems; and
- The development of a joint database in all the main areas of cross-border criminality.

In Northern Ireland an Oversight Commissioner was appointed to oversee the implementation of the Patten recommendations generally. A change management team was also set up under the leadership of an Assistant Chief Constable. Cross-border police co-operation comes within the remit of both the Oversight Commissioner and the Assistant Chief Constable. In October 1999, the Irish Government formed an implementation strategy group composed of the Department of Justice, Equality and Law Reform and the Garda Síochána to examine how enhanced co-operation might be best pursued.

It was not until October 2001 that a joint north/south five-sided board was established to consider how to implement the Patten recommendations. This was made up of representatives from the Department of Justice, Equality and Law Reform, the Garda Síochána, the Police Service of Northern Ireland, the Northern Ireland Office and the Police Authority for Northern Ireland (now the Northern Ireland Policing Board).

In Ireland, working groups were set up by the Garda Síochána to look at those recommendations which would affect them. A Garda Deputy Commissioner was assigned responsibility for co-ordinating these groups and communicating their findings to the five-sided board. Similar working groups in the Police Service of Northern Ireland were set up under the Deputy Chief Constable who is also the head of the Change Management Team. Early attention focused on those areas of police co-operation which would present little difficulty in terms of principle or logistics.

Agreement has been reached on the establishment of an annual conference . The first joint conference chaired by the Garda Commissioner and the PSNI Chief Constable took place at the Garda College in Templemore, County Tipperary in April 2002.

The Chief Superintendents in charge of training are exploring areas where joint training might occur. As outlined in Chapter Four, progress has been made on this aspect of co-operation and the first trainers have already been exchanged.

Patten identified the lack of a joint disaster plan as a serious omission and recommended that it be 'rectified immediately'. Prior to this there were no formal procedures to deal with a major emergency on the border. It has been recognised however that a disaster at Sellafield would threaten both

Corresponds to Patten Recommendation 158

Corresponds to Patten Recommendation 161

Corresponds to Patten Recommendation 162

jurisdictions, leakage from chemical plants in Derry would spread noxious fumes over Donegal as well as Derry, and, as one police officer reminded us, “*Lockerbie is eleven minutes from Derry*”.

The first joint disaster planning seminar took place at the Garda College in Templemore on 19th February 2002. It defined a major emergency as one that causes death or injury, serious disruption of essential services or damage to property. The lead force to co-ordinate an emergency in particular circumstances was identified. It was recognised that disaster planning would have to include other agencies as well as the police services. Workshop participants discussed how casualties would be dealt with, victims identified, enquiries handled, casualty information disseminated and how the investigation into the incident would be carried out. A specific exercise is being planned for Spring 2003. The type and location of the exercise are still under consideration.

A number of points have still to be addressed. All police officers spoken to agreed that disaster planning should be a priority although it would be expensive in terms of manpower. This might be a difficulty in view of the current staffing levels and priorities in the PSNI. The question of powers of police officers in different jurisdictions raises legal difficulties. In the event of a serious civil emergency, technical questions arise such as whether police would be empowered to gather evidence or direct traffic in areas outside their own jurisdiction. The issue of armed PSNI officers operating in the Republic of Ireland might also pose problems.

The recommendation to institute personnel exchanges and secondments seems to be still at a basic stage. The Garda Deputy Commissioner stated that “this is in its infancy and we haven’t gone far down the way... There’s a lot of work to be done.” According to the PSNI Oversight Commissioner, “some documentation is in place relating to management exchanges.” However terms and conditions of employment including pay, powers, holiday entitlements, and equivalencies of rank have yet to be agreed. Nevertheless, an Assistant Chief Constable in the PSNI claimed that he would have no hesitation in appointing a seconded officer from the Garda Síochána to a senior post, but that he would probably have to move at a speed that satisfied the politicians.

When the RUC designated specific Border Superintendents in the wake of the Anglo-Irish Agreement, it did so in order to improve communication between police operating along the border region. The Garda Síochána did not designate official titles on superintendents working along the border but did give them responsibility for communicating with the RUC. Patten has recommended that both forces formalise this arrangement fully by creating the post of liaison officer . The Garda Síochána stated that they had a sub-committee working on this, and had not yet decided whether a liaison officer should be posted to a border station or to Garda Headquarters in Phoenix Park. The issue of liaison officers has been discussed by the Five Sided Project Board, but the status and placement of PSNI

Joint Disaster Seminar, Garda and PSNI Feb 2002

Corresponds to Patten Recommendation 159

These issues have now progressed in the most recent agreement between the two governments (see appendix One)

Corresponds to Patten Recommendation 130

liaison officers in Dublin has created difficulties. A senior PSNI officer stated that the Department of Justice, Equality and Law Reform in Ireland does not seem happy to accept straightforward exchanges between the two police headquarters. They have raised the issue of diplomatic accreditation and placement in the British embassy.

A working group, headed by the Garda Assistant Commissioner and by a PSNI Assistant Chief Commissioner, is looking into possibilities for creating joint investigative teams. At the present time, police officers have no powers to work in each other's jurisdiction, and both the Northern Ireland Office and the Minister of Justice have stated that there are no plans to allow them to do so. Several senior policemen in the PSNI, however, have suggested that there is no reason why there should not be joint investigative teams to share their experience in the areas of, for example, fraud or organised crime. Admittedly, legislation would be required if the intention was to enable officers from one jurisdiction exercise police powers in the context of a joint investigation in the other jurisdiction. It should be necessary to legislate for this possibility by introducing the sort of arrangements that permit officers from Northern Ireland to pursue investigations in Scotland with the knowledge and assistance of the Scottish police. Such legislation would also have to address the manner and extent to which evidence gathered in the course of such an investigation could be used in the home jurisdiction. A PSNI officer suggested that an all Ireland Law Commission could be established to explore this possibility. There are precedents for such efforts in the context of both the Sunningdale Agreement and the Anglo-Irish Agreement.

The failure to form joint investigative teams was brought into sharper focus by the events in Omagh in 1998. A bomb planted on a busy main street on a Saturday afternoon killed 29 people. The investigation that followed was limited to parallel investigations on both sides of the border rather than employing any kind of joint investigative team. In fact, the investigation was highly controversial and highlighted the inadequacies of co-operation existing between the RUC and the Garda Síochána. It exposed the superficial nature of co-operation where serious legislative and procedural barriers had been largely neglected in the hope that informal, *ad hoc* police co-operation would suffice. One senior PSNI officer was quoted as saying:

"Omagh will be a template, a model on the failures of cross-border policing and how we can learn from the mistakes and weaknesses of that investigation for the future."

A senior Garda involved in the investigation cited Omagh as the turning point, "things got serious after Omagh - politically, co-operation became much more important."

Joint database development is an area in which little progress appears to have been made. According to the Oversight Commissioner, a responsible person has been designated to the area.

Corresponds to Patten Recommendation 163

The Guardian Unlimited - <http://www.guardian.co.uk/> - Sunday April 2nd 2000, 'Omagh bomb - We'll never be able to charge killers - RUC.

Corresponds to Patten Recommendation 165 and Recommendation 93

Administrative compliance is not complete however, due to the lack of the Agreement between the two Governments.

The Garda Deputy Commissioner stated that in the past this area had been under emphasised. He explained that the Garda Síochána was in the process of installing a £100 million computer system and that they were committed to this system. It is not currently compatible with that employed by the PSNI. The decision to be made, he said, involved the level of access to be provided to the police service in Northern Ireland. The PSNI are working towards introducing a new Tetra radio system, which will go live at the end of 2003. The system will be compatible with the Garda Síochána new system, which will be rolled out over approximately the same period. Policies and protocols will be developed as the pilot schemes are evaluated

In April 2002 the Irish Minister for Justice, Equality and Law Reform confirmed that Ireland is to sign up to the Schengen Information System. This is a computer database linking police and emigration forces. The Minister stated that subject to Oireachtas approval, Ireland would begin implementing the changes necessary to join the system within month.

“It does mean that in the future, for serious crime there will be no hiding place across Europe. We will have access to the information [and] we will be able to deal with people more expeditiously and more effectively”

Some of Patten’s recommendations required a new agreement to be signed between the two governments to enable their full implementation. On 29th April 2002 an Intergovernmental Agreement was signed in Belfast by John O’ Donoghue, Minister for Justice, Equality and Law Reform, and John Reid, Secretary of State for Northern Ireland.

It covers 12 areas of accord between the two police services and will enable administrative and legislative measures to be put in place by governments in Dublin and Belfast.

The Agreement grants mutual recognition of qualifications which will allow for lateral entry into either police service, as officers above the rank of Inspector will be able to apply for posts across the 2 services. It also enables police officers to be seconded to each service for periods of up to 3 years. The seconded officer will have the same powers, duties, rights and obligations as attested members of the service to which they are seconded. They will wear, as appropriate, the uniform of that service and be responsible to the head of the police service to which they are seconded. On the other hand, personnel exchanges, for the transfer of experience and expertise, are not to exceed one year. The officers involved will not acquire any police powers in the state they are ‘visiting’ and will remain a full member of their own police service responsible to their normal command structure. Both services are to designate liaison officers. Written protocols addressing all aspects of co-operation are to be drawn up and signed by the Garda Commissioner and the Chief Constable of the PSNI. An annual joint

Third Report of the Oversight Commissioner, December 2001
Interview 27th November 2001, Garda HQ

conference is to be provided for, disaster planning, in consultation with other appropriate agencies, is to continue and the two police services are to work to enhance structures for co-operation in training.

Both governments are to establish an expert group to review existing arrangements for joint investigations and are to make recommendations on legal and administrative measures that could facilitate co-operation in this area. The Agreement also commits the two police services to achieve greater compatibility between their IT systems and to establish fast, effective and reliable communications.

The response of politicians to this most recent implementation of the Patten recommendations has been mixed. While the SDLP have welcomed the signing of the agreement some unionist politicians have expressed fears of an all Ireland police force. However, terrorists and organised criminal gangs do not recognise borders and it is therefore vital that the security forces north and south pool information, draw on each other's experience and pursue a common agenda.

Introduction

The development of cross border police co-operation between Ireland and Northern Ireland cannot be considered purely on the basis of local factors and the Patten recommendations. Cross-border co-operation between law enforcement authorities has been, and continues to be, a major growth area at EU level. Ireland and the United Kingdom, in common with all other Member States, are already subject to extensive obligations in this area, and these are expanding at a very rapid pace. The net effect is that many of the police co-operation developments considered necessary to implement the Patten recommendations would have been required anyway as a result of EU obligations. Indeed, in many respects developments in EU obligations on cross-border co-operation are likely to surpass what would have been strictly necessary to satisfy the Patten recommendations. It might be more appropriate, therefore, for current developments in this area to be set more firmly in the EU, as distinct from the Patten, context.

The EU has been promoting police and law enforcement co-operation among Member States since at least 1976. Initially the engine driving this co-operation was the common threat posed by terrorism, drug-trafficking and organised crime. As individuals and organisations engaged in these activities began to take advantage of the free movement opportunities provided by the developing single European market, Member States had to respond by developing inter-State co-operation among their law enforcement agencies. Initially this co-operation was conducted largely on an informal, inter-governmental basis. It acquired a formal EU legal basis in 1993 with the coming into force of the Treaty of European Union (TEU) which included specific provisions on co-operation in justice and home affairs. These provisions were further enhanced by the amendments effected by the Treaty of Amsterdam (TOA) which came into effect in 1999. The range of criminal activities covered by the co-operation obligations have been extended in the process. Co-operation between law enforcement authorities has also been extended and enhanced by several EU Conventions, such as the Europol Convention and the Schengen Convention, a rapidly developing body of secondary EU legislation and a very wide range of informal measures and arrangements adopted at EU level pursuant to the Treaty provisions. These are in addition to co-operation arrangements agreed by individual Member States and their law enforcement authorities at a bi-lateral level.

