

FIFTH REPORT OF THE INDEPENDENT MONITORING COMMISSION

Presented to the Government of the United Kingdom and the Government of Ireland under Articles 4 and 7 of the International Agreement establishing the Independent Monitoring Commission

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1. INTRODUCTION AND CONTEXT

- 1.1 We submit this report on the continuing activities of paramilitary groups under Articles 4 and 7 of the International Agreement establishing the Independent Monitoring Commission¹. The British and