EU measures to promote more effective co-operation among law enforcement authorities across State borders are broadly aimed at ensuring that criminals cannot escape justice by taking advantage of jurisdictional borders within the EU. They can be considered under the following headings: extradition; judicial co-operation; police co-operation; and harmonisation of criminal laws. All of these are of direct relevance to the current project, although some are of more acute relevance than others. Developments in each will be dealt with briefly in turn with a view to explaining how they can

contribute to removing some of the police and law enforcement problems which have been associated traditionally with the existence of the Irish land border.

Extradition and Related Procedures

Extradition is the traditional method through which sovereign States have cooperated to bring fugitive criminals to justice. It involves one State surrendering an individual to another State for the purpose of being tried for a criminal offence in the latter. Typically the role of the former will be confined to the apprehension and delivery of the individual to the requesting State. The extraditing State will not normally participate in the criminal investigation of the individual beyond that which is required to satisfy the extradition request.

The rights of the extradited person and the integrity of the State have generally been protected by permitting extradition only through a judicial process and other built in safe-guards such as: the political offence exception, the dual criminality rule, the rule of speciality, the prohibition against extradition of own-nationals and restrictions on the range of offences which are amenable to extradition. The net result has been that extradition is not always available to bring a suspect to justice in a State other than that in which he or she is currently resident. Even when it is available it can often be a slow and cumbersome process.

Progressive attempts have been made through Council of Europe and EU Conventions to reform the extradition process with the aim of making it easier to extradite suspects from one State to another. However, these reforms have been rendered marginal by the most recent development in this area, namely the European arrest warrant. Once it comes into effect this measure will make a very significant contribution to effective co-operation between law enforcement authorities in bringing fugitive offenders to justice. Not only will it bypass the traditional extradition machinery, but it will also dispense with several of the current limitations which are designed to protect the rights of the suspect in the Irish arrangements.

The European arrest warrant will apply to all offences for which a person can be punished on conviction by a term of imprisonment or detention exceeding four months. Where a warrant is issued in respect of such an offence in one Member State it can be executed by the police authorities in another Member State. The suspect can then be handed over to the authorities in the former with the minimum of formality within a period of three months. If the offence is one of a list of 32 'serious' offences punishable by deprivation of liberty for at least three years the normal dual criminality requirement will not apply.

The warrant will come into effect on 1 January 2004, although there is provision for a Member State to bring it in earlier should it wish to do so.

Judicial Co-operation

Evidence and related matters

Judicial co-operation between States in criminal matters represents a higher degree of co-operation than extradition in facilitating effective law enforcement across borders. It involves the prosecutorial and judicial authorities of one State using their powers and resources to help progress a criminal prosecution in another State. It may be, for example, that in order to progress a criminal prosecution in an individual case the authorities in one Member State need to obtain evidence which is located in another Member State. The evidence in question might take the form of material which is believed to be located on private property or it might consist of witness testimony. Either way, the State cannot ensure the production of that evidence simply by the issue of a warrant by its judicial authorities as that warrant will have no validity in the other jurisdiction. One solution is to change the law so that the authorities in the State where the evidence is located will recognise and act upon the validity of the warrant issued in the State seeking the evidence. The law will also have to provide that the evidence can be seized, or the witness taken into custody, in accordance with the terms of the warrant and transferred into the custody of the authorities in the requesting State for the purpose of the criminal proceedings in that State. Another possibility is to have evidence taken from a witness before the judicial authorities in one State for use in criminal proceedings in another State.

Substantial progress on judicial co-operation and mutual assistance has been achieved already at EU, Council of Europe and UN levels pursuant to the European Convention for Mutual Assistance 1959, the Council of Europe Convention on Money-laundering and the UN Drug-trafficking Convention. Pursuant to these Conventions domestic law in Ireland and the United Kingdom already makes provision for the use in criminal proceedings in one jurisdiction of sworn evidence taken from a witness before a judicial authority in the other State in certain circumstances. Similarly, there is provision for the execution in one jurisdiction of a search warrant or an order for the production of documents issued in the other. There is also provision for a prisoner in one jurisdiction to be transferred to another for the purpose of giving evidence in criminal proceedings in the latter.

Originally, requests for judicial assistance had to be made through the central political authorities. As well as introducing a political element into the process, this requirement added to the bureaucracy and delay. Now, as a result of the Schengen developments and the establishment of Eurojust the requests can be made directly between the relevant law enforcement authorities. Not only does this speed up the process but it facilitates the development of familiar cooperative networks between the authorities.

While these provisions can make a significant contribution to criminal law enforcement across the border, it must be acknowledged that their efficacy can be hindered in certain circumstances by differences in the rules and principles governing the admissibility of evidence and the criminal process generally in the two jurisdictions. There is still some uncertainty, for example, whether the evidence obtained in accordance with the legal and administrative requirements of the State in which it was obtained will be admissible automatically in the State where it is to be used. It may be, for example,

that the legal and administrative requirements of the latter are more stringent in some respects than the former. This can be overcome by requesting one State to obtain the evidence in accordance with the most stringent requirements applicable in both States. That should pre-empt a successful challenge to the evidence in either State. The alternative is to provide for the mutual recognition of each other's evidence requirements. This is a much more complex and ambitious approach. Nevertheless, very definite steps have been taken in that direction already at EU level.

Eurojust

Mutual assistance and judicial co-operation will be carried to a new level with the establishment of Eurojust. This is an EU body composed of prosecutors, magistrates and police officers of equivalent competence from each of the Member States. The essential function of Eurojust is to enhance co-operation between the competent authorities in the investigation and prosecution of serious crime. Initially, it will focus on criminal activities, including terrorism and organised crime, which have an inherent cross-border dimension. However, it is also competent to assist in the investigation or prosecution of any type of offence at the request of the law enforcement authorities in a Member State.

Eurojust is set to become a primary engine of cross-border co-operation in law enforcement at both the investigatory and prosecutorial levels. It can ask the law enforcement authorities of one Member State to undertake a specific criminal investigation, agree on the most appropriate jurisdiction in which to take criminal proceedings in any individual case, coordinate the actions of the law enforcement authorities in several Member States in an individual case and set up joint investigative teams. Also, at a very practical level, it can facilitate the progress of mutual assistance and judicial co-operation both generally and in individual cases. Overall it would appear that Eurojust will have the flexibility and the competence to progress criminal investigations and prosecutions across borders. Its presence and activities will significantly reduce the administrative, procedural and jurisdictional obstacles that can arise in law enforcement across borders within the EU.

Enforcement of Judgements

Judicial co-operation in the EU has extended to the enforcement of judgements in criminal cases. The primary example of this in current practice is the mutual recognition of confiscation and forfeiture orders issued against persons convicted of drug-trafficking and other indictable offences in the amount by which they have benefited from the offences. The relevant provisions have been introduced into their domestic law by the United Kingdom and Ireland in order to implement their obligations under the Council of Europe Conventions on Mutual Assistance and Money-laundering and the UN Drug Trafficking Convention. It is likely, however, that much more extensive provisions on the mutual recognition of criminal judgements will be introduced into domestic law as a result of other European and UN Conventions. These will extend to orders freezing the assets of suspect terrorists and suspect criminals in certain circumstances.

The practical problems associated with the enforcement of fines and other criminal penalties across the border are addressed in a number of Council of Europe Conventions, namely: the Convention on the Enforcement of Foreign Criminal Sentences, the Convention on the International Validity of Criminal Judgements, the Convention on the Enforcement of Driving Disqualifications and the draft Agreement for the Mutual Enforcement of Financial Penalties for Traffic Offences. These measures, once adopted and ratified by the United Kingdom and Ireland, will make a substantial contribution to eliminating the border as a device for avoiding the payment of fines and other criminal penalties. The net effect is that fines and criminal sentences duly handed down in one State must be recognised and enforced in the other State when the necessary pre-requisites have been satisfied. In Ireland this will have an immediate and very practical effect in the enforcement of road traffic laws. Infringements which have attracted fines, penalty points and disqualifications on one side of the border will have effect on the other side of the border. Accordingly, the authorities in the State where the offender is resident can collect the fines and impose the disqualifications etc even though they have been incurred in the other State.

Police Co-operation

The obstacles to law enforcement posed by jurisdictional borders cannot be overcome solely within the context of extradition and judicial co-operation. Co-operation through these two procedures is aimed at the advancement of judicial procedures against in the State seeking a witness, suspect or material evidence located in another State. It may be, however, that the authorities in the former are only at the preliminary investigative stage and are not yet at the stage where they can initiate a criminal prosecution. Nevertheless, it may be essential to the progress of an investigation for the police in one State to be able to question a suspect or witnesses who are resident in another State, or to access material evidence which is in the possession of a private party in another State. Equally, circumstances may arise in an individual case where the requirements of effective law enforcement can best be met by the police in one State pursuing a suspect across the border into another State or keeping a suspect under surveillance in that other State. Major progress has been made on these aspects of police co-operation in the European Union. The net result is a steady decline in the capacity of internal jurisdictional borders to impede law enforcement.

The major developments in cross-border police co-operation in the EU are represented in Europol, Schengen and Eurojust. Collectively, they provide the framework and the processes through which police forces throughout the EU can cooperate directly and efficiently with each other in the pursuit of criminal investigations. In some circumstances they permit police officers from one State to operate on the territory of another State when accompanied by police officers of the host State. These structures and processes are complemented by a rapid growth in opportunities for police forces to interact with each other through personnel exchanges and developments such as the European Police College and the Association of European Police Chiefs.

Europol is established as a distinct legal entity by the Europol Convention and its two Protocols. Its overall objective is to improve the effectiveness of, and co-operation among, the police and law

enforcement agencies in the member states in preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime, the scale and organisation of which are such as to require a common approach by the member states affected. Its principal task is to assist police investigations in member states primarily, although not exclusively, through the collation, analysis and exchange of intelligence. To this end the Convention requires the establishment of a “national unit” in each member state. These national units function as the sole liaison bodies between Europol and the national police agencies. In addition each national unit must second at least one of its members to the Europol Headquarters at the Hague.

Currently, Europol pursues its objectives by focusing on unlawful drug-trafficking, trafficking in radioactive and nuclear substances, trafficking in illegal immigrants, trade in human beings and motor vehicle crime. Within two years of the Convention’s entry into force this remit will extend to terrorism and can be extended further to a wide range of crimes including offences against the person and property and trafficking in arms, endangered animal and plant species, hormonal substances, growth promoters, cultural goods, antiquities and human organs. Europol’s competence with respect to these crimes extends to associated crimes such as money-laundering.

It is also worth noting that Europol is set to acquire a significant operational role pursuant to the provisions of the Treaty of Amsterdam. Within five years of the entry into force of the Treaty the Council must enable Europol to facilitate and support the carrying out of specific investigative actions by the competent authorities of the member states, including operational actions of joint teams comprising representatives of Europol in a support capacity. This is in addition to other provisions of the Treaty which lay a basis for operational co-operation between the relevant national authorities in the prevention, detection and investigation of criminal offences. As yet no concrete legislative measures have been adopted on these matters. However, as noted below, the Council has given some indication of the programme it intends to pursue.

The Schengen Agreement and Convention provide for the abolition of internal border checks on the movement of persons and the introduction of associated measures on police and security co-operation, the crossing of external frontiers, asylum and immigration. The provisions on police co-operation include: bilateral agreements on the secondment of police officers from one force to another; the exchange of criminal intelligence between forces; and the enactment of measures compelling the management of hotels, guest houses and other such rented accommodation to keep a register of persons staying in their accommodation and to make this information available to the appropriate police authorities in the state. They also authorise a degree of cross-border policing in the form of hot pursuit and cross-border policing. The United Kingdom has opted in fully to the Schengen arrangements, while Ireland has opted in to everything with the exception of hot pursuit and cross-border surveillance.

Europol and Schengen are not the only developments to facilitate cross-border police investigations. The European Convention on Mutual Assistance 2000 makes provision for, *inter alia*, the spontaneous

exchange of information across borders between law enforcement authorities, the interception of communications in one State at the request of authorities in the another State and the formation of joint investigative police teams. This last development is particularly significant as it will permit police officers from one State to join with officers in the other State in the investigation of a suspect in the latter. This can include the questioning of the suspect in police custody. These developments are complemented by Eurojust which has the capacity to set up joint investigative teams to pursue investigations and prosecutions in individual cases.

Harmonisation of Criminal Laws

Differences in the substance of criminal law between Member States can present fundamental problems to law enforcement co-operation. If certain behaviour is criminal in one Member State but not criminal in another, it will be very difficult as a matter of law for the latter to cooperate with the former in respect of that offence by way of extradition, mutual recognition of judgements and mutual assistance. Even, if the definition of an offence differs in some respect between one State and another this difficulty can arise. It follows that law enforcement co-operation across a jurisdictional border will be enhanced if the substance of criminal laws on either side of that border is harmonised.

The Treaty of Amsterdam makes provision for the approximation of national criminal laws in the areas of: organised crime, terrorism and illicit drug-trafficking. Already, there are legislative proposals before the EU Council to approximate national criminal laws on: terrorism, trafficking in human beings, the sexual exploitation of children and child pornography and racist and xenophobic offences. Once adopted these measures will be legally binding on Member States in the sense that they must ensure that their laws on these offences are line with the EU measures. The net effect is that the definition of these offences will be the same throughout the EU, including on either side of the Irish border.

Conclusion

It is clear even from this brief survey of EU developments that the agenda for cross-border police co-operation is expanding very rapidly at European level. The range of basic and common-sense developments recommended by the Patten Commission have already been surpassed by agreements reached in the EU. While this can serve as a very useful catalyst in the otherwise very sluggish pace of developments North and South of the border, it brings with it all of the problems associated with the democratic deficit at the heart of decision-making in this area at EU level. It would be much more desirable for the much needed developments in this area to be discussed and agreed openly by the democratic administrations on both sides of the border.

Internal culture

The existence of a 'police culture' was a recurring theme in most interviews and discussions, especially in the context of two forces with differing origins and histories. In some cases the view was that this culture related not just to practice and attitude, but to something quite fundamental and to do with how each force identified itself. In the Patten Report (1999) the general notion of organisational culture is defined as the way in which an organisation:

"sees itself and manages itself internally and the way in which it sees and interacts with its clients and others outside the organisation."

More specifically to do with policing, Cramphorn (2001), speaking at a police conference on 'Policing and Human Rights' 2001, laid considerable emphasis on culture, stressing what he clearly perceived to be its all encompassing importance:

"Culture is far more important in determining whether policing is congruent with the values of community than are accountability techniques 'per se' or the organisational structures of the police because culture informs all police activity."

Few would argue with the claim that, for a police service to operate effectively, it should reflect the values and culture of the community that it serves. The problem for the RUC was that traditionally its relative effectiveness was determined by an identity with the culture of only one section of the community.

The changes in policing in Northern Ireland consequent upon the Good Friday Agreement are obviously of considerable importance in this regard. The Patten Report initiated a considerable debate about all aspects of policing, and the name of the force has changed from the '*Royal Ulster Constabulary*' to the '*Police Service of Northern Ireland*'. An important element in that decision to change the name was that, along with the other aspects of the peace process, the new name would signal a change in the relationship between the force and the community as a whole.

Culture is an important matter for consideration in its own right in relation to how either of the two forces functions internally, but its real significance for this study relates to how the existence of two distinct police cultures influences the manner in which they interact with each other. The similarities and differences in culture of the two police services must therefore be important factors in contributing to, or detracting from, co-operation. One specific aspect of this was referred to as a 'culture of secrecy' within police services, where information was often a crucial element in the success or failure of their activities. This was particularly true within units like Special Branch, which were described as being

'careful about sharing intelligence'. This, it was argued, is necessary for a number of reasons, such as the protection of sources. But it was also acknowledged that such a view was at odds with demands that a modern police force must be accountable and transparent.

More generally, it was also believed that police culture within any specific force was not monolithic, but consisted of an aggregate of many sub-cultures in specific branches, such as uniform branch, special branch, criminal investigation, traffic and mobile support units, and so on. One police officer argued that, as in many other organisations, differences in culture exist at all sorts of levels. The challenge, he said, was to ensure that there is no clash at the interface that would inhibit communication. Some degree of understanding of how these cultures manifest themselves, and influence practice and decision-making, would obviously make an important contribution to better and more productive inter-force co-operation. For instance, Byrne (1999) contrasted both forces in terms of the type of relationship between uniformed officers and members of the Special Branch. It was found that Special Branch within the RUC, when compared to Special Branch in the Garda Síochána, had a higher degree of organisational independence. In his report, Patten (1999) refers to these issues, especially in the context of the Special Branch:

"Several respondents have described the Special Branch as a 'force within a force' and RUC officers, serving and retired, have made similar comments to us, a common observation being that the divisional sub commanders often knew very little about the activities of the Branch in their area."

With regard to relationships between the two forces, it is not entirely clear what all the implications of this sort of secrecy at the interface are. What is clear is that the consequent lack of openness has caused problems of communication at intra service level. In the context of the smooth interchange of information between the two police services, it is therefore likely to pose even greater problems at inter service level. The merits of informal communication have been argued elsewhere in this report. However, such a culture of secrecy might provide a strong argument in favour of formal channels of communication in situations where informal strategies are overly reliant on mutual trust between individuals.

The research nevertheless revealed a tendency, among police officers working on the ground on both sides of the border, to favour the apparent ease and speed of informal techniques of co-operation over more bureaucratic formal procedures. This is not surprising, given the perception that formal procedures take more time and are ultimately more liable to accountability procedures than are informal measures.

One Garda working on the border described how more formal and institutionalised European procedures were often resisted in practice. Transfer of evidence procedures between the North and the South now occur via the International Liaison Office, a European construct. This institution, he argued, slows down everyday co-operation. As an example he cited the situation where a car, which it

was suspected had been used in a hi-jack in Northern Ireland, was found abandoned in the Republic of Ireland: the formal procedure in such circumstances was that documentation relating to the car had to be sent to Northern Ireland, via the International Liaison Office. This process was cumbersome, took up a lot of time, and even imperilled attempts to deal successfully with the case. He claimed that most Garda felt that such a complicated procedure was in fact unnecessary, and that some therefore simply avoided it by driving the car to the border and handing it over to an officer of the PSNI. If the evidence provided in this way will help to secure a conviction, the pertinent documentation will then be put through the correct channels of procedure.

Formal powers, according to one member of the Garda Síochána, are used only for serious fraud crimes, murder or terrorism. The same source summed up cross-border police co-operation by stating that the PSNI is always on the other end of the telephone and claimed that *“officers know their counterparts well and trust them.”* The view that emerged from interviews with police officers on both sides of the border was that much successful police co-operation on the island, especially in the area of ordinary crime, has tended to be informal and relatively unsophisticated. It was uniformly accepted that these informal contacts must be maintained and fostered alongside the formal protocols required by the Patten Commission.

Community

Inevitably the impact of the conflict has created differences between the two forces. In Northern Ireland, members of the RUC often do not live within the community where they work. Relatively high salaries have enabled them to live in more affluent middle class districts where they are likely to be shielded from potential threats to their homes and families. For many years they had to protect themselves from the IRA and, after the Anglo Irish Agreement, from loyalist bombs. More recently, they have been attacked by rioting mobs from both sides of the community. As Ryder (2000) puts it:

“Life for the police was so dangerous that none of the officers was able to live or socialise locally. They commuted to their high risk jobs from safer areas twenty to thirty miles away.”

One consequence was the creation of a climate of camaraderie and unity. It also led to a form of exclusion or social separation, and this has resulted in the PSNI being referred to on occasion as the third community in Northern Ireland. This isolation may also encourage what is sometimes referred to as a canteen culture that, it is argued, fosters elements of sexism, racism and bigotry. This is a claim that has often been made against the RUC in the past. It is difficult to establish however the extent of its existence or how it is perceived or understood by the police themselves. Police officers interviewed tended to reject the claim entirely. Ryder, who has closely researched the RUC, accepted that something like this did in fact exist, but that it was on the level of banter and was no more than exists in any large organisation.

It should be pointed out that the concept of a canteen culture is a universally recognisable trait in police services around the world. In this context Duff (2000) has investigated the extent to which the Garda Síochána have developed and subscribe to an informal culture. He found that they have a

tendency to perceive themselves as being different from people in other occupations. This would seem to be closely allied to the concept of a third community. Duff's research was informed by the work of Robert Reiner on the '*working personality*' of the British constabulary. Duff compared the characteristics of Garda officers with Reiner's findings. He found correlation, especially where members of both forces professed a sense of social isolation due to their work. He also recorded a discernible element of machismo in both male and female officers.

"Garda Síochána, it is suggested, do subscribe to an occupational culture similar to that postulated by Robert Reiner in relation to police forces in the United Kingdom. The Irish idiom appears to revolve around the level of social isolation, which officers perceive, and the strong sense of organisational solidarity which offsets this."²⁷

It would seem therefore that if the PSNI can be described as the third community in Northern Ireland, it may well have its counterpart in the Garda Síochána in the Republic of Ireland.

There are of course historical differences between the Garda Síochána and their counterparts in Northern Ireland with regard to their relationships with the community. The Garda police are people who have the same constitutional allegiance as themselves and so there is little fundamental political separation between them. The result is that, to a very large extent, they have been part of the community in a way that was rarely possible for members of the RUC. Consequently it is easier for the Garda to act as a community or civilian police force and to claim that they have always had the support of the community. As one Garda put it:

"The Gardaí are, by and large, accepted by the people. We have never been targeted and shot at like the RUC for being police officers."

However, it would appear that such community support may be diminishing. While the Garda Síochána probably retains its traditional position in rural society, it increasingly has to face challenges in this regard in the larger cities. Changing patterns in society, along with the growth of a culturally less homogenous population, are combining to erode traditional values and respect for law and order. One survey²⁸ of rural parts of the country claimed that only 3% of Gardaí at local stations were unapproachable while 68% were approachable. In Dublin this statistic changes dramatically and 68% of Gardaí are described as unapproachable.

Morale

The level of morale and satisfaction within a service organisation such as a police force is a prime determinant of performance, and is dependent on a wide range of factors. This range is likely to include factors such as: how members perceive themselves; how their work is valued by the community which they serve; the levels of efficiency and fairness of the administrative structures set up to manage their work; and how sensitively changes and reforms are initiated and managed.

²⁷ Garda Review vol.28 (9) October 2000.

²⁸ Cited in the September 1999 Editorial in '*Communique; the Garda Síochána Management Journal*'. Taken from a 1999 Public Attitudes Survey in which 1000 people were interviewed.

Morale is also one of the key factors influencing co-operation between the Garda Síochána and the PSNI. Directly or indirectly, the level of morale within a police service affects the build-up of mutual trust, which we have already recognised as essential to effective communication. Low morale, partly attributable to organisational change, has resulted in problems within the PSNI. The lengthy and, at times, fractious period of debate and discussion about Patten has significantly affected the level of morale of police officers there. A senior officer claimed:

“officers [are] subject to protracted criticism from politicians and community leaders and suffer from enormous frustration caused by a lack of understanding of the difficulties they face.”

Many officers and their families remain unhappy with the name, badge and uniform changes. They believe that the changes dishonour the memories of RUC officers killed and injured in the past. The fact that the British flag now flies over police stations only on special occasions has also caused significant resentment.

The speed of the changes set in train by Patten has proved difficult to manage. A large number of experienced PSNI officers have taken retirement and new recruits will not be fully trained until March 2003. There is a visible shortfall of manpower on the streets. Present numbers of PSNI officers fall short by almost 400 of the 7,500 officers considered adequate by the Patten Report and the Police Federation claims that officers are over-stretched.

Fig 1 : RUC/PSNI Staff Figures January 2001 – 2002

| | January 2001 | January 2002 |
|--------------------------|--------------|--------------|
| RUC/PSNI | 8038 | 7104 |
| Full-time Reserve | 2529 | 2220 |
| Part-time Reserve | 1088 | 1022 |

Source: Police Federation

One quantifiable indicator of the level of morale is absentee rate. Absenteeism in the PSNI is high. On one day in January 2002, out of a force of 7,200 one thousand and twenty officers were absent.²⁹ This is only partially attributable to the number of officers injured on duty. Because of new accountability mechanisms governing the use of plastic baton rounds many less are being used, although no alternative non-lethal method of public order policing has been issued to the police. Senior officers claim that this has resulted in more police officers than formerly being injured. The fact that police officers increasingly find themselves under attack from both communities in Northern Ireland is another significant factor contributing to low morale.

The radical changes being implemented within policing in Northern Ireland would be difficult for any

²⁹ Police Federation representative, at interview.

police force to come to terms with. An indication of this came from a member of the Garda Chief Superintendents' Conference in 2000, in his response to a suggestion that something like Patten would also benefit the Garda. A consultant to the Strategic Management Initiative Review (1997) had suggested that the Steering Group³⁰ should adopt a blank sheet approach to the Garda Síochána, and that members of the Committee should design a new police service for the country from scratch. The Chief Superintendent's reaction encapsulates an important aspect of Garda culture, and suggests that members of the Garda Síochána take their inspiration from the organisation's role in the founding of the State:

"This force has too proud a history to be treated in such a manner. It has contributed enormously to the building of this nation and continues to do so". (Monaghan 2000)

However, editorials from the Garda Review often allude to the low morale of the force. A number of causes for this are cited, including: frustration with legislation that constrains their ability to function effectively; a media perceived as increasingly belligerent and critical; problems of pay and conditions; and, (of particular concern to the Garda Representative Association) inadequate manpower levels and the burden of increasing workloads.

One article cites an example of the disjunction that sometimes exists between legislation and the reality of the job, and refers to frustrations in connection with issuing speeding fines on the border:

"We understand members of An Garda Síochána in certain border areas are directed an instruction (sic) that transgressors in respect of motoring offences from Northern Ireland should not be treated differently from those from the South – in other words – prosecute by means of summons ... an instruction issued knowing full well that such an agreement cannot happen in that An Garda Síochána have no jurisdiction in respect of serving summons in Northern Ireland." ³¹

In a similar vein, another editorial asks:

"Would it not merely take a simple piece of legislation to ensure that the necessary legal 'consistency', which should flow from driving offences, is present in all member states? Yet this simple piece of legislation is prevented from coming into existence by European bureaucratic protocol ... Furthermore ... it should be possible to simply move people from one jurisdiction to another without prolonged court challenges which only cause to delay the course of justice in all member states." ³²

A significant number of Garda officers are engaged in part-time occupations or business interests, and this is a contentious issue. The Garda Representative Association believes its members should have the right to do other work on their own time as long as there is no conflict of interest. However an influential report into the Efficiency and Effectiveness of the Garda Síochána (1997) argues as follows:

³⁰ Report of the Steering Group on the Efficiency and Effectiveness of the Garda Síochána, June 1997

³¹ Garda Review Editorial 05/00

³² Garda Review Editorial 02/00 – volume 28 (1)

“The steering group believes that it is inherently inappropriate for officers to engage in seriously time consuming secondary business activities because they deflect attention energy and commitment away from their primary employment. It may also bring into question the officers’ impartiality and it may lead to an officer being in debt or beholden to another party.”³³

It is likely that pay levels influence the incidence of secondary employment engagement. Certainly there is a significant difference between Garda and PSNI pay rates.

Fig 2: Comparative Pay Rates

| | | PSNI | GARDA SÍOCHÁNA |
|------------------|----------------|-------------------|-----------------------|
| CONSTABLE | Appointment | £17,733 (€28,400) | €19,209 |
| | After 14 years | £28,062 (€44,942) | €33,031 |
| SERGEANT | Appointment | £27,084 (€43,376) | €30,379 |
| | After 5 years | £31,590 (€50,592) | €33,587 |

Source: PSNI Police Federation & Garda Síochána Press Office

In spring 1998 a thirty-nine per cent pay rise claim was lodged for ordinary Garda. The Government responded with an offer of seven per cent, and in May 1999 eighty percent of Ireland's police force called in sick as part of a campaign to demand better wages.³⁴ This form of ‘sickness’ became known as ‘Blue Flu’, and the Irish army was put on standby with one hundred percent walkouts in rural areas and about a 90 percent stoppage in the Dublin area. Another indication of the frustration of Garda officers with the levels of pay was their refusal to implement fully the new PULSE computer system. Several Garda expressed the view that at this time morale within the force was at an all time low.

Accountability

It is accepted that modern policing should be based on a culture of accountability: however, the existence of different managerial systems, possibly emphasising differing levels of accountability, is likely to pose problems between co-operating police forces. At a conference on Human Rights a PSNI Deputy Chief Constable referred to the context within which formal accountability takes place. He believed that, for better or worse, this context was dependent on the culture of any police force. He pointed out that human rights law requires police to balance competing, and sometimes conflicting, rights and that to do so they must exercise discretion. This leads to selective under-enforcement, which may be discriminatory or perceived to be so. It is difficult to make this accountable.

Prior to the establishment of the new Policing Board, the RUC was accountable to the Secretary of State through the Police Authority of Northern Ireland. The Police Authority, however, lacked total autonomy because its members were appointed and could be dismissed by the Secretary of State.

³³ Report of the Steering Group on the Efficiency and Effectiveness of the Garda Síochána, June 1997

³⁴ April 30th 1998 *Ahern Takes Strong Line in Garda Pay* & May 1st 1998, *Minister Defends Action on Gardai*, Irish Times.

Although the Authority could ask the Chief Constable to produce specific reports, Hamilton *et al* (1995) claim;

“he/she may refuse to comply with these requests if the Chief Constable feels that such a report would contain information which is in the public interest not to be disclosed or is not needed for the Police Authority to discharge its functions.”

Livingston and Morison (1995) give further evidence of this delicate relationship. They cite the submission of Northern Ireland Congress of Trade Unions to the Opsahl Commission, which stated that the Chief Constable had indicated to them that he would;

“pay as much attention to a letter in the Irish News (the main Nationalist newspaper) as he would to the Police Authority.”

This apparent lack of accountability had a number of important side-effects. When a number of murders and assassinations occurred (in particular those of the solicitors Patrick Finucane in 1989 and Rosemary Nelson in 1999, as well as the beating to death of Robert Hamill by a loyalist mob in Portadown in sight of a police patrol) claims were made that the security forces had colluded with loyalist paramilitaries. Accusations of this sort have never been independently investigated, and the result was a diminution of confidence in the original Police Authority and a dangerous loss of confidence in the RUC within some parts of the community.

Such events undoubtedly influenced the Patten recommendations and led to the emergence of proposed initiatives designed to optimise police accountability in Northern Ireland. A new Policing Board was established with nineteen members, ten of them elected members of the Northern Ireland Assembly (selected using the d'Hondt system), and nine independent members chosen from a range of organisations including business, trade unions, community groups, voluntary organisations and the legal profession. The Chief Constable of the PSNI is responsible to the Policing Board and not to the Secretary of State. Patten recommends that the function of the Board should be “*to hold the Chief Constable and the Police Service publicly to account.*”

There were also changes in management structures at a geographical level, in order to allow for accountability mechanisms in relation to local communities. New Command Units are being established that correspond to local council areas, and it is intended to establish District Policing Partnership Boards in each of these areas. These boards will be composed of both elected and independent members and an important part of their task will be to reflect community concerns and priorities to the District Commander. Until these are set-up, their effectiveness in terms of accountability, have yet to be evaluated.

Ellison and Mulcahy (2000) have noted that the long standing issue of an appropriate and accountable police complaints system had already been addressed in the impressive Hayes Report in 1997, well before the establishment of the Independent Commission on Policing chaired by Patten. This Report recommended an independent system based around the concept of an ombudsman. Since then the

Office of the Police Ombudsman as recommended by Patten has been established. The recent report from that Office, which was highly critical of police handling of the Omagh bomb investigation, has resulted in discord between the Ombudsman and the Chief Constable. That the Policing Board has been able to reach a compromise between the two, appears to augur well for more effective accountability in the future. On the other hand, the fact that no mechanisms have been put in place to address retrospective accountability, remains a cause for concern. In fact, Amnesty International claimed that the (Patten) Report not only failed to address past examples of abusive police practices, but also did not go far enough in establishing measures to ensure accountability.³⁵

The issue of police accountability has also assumed a higher profile in the Republic of Ireland in recent years. For example between 1990 and 1998 there was a 90% increase in complaints against the Garda Síochána, with a consequent public debate about how the relationship between the police and the community can be monitored and improved. The current system of Garda accountability in relation to members of the public is based upon the provisions of the Garda Síochána (Complaints) Act of 1986. This Act provides an apparatus for the investigation of citizens' complaints, involving the creation of a Board on which a representative of the Garda Commissioner sits. The function of the Board is to supervise investigations into complaints made by members of the public against members of the Garda Síochána. These investigations are carried out by members of the Garda Síochána, and this in itself is a source of some discontent with the system. More generally, the composition of the Board and its apparent lack of transparency are often subject to criticism, and there is a view that the Act will have to be amended if the system is to be efficient, properly accountable, and demonstrably independent, in the eyes of the public. Such changes are considered to be particularly necessary in the case of complaints perceived to be of a serious nature.

The Garda Review, the Force magazine, has stated that some members of the force have problems with the Complaints Act. It claims:

“the complaints procedure is sometimes used by solicitors in their endeavours to frustrate a prosecution and by criminals to intimidate the Gardaí into inaction in the investigation of a crime.”³⁶

The same source strongly defends the presence of a representative of the Commissioner on the Board, although this has been a cause for criticism from those who question the impartiality of the Board on this basis. Critics of the procedure point out that in the year 1998, when fourteen hundred complaints were made against members of the Garda Síochána, only six were referred to a tribunal.³⁷ In response Gardaí say that a large number of these complaints were minor and therefore inadmissible under the terms of the Act.

Brady (2000), argues that the structure of the Garda Síochána affects its accountability mechanisms:

³⁵ Amnesty International – index: EUR 45/050/1999 06/12/1999

³⁶ *Garda Review*. Vol. 28 (7), August 2000

³⁷ *Primetime*, RTE. 23 May, 2000

“The imperative in such a structure will tend upwards – through the bureaucracy – rather than laterally, towards the community”.

He contrasts this with the PSNI whose obligations towards District Policing Partnership Boards and the Office of the Ombudsman will oblige local commanders to respond to local needs. He foresees that these will strengthen ties between the community and the police, leading to ever-greater levels of accountability and flexibility. Garda Commissioner Pat Byrne, speaking at an IBEC (Irish Business and Employers Confederation) conference, accepted that though the current Garda Complaints Procedure was outside his control, he did however feel that the current practice should not be held on to doggedly.

As in Northern Ireland, a number of recent controversial events have called the whole area of police accountability in the Republic of Ireland into question and are therefore a cause of public concern. These have included the shooting dead of John Carthy in Abbeylara and the current investigation into police corruption in Donegal. One senior politician expressed the view that:

“Recent events, particularly in Donegal, have confirmed that a very serious look has to be taken at the Gardaí. Certainly the Patten Report should be digested in terms of what useful lessons there are for the Guards as well as the RUC.”

Amnesty International has commented that many people who are alleging ill treatment feel that they have no confidence in the complaints procedure because they do not believe that the existing system is impartial and fair.³⁸

In addition, the Minister for Justice, Equality and Law Reform recently announced his intention to establish a Garda Inspectorate. Speaking in the Dail he said:

“Complaints against individual members [of the Gardaí] would continue to be addressed by the Garda Complaints Board and that internal disciplinary matters would continue to remain the responsibility of the Garda Commissioner. However I recognise that there are situations outside the existing complaints machinery that require to be covered.”

He continued:

“Where specific Garda systems or operations do not measure up to the appropriate standards, for example, the difficulties which arose in Co. Donegal. I am looking closely at the question of an Inspectorate. A new independent Inspectorate with appropriate powers might be very well placed to conduct the necessary investigations in such cases.”³⁹

The general picture therefore appears to be that police accountability is coming under increased public scrutiny in both jurisdictions. The appointment of the new Police Board and the police Ombudsman in

³⁸ Amnesty International EUR 29/01/00 August 2000.

³⁹ Dail Reports 7 February 2001, Questions, column 84.

Northern Ireland may fuel the debate on the establishment of an Inspectorate or Police Ombudsman in the Republic of Ireland.

Human Rights

It would seem that traditionally human rights issues did not have high priority in the training and practices of the RUC. Livingstone (2001) claims that, while police in Northern Ireland have had a very difficult job in the past thirty years, they have nevertheless infringed the human rights of others primarily in the areas of public order policing, conduct of search and arrest operations, and treatment of suspects in custody. In fact, in 1999 the Patten report revealed that only two out of 700 training sessions were given over to human rights. Recommendation 4 of the Patten Report proposes that:

“all police officers and police civilians should be trained (and updated as required) in the fundamental principles and standards of human rights and the practical implications for policing. The human rights dimension should be integrated in to every module of police training.”

Recommendation 5 asserts that:

“awareness of human rights issues and respect for human rights in the performance of duty should be an important element in the appraisal of individuals in the police service.”

It was also recommended that the monitoring of human rights performance should be the responsibility of the Policing Board. The Chief Constable accepted all of these.

As a result, one of the major objectives of the PSNI is that principles arising out of human rights declarations will be central to its working practices. An Assistant Chief Constable has been designated as the ‘Police Human Rights Champion’. At interview, this officer claimed:

“No other profession working in the Criminal Justice System has the potential to infringe Human Rights as much as the police. Equally no other profession has the capacity to protect Human Rights in a democracy as much as police officers.”

The Police Human Rights Champion is responsible for implementing a comprehensive programme of action to focus policing in Northern Ireland on a human rights based approach as recommended by Patten. The recruits to the PSNI will be issued with a Human Rights Code of Ethics, based on international human rights standards, which will become the discipline code to which all officers must adhere. A new oath, which expresses an explicit commitment to the upholding human rights, will be taken by all new officers. Existing officers may take the oath but, because they have already been attested, cannot be required to do so. This has caused disquiet among some politicians and human rights activists who have called for all officers to be required to take the oath as recommended by Patten. The Office of the Oversight Commissioner has also expressed concern in this regard

The Police and Criminal Evidence Act (PACE), which regulates how suspects are detained and questioned and the Regulation of Investigatory Powers Act (RIPA) which governs the conduct of covert operations are further attempts to safeguard human rights. The Office of Ombudsman operates

with independent investigators and may investigate complaints against the police as well as instigating inquiries where no specific complaint has been made.

The ACC in the PSNI with responsibility for implementing Patten's human rights recommendations, has pointed out that there is overlap between the programme suggested by the Council of Europe and the first recommendation of the Patten Report. It seemed a good idea therefore for the PSNI to base its programme on the European model. This divides policing into seven component parts: basic values; staff; training; management practice; operational policing; structure; and accountability. The implications of this are that the proposed approach to human rights extends beyond traditional areas of concern, with a specific focus on culture, values training and the selection process used in recruitment.

Modelling human rights on the European Code gives it a wider perspective and presents an opportunity for officers to learn from best practice elsewhere. Many European states share the difficulties of balancing competing human rights: examples of this include victims and suspects, the right to education, and the right to protest. In Northern Ireland there are particular problems such as the conflicting claims of marchers and residents. Many officers emphasised to us that the police also have suffered from political violence and intimidation and that their right to work without threat or attack is often overlooked.

In the Republic of Ireland a Garda Working Group was set up in 1997 to create a coherent human rights programme for the Garda Síochána. A number of initiatives emerged from the process:

- A series of outreach consultation forums
- A human rights training programme
- A human rights committee
- An awareness campaign
- A human rights audit

By 1999 the Community Relations Department could report that:

"Preparations are being made to establish a comprehensive training package at the Garda College in Templemore to create awareness among members of the force of the special difficulties experienced by foreigners in Ireland."⁴⁰

In April 1999, as part of this initiative, a human rights conference was organised to assist the Garda Síochána in providing a police service in a multi-ethnic and multi-cultural Ireland. Discussion days were organised to take cognisance of the contributions from community groups, minority groups and NGOs who had participated in the conference. According to the programme details these seminars would:

"Identify areas of mutual concern regarding human rights and policing in the community, and to consider appropriate interventions to manage these issues. The

⁴⁰ Garda Review 08/99 Volume 27 (7)

outreach structures will form the basis for the development of long-term partnerships.”⁴¹

On one such discussion day held in October 2000 in Dublin, fears were expressed by contributors that the organisation might not be willing or able to adapt to a new role that involved consultative policing rather than law enforcement, because this required a considerable shift in the understanding and perception of individual Gardaí. Others voiced fears that political will may be absent within the Department of Justice, Equality and Law Reform to embark on such a community-oriented initiative.

It would appear that human rights issues exist both within the organisation and also in the relationship between it and the general community. For example, one contributor referred to the problem of bullying within the Garda Síochána, and argued that the public must see “evidence of human rights abuses within the organisation speedily and satisfactorily addressed with openness and transparency.”⁴² According to one survey on bullying within the organisation, 46.8% of inspectors and sergeants had come across the problem, and while 24.4% had only seen it once, 12.5% saw it frequently.⁴³

Despite many of the above problems, the Council of Europe’s Human Rights Quarterly deemed the process of Garda consultation with the community as praiseworthy, and in fact awarded the service a prize for innovation in its anti-discrimination programme.

A number of human rights activists consulted during this study, however, had some reservations, and pointed out by that, although the work done by the Garda Working Group was commendable, much more needed to be done to inculcate human rights into the Garda Síochána itself. A prominent lawyer - involved in the project Working Group – argued that the decision to place human rights on the training curriculum was not in itself enough. Human rights needed to be inculcated into the culture of the organisation in order to affect policing methods. With particular reference to the Garda Working Group, it was accepted that, while it had demonstrated imaginative plans, it often lacked the level of resources needed to implement them: more generally it was argued that the implementation of human rights principles required a significant manpower input.

In the course of interviews and discussion during this study, the centrality of human rights issues was constantly emphasised, perhaps more than anything else; for many, differences in approach to human rights issues will have a significant impact on the quality of the co-operation between the two police services in Ireland that current political and social change appears to demand.

⁴¹ Garda Human Rights Working Group (2001)

⁴² *ibid.*

⁴³ Garda Review Volume 27 (5)

The Political Context

In simple terms, the disparity of political aspiration in Northern Ireland can be represented as a Unionist desire to maintain the union with Britain and a Nationalist wish for a united Ireland. The latter was enshrined in Articles 2 and 3 of the Irish Constitution. While these have now been repealed, there remains a heritage of mistrust regarding sovereignty on the one hand, and aspiration for unity on the other.

Since the Anglo Irish Agreement (1985) both governments, and the two police forces, have always maintained publicly that excellent co-operation existed between them. There were periods, however, during the 'shoot to kill' controversy when the two forces regarded each other with suspicion and politicians were vociferous in their disagreements. Regular meetings after the Anglo Irish Agreement put cross border co-operation in policing on a more formal footing. However, a former Chief Constable in the RUC told us that this worked alongside the existing informal co-operation which;

"was all done without fuss because if the politicians had got their hands on it they would have blown their tops."

An Ulster Unionist emphasised the determination of his constituents to remain British citizens, but beyond that he was in favour of having the highest permissible level of co-operation. Referring to the inability of either police force to follow criminals across the border, he claimed that there was a lot to be said for flexible arrangements on the border. He qualified this, however, by saying:

"I don't know how you do it, because society, and I include society in the Republic, are not ready for that yet."

The Democratic Unionist Party, cautious of anything that could be perceived as a step towards a united Ireland, was rather more circumspect in relation to greater co-operation. Their representative said he saw no role for secondment or liaison of officers from the Republic of Ireland unless it was put in an international framework. He claimed that, while it is in everybody's interest to co-operate to prevent criminality, the difficulty is that some politicians have a particular nationalist agenda that includes the development of cross border mechanisms. He agreed that it was common sense, for example, to try to decrease the fatal accident rate on the roads of Ireland, and that convicted paedophiles should not be able to move freely from one jurisdiction to another without records. He insisted, however, that co-operation on matters of this kind should be put in a European context and function according to what is recognised best practice in other countries.

A Progressive Unionist Party representative claimed that if cross border co-operation would make for more efficiency, transference of knowledge, sharing of ideas and good practice, then he was in favour of it. He was willing to support secondment of officers to share expertise on specific issues, and believed that when the protocols were in place and the processes were seen to work, fear in the Unionist community would diminish. In keeping with several other sources, he made the point that if cross border co-operation is good for policing then intrinsically it is a good thing.

At the time of interviewing, the SDLP spokesman on policing said that initial agreement had not yet been reached and until that had been achieved he saw no value in discussing north/south co-operation. That agreement has now been reached and the SDLP have taken their seats on the Policing Board. Their spokesman was of the opinion that co-operation was important in terms of building confidence and relationships, and in opening up the new police service to external influences. He also expressed the view that he would not be surprised '*if there was some institutional resistance at various levels in the south of Ireland to Patten.*'

A Sinn Féin representative expressed the view that there would be no benefit in co-operation at this point in time. He pointed out that the priority of the party was to redress grievances and have complaints about the RUC/PSNI dealt with. He believed that:

"If we get the proper legislation then we can deal with co-operation. The legislation, if it is good legislation, should deal with the whole of the island."

He also claimed that the emergency legislation existing North and South is a corruption of democratic accountability and that in order to have a proper police service and a proper judiciary it must be repealed.

Despite the wide range of views among political parties in their responses and aspirations regarding policing, it is of some significance that, with the exception of Sinn Féin, all parties in the North have taken their places on the new Policing Board. This has happened despite what would appear to be significant political disparities in relation to such matters as the provenance of the new Board, how it can be identified with, and the full range of its objectives.

In the Republic of Ireland, the Minister for Justice, Equality and Law Reform responding to a question regarding more effective arrangement of cross-border police co-operation stated:

"...the Patten Report on policing in Northern Ireland acknowledged that there was already a very high level of co-operation between the Garda Síochána and the RUC. That report set out a number of recommendations for improved co-operation between the Police Service for Northern Ireland and the Gardaí. It is intended that implementation of these recommendations will be pursued under the auspices of the British-Irish Inter-Governmental Conference."⁴⁴

In this context, it was made clear during our interview with the Garda Deputy Commissioner that the Department of Justice, Equality and Law Reform supports operational co-operation that does not require fundamental legislative changes. The Department's role is to identify the requirements for an agreement which, when formulated by the British and Irish Governments, will form the basis of administrative compliance to the Implementation Plan. In practice it will enable co-operation to occur in areas such as secondment and joint training exercises. Further co-operation would be driven by the implementation of European Union legislation.

⁴⁴ Question Time, Dail Éireann, 13 April, 2000

The Patten Report, while obviously being directed to the specific context of Northern Ireland, is increasingly being regarded as a definitive model for modern policing in general. This has motivated commentators to highlight deficiencies in policing in the Republic of Ireland. The Irish Labour Party has repeatedly demanded reform. Ruairí Quinn, the party leader, has said that “it is not acceptable that the people in this State should have a less accountable police force than the people of Northern Ireland.”⁴⁵ The Labour Deputy Leader and Spokesperson on Justice, Brendan Howlin TD stated:

“Policing in Northern Ireland is currently undergoing a dramatic transformation, and while the problems of policing in a politically divided society are somewhat different, I believe that there are many lessons we can learn from the Patten Report and the process of change now going on there.”⁴⁶

In November 2000 the Labour Party issued ‘Proposals for Legislation for A Garda Authority and Garda Ombudsman’. The document, which is influenced by the Patten Report, states that implementation of Patten’s proposals will put policing in Northern Ireland on a more modern footing than that of the Garda Síochána.⁴⁷ Northern Ireland’s First Minister, David Trimble, agrees. He is on record as having stated that “the police force in Northern Ireland is far more accountable than that in the Republic of Ireland.”⁴⁸

When asked by Mr Howlin for comment on the matter, the Minister for Justice, Equality and Law Reform initially dismissed the idea of a Garda Ombudsman, saying it was a matter relevant to Northern Ireland because of the unique situation there. In February 2001, during a debate, the Minister responded to Mr Howlin that:

“what might be suitable in one jurisdiction might not be suitable in another I don’t believe that it is desirable to transpose unquestioningly a system that operates in one jurisdiction into another jurisdiction.”⁴⁹

A Labour TD commented that if what occurred in Abbeylara had occurred in the North the Police Ombudsman there would have been one of the first on the scene.⁵⁰ It is clear therefore that the same questions once asked about the Royal Ulster Constabulary are now being asked about the Garda Síochána. One veteran Fine Gael politician expressed his anxiety in an interview:

“I’m a bit concerned that in the present circumstances because of abuses and indications of corruption that the Guards are beginning to lose that [public] confidence at a time when they need it very badly. Recent events, particularly Donegal, have confirmed that a very serious look has to be taken at the Gardaí. Certainly the Patten Report should be digested in terms of what useful lessons there are for the Guards.”

Another politician commented on the relevance of the Patten recommendations to the Garda Síochána:

⁴⁵ Irish Times, Friday October 5th 2001, ‘Labour to press for Garda Ombudsman’.

⁴⁶ Press Release Labour Party, issued on Monday 9th April, 2001,

⁴⁷ Press Release Labour Party November 2000

⁴⁸ The Guardian, dated Sunday December 3rd 2000, ‘Copy Patten reforms call to Garda’

⁴⁹ Dail Eireann Reports, Vol 530, 7th February 2001, column 84.

⁵⁰ Press release on Labour website.

"I would have thought that a full implementation of the Patten Report would have done substantial (work) for our force here ... and I regret the fact that most of the focus on the Patten Report was on Northern Ireland. There are huge areas of Patten that are immediately applicable to the Republic and we could learn much from it in terms of re-organisation of our own force"

Farrell (2000) claims that the logic of the Irish Government's demand that Patten be implemented in the North meant the principles of the report should extend to policing south of the border. He stated:

"The Garda Síochána is now unique in these islands in being a hierarchical national body answerable only to the Minister for Justice, and perhaps even answerable to him as far as operational matters are concerned"⁵¹.

Another TD commented at interview on the possible implications that the Patten recommendations might have for policing in the Republic of Ireland:

"I had a lot of dealings with Gardaí and with the Commissioner and I found them very open to new ideas. I would have thought that though there's a recognition that in many respects in relation to Patten that they're behind the times and of course the fact that the Guards are becoming increasingly involved with other police forces, that they're attending police academies, that they're involved with peacekeeping operations – I think these things will increase their receptivity to new ideas...I would imagine that for the Guards to accept Patten would be a very fundamental change!"

One Dublin North TD expressed a more radical view at interview:

"Attitudes here towards the RUC were dominated by the political attitude in relation to the North. The changes that have taken place as a result of Patten, I think, will ensure that the law-abiding element of the community would welcome people from the PSNI here ... it would be a welcome development welcomed by the majority of people."

It is likely that the implementation of Patten's recommendations in Northern Ireland will have significant ramifications in the Republic of Ireland. It is possible that the Report may influence such things as the appointment of an independent police inspectorate⁵² and the current discussions about setting-up a police ombudsman's office in the Republic of Ireland. In fact, at the time of writing, the appointment of a Police Ombudsman is being discussed at a British-Irish Inter-Governmental Conference. Furthermore an interchange of training officers has also taken place. The extent to which such parallel 'Patten inspired' initiatives continue to emerge will perhaps give an indication of the development of cross-border police co-operation as a whole.

⁵¹ The Guardian Sunday December 3, 2000, *'Copy Patten reform, call to Garda'*.

⁵² The Irish Times, October 10th 2001

The quality and ethos of a police service is determined largely by the training, education and development its officers receive. As society changes, policing in general must change to keep pace. Skills of twenty years ago are not sufficient for today's police officer and trainers are being challenged to meet modern needs. The development of new techniques and equipment that can aid good policing also creates complex problems in the areas of, for example, human rights and the privacy of individuals. Throughout Europe operational police performance is coming under increased scrutiny, established practices are being questioned, and the body of legislation that informs policing is growing and changing.

In April 1999 a report by the Inspector of Constabulary for England, Wales and Northern Ireland was critical of police training throughout the UK. It found that in the majority of cases training:

"is not properly targeted at those whose need is greatest [and] much of it is duplicated, poorly costed and not managed within a tight performance and accountability framework." (HMIC 1999)

Reference has been made throughout this report to specific elements of police training and practice. The Patten Report has made detailed recommendations concerning training for the Police Service of Northern Ireland. These include:

- A new purpose built police college
- A detailed analysis and review of training strategy
- Greater civilian input into training
- That attestation as a police officer should be delayed until after the successful completion of an initial training course, which should be marked by a graduation ceremony
- A reduction of time spent devoted to drill
- Problem solving and partnership approaches should be central to recruit training
- Community awareness should be integrated into all aspects of training and should include all the main religious and political traditions in Northern Ireland.

In May 1999, the RUC had already begun work on updating their training strategy. This was in response to a direction from the Chief Constable to start with a 'clean sheet'. It predated, and was to some extent independent of, the Patten report, although the two subsequently influenced each other. It was seen by the police officer in charge of training as a unique opportunity for the police service to reinvent itself.

A process of consultation included all ranks, areas and branches of the RUC. Police services in Britain, Canada and South Africa, as well as other organisations in the public and private sector, were scrutinized for examples of good practice against which police training could be benchmarked. At the

same time, members of the Patten team were gathering evidence and preparing recommendations that would lay emphasis on the interdependency of the community and police. The objective was to get the community involved at the training level and give them some understanding of the capabilities and limitations of the PSNI. As the PSNI training strategy document states:

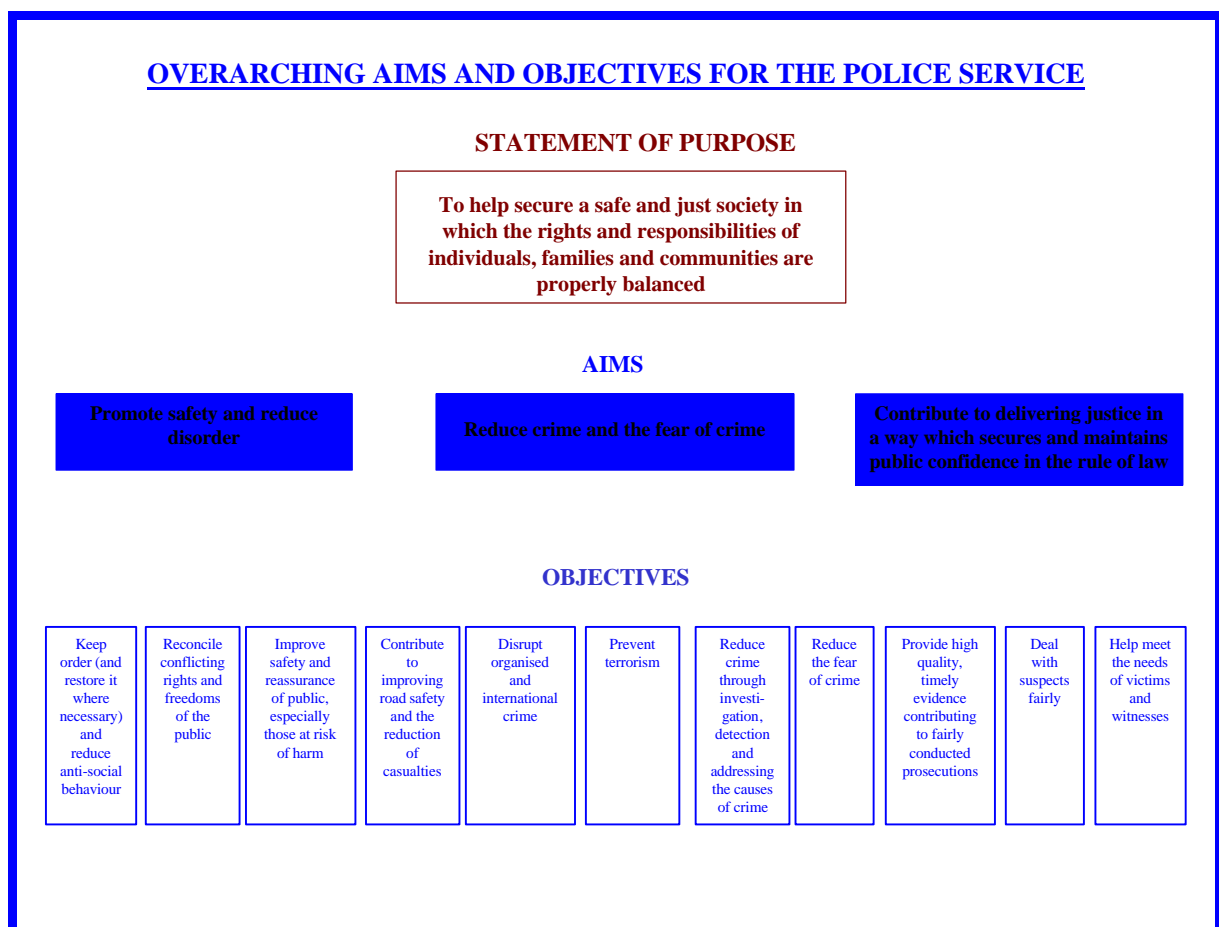
“If the concepts of openness, transparency and accountability in the police service are to mean anything, we believe that the community should be involved in shaping the mould which shapes the police service they receive. In other words, the community should have an important say in the shaping of training, education and development of the police officers who serve them.”

Fifty-four organisations were consulted including political parties, academics, lawyers, the Churches, community groups, environmentalists and multi-racial groups. 72% of those targeted responded. Additionally, seventeen major reports with a bearing on police training, published in the previous five years, were examined for examples of good practice. (PSNI 2001)

Finally, the overarching aims and objectives devised in 1998 for the police service by the Home Office, Association of Chief Police Officers and the Association of Police Authorities were also taken into consideration.

(see fig 1).

Fig. 1: Overarching Aims and Objectives for the Police Service



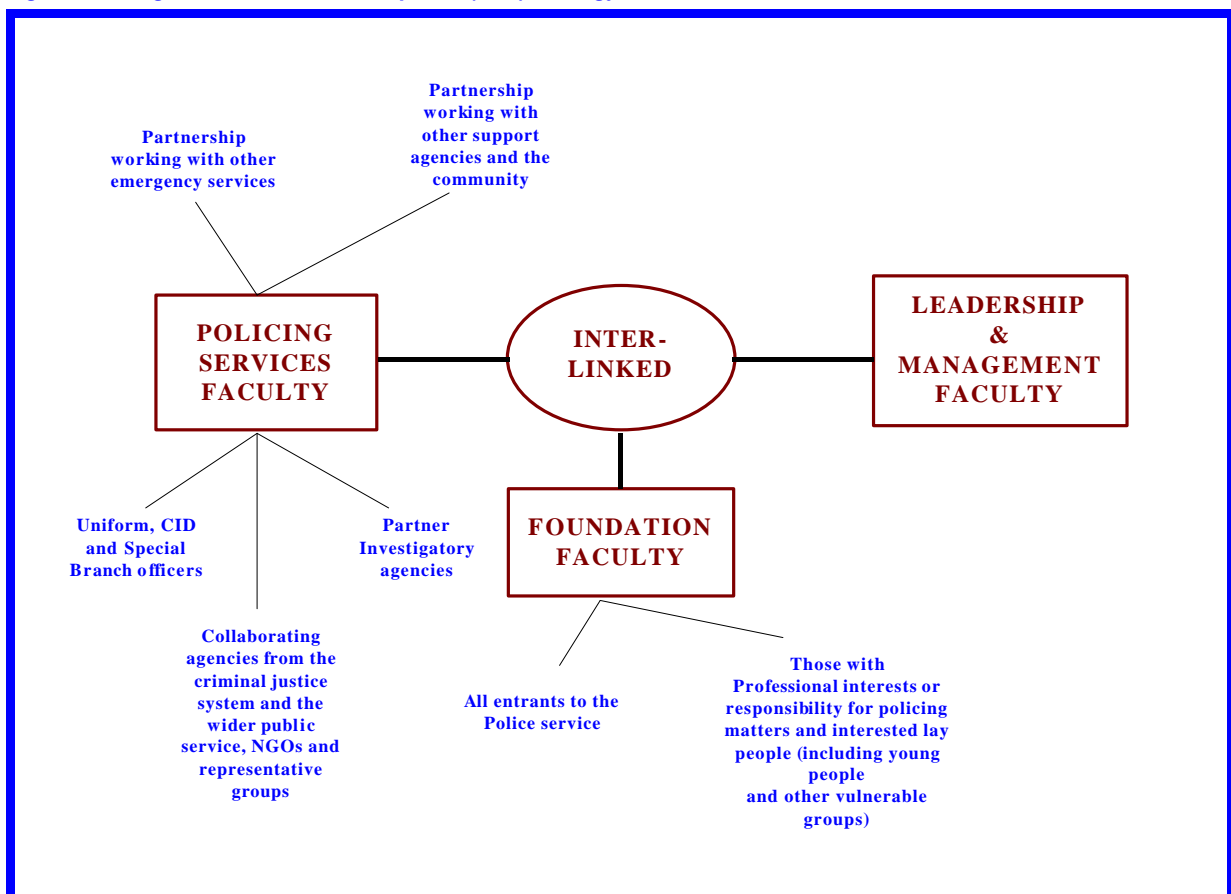
Source: T.E.D. Primary Reference Document, PSNI

Ninety-two recommendations emerged from this process. These formed the basis of the approach to creating the current training, education and development strategy for the PSNI. It is based on the need to police in partnership with the community and aims to put all topics within the framework of human rights. Nine core themes', which are to underpin the delivery of the Police Service of Northern Ireland, were identified. These are:

- Human rights theory and practice
- Diversity incorporating equal opportunities and community and race relations
- Community policing
- Community safety
- Problem solving
- Professional standards and ethics
- Best value
- Best practice health and safety
- Health and safety

The Training, Education and Development (TED) strategy comprises of three inter-linked faculties (see fig 2).

Fig. 2: Training, Education and Development (TED) Strategy



Source: T.E.D. Primary Reference Document, Policing in Northern Ireland 2001

The foundation faculty will train all new recruits and those with professional or other interests in policing. This could include members of the District Policing Partnership Boards when established.

The Policing Services Faculty is responsible for all the technical skills training underpinning the work of the various branches of the police service, including Uniform Branch, Criminal Investigation, Traffic, and so on, and will provide training in, for example, driving, use of firearms and public order. Leadership and Management Faculty will train both police and civilian support staff.

Training for the new recruits begins with twenty weeks in the Foundation Faculty at Garnerville, the police training college. Plans are being drawn up for a new police training college because the facilities at Garnerville, an old domestic science college, are considered to be inadequate.

Fig 3: Student Officer Training Course

| MODULE | CREDIT LEVEL | TIME ALLOTTED TO MODULE | CREDIT POINTS | MODULE STATUS | AWARDS |
|---------------------------------------|--------------|-------------------------|---------------|---------------|--|
| <i>Police and Community Relations</i> | A | 200 hours | 20 | Compulsory | CERTIFICATE IN POLICING STUDIES |
| <i>Criminal Justice System</i> | A | 100 hours | 10 | Compulsory | |
| <i>Crime</i> | A | 100 hours | 10 | Compulsory | |
| <i>Traffic</i> | A | 100 hours | 10 | Compulsory | |
| <i>General Police Duties</i> | A | 100 hours | 10 | Compulsory | |

Source: T.E.D. Primary Reference Document, Policing in Northern Ireland 2001

The course comprises of the five modules of study figured above, which are accredited by the University of Ulster, and the successful student is awarded a Certificate in Policing Studies at a graduation ceremony. Further studies, which are not compulsory but are encouraged, lead to a Diploma in Policing. The module on Police and Community Relations carries twice the weighting of each of the other modules.

Ten weeks are allocated to driving, firearms and public order training, and this is followed by a further ten weeks with a tutor unit in Belfast or in a District Command Unit (DCU), where the probationer is given input and ongoing assessment from his tutor, constable or sergeant. This period includes two weeks in a criminal justice unit to learn about file preparation for the DPP and courts. After forty weeks recruits are allocated to DCUs as probationers. They no longer have the supervision of tutors but work with experienced police officers and as probationers are given the help and assistance they require.

They have two further blocks of two weeks in Maydown Police Centre to develop existing training before being confirmed as full constables of the PSNI. During the two years of training, each officer must build a collection of case studies into a portfolio that must be completed before confirmation of appointment.

The first recruits complete their probation period in Spring 2004. Evaluation and review of each module will be undertaken on a continuous basis by students and trainers. There is provision for the community and other agencies to give their views to the Course Committee on the police training curriculum. The Committee may make changes to the training programme as a result. The Northern Ireland Human Rights Commission (NIHRC) is evaluating the human rights content of the training but this evaluation will not be complete until June 2002. It has provisionally recommended that contracts to provide training should be advertised and selection made by open tender, and that civilian trainers (beyond the University of Ulster), especially human rights groups who have substantial experience in policing issues, should be asked to provide training.

Regarding civilian trainers, Patten proposed that there should be a high degree of civilian input into the recruit training programme. The PSNI Foundation Faculty has pointed out that they have a substantial number of inputs to the training programme from personnel external to the regular police service. These are drawn from University of Ulster staff, community contributors and other staff employed by the PSNI in a civilian capacity in the areas of health and safety, welfare and communications.

Within the Foundation Faculty the current ratio of PSNI regular police staff to other contributors to the programme is approximately 65% to 35%. The majority of civilian input is provided on a contract basis rather than permanent basis.

Figure 4 – Breakdown of Permanent Staff within the Various Faculties/Specialisms

| Faculty/Department | Police | Civilian | Total |
|-----------------------|------------|-----------|------------|
| Foundation | 49 | 0 | 49 |
| Policing Services | 144 | 15 | 159 |
| Leadership and Mgt. | 7 | 4 | 11 |
| Support & Development | 5 | 0 | 5 |
| Total | 205 | 19 | 224 |

Source: Garnerville Training College

In-service training is more difficult to comment upon. One constable in the PSNI claimed that ongoing training is limited mainly to new legislation and human rights, and that it is difficult to keep abreast of it

all. The NIHRC had serious concerns about the training given on The Human Rights Act (1998) and, in particular, how it was received by some Special Branch officers. It was critical of the fact that, although the Commission has a statutory duty to promote Human Rights, it had had been granted little input into the relevant planning process in relation to the training. A further cause for concern was that there was no independent evaluation of the course (NIHRC 2000). At a Conference on Human Rights the Assistant Chief Constable who has responsibility for Human Rights in the PSNI, explained that the Code of Ethics, based on international human rights standards, will be the discipline code of the PSNI and will be binding on all officers (Kincaid 2001). He went on to explain, however, that training was constrained by budgets and that reduced manpower makes it difficult to extract officers from operational duties. Alternative ways of delivering training, such as distance learning packs and a human rights newspaper, are being considered. Another District Commander recognised the need for training in the management and operation of sectors within the District Command Units, but again pointed to the difficulties of finding time for training.

It would seem that there is a qualitative difference between the training given to new recruits and the in-service training of existing officers. It is possible that such a disparity may cause problems in the future. For example, a senior officer accepted that new recruits might meet with some difficulties when they go out to their command units. He suggested that there might be some conflict with the old culture. It was a question he said:

“of the unstoppable meeting the immovable – until a critical mass has been achieved which tips the organisation over.”

The Garda Síochána also undertook a re-evaluation of their training. However this was more difficult to assess because, unlike the PSNI who gave us every assistance, the Garda Síochána were unable to offer us access to the Garda College at Templemore or to senior officers involved in training. In 1998 they appointed a Review Group to examine the philosophy, structure, content, processes, management and costs of the Garda training programme. The contributions submitted to the Review Group were primarily internal, focusing on serving members from all ranks and sectors of the organisation. The national Vice-Chairperson of Victim Support was also consulted, although, perhaps surprisingly, the list of submissions does not include any from other police forces.

The Review Group proposed a competence-based model of training whereby a number of core competencies, clustered under three headings, would permeate the training schedule of the trainee Garda. (see fig. 5).

Fig. 5: General professional competencies

| TASK | VALUES | RELATIONSHIPS |
|--------------------------|------------------------------|--------------------------|
| Analytical Ability | Commitment to High Standards | Empathetic Understanding |
| Communication | Community Orientation | Team Work |
| Conflict Resolution | Self-management | Assertive Presence |
| Balanced Decision Making | Safety Healthy & Fitness | Flexibility |

Source: Final Report Review of Garda Education/Training

Garda training emphasises such issues as human rights and community policing. In fact these are argued to pervade all modules of training. The curriculum contains a mandatory course in Social Science Studies. It also includes modules in political conflict and terrorism and in contemporary policing in Ireland. A related course, entitled Communication Studies, includes lessons in prejudice and discrimination and conflict management. The Policing Studies module covers issues such as comparative policing, community policing and neighbourhood policing.

The course of studies is comprised of legal studies, policing studies, technical studies, communication studies, social science, physical education, European language and Irish studies, as well as a dissertation. Figure 6 sets out the number of teaching sessions assigned to each team and demonstrates the heavy emphasis placed on legal studies.

Fig 6 : Proposed programme for teaching staff

| Subject/Module | Total Sessions | No. of Staff |
|--|----------------|--------------|
| Legal Studies, Garda Practices & Procedures, Contextual Policing Studies | 1,720 | 16 |
| Management & Organisational Studies | 630 | 6 |
| Physical Education & Safety Studies | 1,322 | 11 |
| Gaeilge | 600 | 4 |
| European Languages | 570 | 4 |
| Social & Psychological Studies | 630 | 7 |

Source: Final Report Review of Student Garda Programme

The Student Gardaí Training Programme is of two years duration and consists of the following five separate, but integrated, phases:

Phase 1 Twenty weeks at the Garda Síochána College with two weeks leave of absence

Phase 2 Twenty-two weeks at a selected station followed by two weeks leave of absence

Phase 3 Sixteen weeks at the Garda Síochána College

Phase 4 Thirty-eight weeks at a selected station

Phase 5 Four weeks at the Garda Síochána College

Phase One of the Student Garda Programme is conducted within the Garda College. The objective is to give students a clear framework that supports contemporary professional police practice, and emphasis is placed on preparing students for those situations that they are most likely to encounter as Gardaí.

Phase Two of Garda training is twenty-two weeks long and takes place at a selected Garda station. Students undergo a structured and co-ordinated training programme under the supervision of a training sergeant. They are accompanied at all times by a tutor Garda during this phase. Twelve weeks are spent accompanying the tutor Garda on his/her duties, while the remaining ten weeks are served in a specialist unit such as the detective unit, the drug unit or the district office. Time is specifically allocated to the understanding of the social aspect of policing and two subsequent weeks are devoted to a social placement.

Phase Three, which is sixteen weeks long, is devoted to a review and evaluation of phase two field experience and a more in-depth study of the topics included in phase one and takes place back in the classrooms at Templemore. Part of this phase involves a trainer proposing contingencies to the probationer who must evaluate available possible actions and decide upon the best course of action. These involve everyday scenarios encountered by police in the line of duty. Upon completion of Phase Three the student is attested as a member of the Garda Síochána and placed on probation for a two-year period.

In Phase Four of training, all probationers are required to maintain a personal diary throughout the period and complete three projects: two 1,500 word essays and a 10,000 word dissertation. One of the 1,500 word essays locates the social and psychological effects of a policing intervention in the personal experience of the probationer.

Phase Five involves the probationer returning once again to the Garda College to reflect on the previous two years and to be apprised of new developments in policing since attestation. Probationers graduate with a Diploma in Policing Studies at the end of this period (Keating 1999).

In addition to probationer education, the Garda Síochána also undertakes in-service training of its members. Because in-service training leads to a reduction in the level of manpower on the street, it usually concentrates on organisation-wide issues that arise from time to time. Each Garda division has an in-service training unit and classes typically cater for approximately twenty-five people. Areas requiring training include new legislation that affects policing powers, or the introduction of new technology, for example the PULSE computer system. It should be noted however that the introduction of this system caused significant problems, not least of which was criticism by serving Garda of the training they received in the area.⁵³

In the context of training, the Patten Report expressed a belief that joint training opportunities would be valuable in building up a framework of co-operation between the Northern Ireland police and the Garda Síochána. A one-off example of this was a joint RUC/Garda training exercise that took place in Templemore prior to their embarking on a peacekeeping mission to Kosovo. The three-week program included search training, first aid, driving, occupational health, conflict resolution skills, UN procedures, scene of crime, human rights, firearm refresher and tactical training. Officers have also attended each other's conferences as observers. The first annual joint conference on the theme '*Community, Commitment, Cooperation*' took place in Templemore on April 3rd/4th 2002. In the past, officers from the two police services had little opportunity to meet, even in management training. At this level the RUC traditionally attended the senior management course at Bramshill in the United Kingdom, while the Gardaí went to John Jay College in New York. For a number of years members of the Garda Síochána, from sergeant rank up, have been attending short-term courses of two to three weeks duration offered at this College. Senior officers from both police services have also attended the FBI College together at Quantico. A superintendent in the PSNI stressed that the contacts and friendships made there were a valuable way of strengthening relationships.

In addition, heads of training from England, Scotland, Northern Ireland and the Republic of Ireland sit on the Governing Board of the European Association of Police Colleges. The Director of Training, PSNI, claimed that there is particularly good communication between the representatives of Northern Ireland, Scotland and the Republic of Ireland. Connections have also been established with the Ontario Provincial Police. He believed that co-operation within these groups presented an opportunity to develop a world class training facility in leadership, offering multi-site modules. He added that he looked forward to that level of co-operation.

While we were visiting the PSNI Training College at Garnerville, a small team consisting of the most senior trainers in the Garda Síochána was also meeting there with PSNI training officers to identify

⁵³ The Examiner, 26th March, 2002

areas of mutual interest where they might co-operate. Areas identified at that meeting included social studies, communications and legal and policing studies. As a result of these meetings, the first exchange of trainers has taken place. This consisted of three Garda Síochána officers who spent a week in Belfast delivering classes on traffic, crime and general police duties to foundation level students. At the formal launch of the exchange programme in Templemore Training College a Garda Síochána Superintendent said:

*"This is a great opportunity for both forces to share learning experiences on a formal basis. After all the preparative work, this is our first input into the PSNI's curriculum and their first contribution to ours"*⁵⁴

Training has been described by both police officers and governments as an easy area in which to co-operate and, indeed, a simple exchange of trainers at this superficial level does not appear to have raised any problems. If, however, as a recent press report claimed⁵⁵, an independent secondment of more senior officers is being considered, there are other issues to be addressed. For example, it raises questions of powers, procedures and accountability and how these would apply in another jurisdiction. The Chairman of the Police Federation of the PSNI pointed out that the difficulty of pay and conditions also remains to be negotiated.

Because there are some differences between the criminal law structures in the two jurisdictions, legal and policing subjects have been identified as areas for possible common training. Several officers in both police services have commented on the degree of ignorance existing between them on issues arising from powers and procedures. Joint training of new and existing officers could provide an opportunity to counteract such mutual ignorance.

A possible impediment to such joint training ventures might lie in the relative qualifications of training officers. Garda trainers must be of sergeant rank or above. There is no similar rank requirement for PSNI trainers, although they must hold appropriate HNVQ⁵⁶ training qualifications. In the past, failure to have completed a senior management qualification from a United Kingdom Police College militated against members of the Garda Síochána being considered for senior posts in the PSNI. In order to facilitate a freer exchange between police services in the UK and Ireland there is a need to standardise qualifications.

PSNI officers still carry firearms, and have to deal with public order situations not generally encountered by their colleagues in the Republic of Ireland. Training in firearms and when to use them, and dealing with public order situations, is therefore an important part of their training. Less emphasis is placed on such strategies in Garda training.⁵⁷ Following the 1998 Review of Garda Training, the instruction on the carriage and use of firearms was discontinued, in recognition of the unarmed nature

⁵⁴ The Irish Times March 13th 2002 'Garda and PSNI Unite to Co- operate Training'

⁵⁵ Ibid.

⁵⁶ Higher National Vocational Qualifications.

⁵⁷ Final Report Review of Garda Education/Training 1998

of the force. Probationer Gardaí now undergo a firearm familiarisation course, while further training is provided on a selective basis at an in-service level.

Present facilities at the PSNI Training College at Garnerville are at best limiting and it has been suggested that PSNI trainees might benefit from the facilities at the Garda College in Templemore. One senior PSNI officer stated:

“Templemore is a visionary facility that officers can be proud of in terms of training and infrastructure and I look forward to the day when we will see a similar commitment of resources to the PSNI”

However there is a serious accommodation shortage at Templemore, where over one hundred trainees have to reside with families in the town rather than in the complex. In terms of co-operation, therefore, it might initially be more realistic to focus on an interchange of trainers rather than trainees.

Perhaps the easiest elements of the curriculum of the two training establishments, within which to engage in joint activities, are subjects such as physical education. Boxing has traditionally been a sport through which both police forces maintained strong linkages. Regular events were held between the RUC and the Garda Síochána. This has now developed further to the point where the PSNI and the Garda Síochána together constitute an all-Ireland boxing team that travels to compete in other countries. Other areas where sporting links have been strong include cross-country running and rugby. It is intended in the near future to organise a Gaelic football match⁵⁸ between the two police services and further sporting fixtures will be developed in line with the expanding role of secondments between the two training facilities.

⁵⁸ PSNI correspondence 9th April 2002.

Section One

- 1.1 Co-operation between the Garda Síochána and the Police Service of Northern Ireland is probably at its highest level since partition. However the existing level of co-operation is the least one would expect between two police services with a common land border.
- 1.2 There appears to be a strong commitment in both police services to strengthening and formalising this co-operation.
- 1.3 The Patten Report has made specific recommendations for the Police Service of Northern Ireland with regard to cross-border co-operation. These recommendations are also likely to have significant implications for the Garda Síochána.

Section Two

- 2.1 Both governments have declared their willingness to co-operate in cross-border policing. The rate at which both police services want to proceed would seem to be very much faster than that envisaged by politicians.
- 2.2 Regarding terrorism and organised crime, both police services recognise a common enemy and will work together, as far as the laws of the two jurisdictions allow. There are however differences in law and procedures which create difficulties. Notwithstanding the recent inter-governmental agreement police officers would appear to be impatient with the apparent inability of the lawmakers to solve these difficulties.
- 2.3 Differences in criminal procedure, particularly on the rules governing the admissibility of evidence, allow criminals to use the border to their advantage. No clear analysis has been made to identify what can be done within the existing law, and what could most easily be legislated for. No actual legislation has been framed with a view to easing activities such as joint investigation. The establishment of an all-Ireland Law Commission may be one way to deal with this.
- 2.4 There appears to be a degree of ignorance among police officers in both jurisdictions about the powers and procedures on the other side of the border. Strategies such as 'gap analyses' should be able to identify policy issues, which would be in the gift of the two police services, and procedural issues, which would require legislation.
- 2.5 The establishment of joint investigative teams was recommended in the Patten Report and raised frequently during the research. The Inter-governmental Agreement which the two governments signed in April 2002 commits them to reviewing existing arrangements for joint investigations. In view of the ongoing controversy surrounding the Omagh investigation this is particularly urgent.
- 2.6 At a more basic level, concern was expressed to us that in the Newry-Dundalk region the lack of an integrated traffic strategy had, all too frequently, the gravest consequences. For

example, drivers can speed with impunity in the other jurisdiction in the certain knowledge that any summons will not be pursued in their own. It should be possible for summonses to be issued and fines collected on behalf of police officers in the adjoining jurisdiction. The application of existing European legislation would solve this problem.

- 2.7 The difficulty in applying traffic regulations in border regions is particularly ironic considering that in these areas there is a disproportionately high representation of police officers in close proximity on either side of the border. Consideration might be given to ways in which these resources could be more effectively deployed.
- 2.8 The Patten Report includes the clear recommendation that joint database development be pursued as a matter of priority in all the main areas of cross-border criminality. It is of concern therefore that no database exists on an all-Ireland level with regard to, for example, paedophiles. At the moment, such information is shared at a cross-border level by request only.
- 2.9 At a related level, it has been suggested to us that a joint database of good ideas and examples of good practice in all areas of policing would infringe no laws and would serve to increase mutual understanding.
- 2.10 The majority of politicians on both sides of the border have recommended that nationalists should join the PSNI. This obviously suggests an acceptance of, and trust, in the service. If therefore they are to be consistent, there should be no problem on either side of the border in accepting innovations such as joint investigative teams which would also rely on mutual trust.

Section Three

- 3.1 The two police services share common goals and a common policing culture. This should help to facilitate co-operation between them. However there is a danger that the stronger this occupational identity becomes, the more likely it is to distance them from the communities they serve.
- 3.2 The Patten Commission highlights a culture of secrecy within the Special Branch of the RUC/PSNI, it is argued that this has impeded sharing of information within and between the two services. This perception is strengthened by the accusation that even such an important inquiry as the Omagh investigation was hindered by such a lack of information sharing.
- 3.3 Both services declare their opposition to political interference. Although police in Northern Ireland were bedevilled by this in the past, they now perceive themselves as being subject to less political influence than their Garda counterparts.

- 3.4 In terms of transparency, there would appear to have been a sea change within policing in Northern Ireland. The PSNI were helpful, open and accommodating to every request made of them during this research. At an individual level the same was true within the Garda Síochána. However at a formal level within that service our research seemed to be perceived in terms of threat rather than opportunity.
- 3.5 Police accountability has become an important concern in both jurisdictions. The structures for dealing with the issue differ significantly within each. Currently, the appointment of an ombudsman in the Republic of Ireland is the subject of some controversy. These differences are likely to have important implications if secondment and exchanges become more frequent.
- 3.6 At a political level there is some disagreement about the extent and scope of cross border co-operation in policing. In Northern Ireland, most pro-Agreement parties have expressed a welcome for such co-operation. Anti-Agreement parties have not, and their representatives see any cross border co-operation, that is not placed in a European context, as a threat to Northern Ireland. Impending European legislation may make this resistance redundant.
- 3.7 Sinn Féin, although a pro-Agreement party, does not support the PSNI. It is campaigning for further changes to the police service and has stated that, while it do not oppose cross border police co-operation, it does not see it as a priority at this time.
- 3.8 The Irish Government has given its full support to co-operation recommended by the Patten Report but seem less enthusiastic to accept proposals that require fundamental legislative change.

Section Four

- 4.1 Training is the area upon which co-operation may have the most immediate and visible impact.
- 4.2 The PSNI and the Garda Síochána are in ongoing discussions about how they can best co-operate in this area and have introduced a short-term exchange of trainers. Longer-term secondments, which would be more meaningful, are also being considered. These, however, must wait for issues such as pay and conditions to be resolved.
- 4.3 In order to make exchanges of trainers, secondments, and other cross-jurisdictional transfers more effective, attention will have to be given to the mutual recognition of qualifications and accreditation.
- 4.4 The two police services have been sending delegates to each others conferences for some years but the first annual joint conference has now taken place and others are planned.
- 4.5 Human rights experts have suggested that theirs is an area in which joint training could usefully take place. They have also recommended that such training should be both planned and presented in conjunction with human rights organisations which have expertise in this aspect of policing.
- 4.6 The point has been made that the new PSNI recruits may be faced with some clash of cultures when they are assigned to their command units. If the PSNI is to make a new beginning, equal attention might be given to in-service and pre-service training.

- 4.7** As delegates to CEPOL, heads of training from Garnerville, Templemore and Tullyallen have established strong connections. These connections, coupled with existing links with the FBI College and the Ontario Provincial Police, have the potential to establish an important management training facility.
- 4.8 A new police college for Northern Ireland is overdue, and this is made more apparent when facilities at Garnerville are compared with those at Templemore. While the quality of a police service does not depend on buildings, nevertheless, the importance placed on the training of police recruits should be reflected in suitable surroundings, which accord respect and esteem to students and trainers.

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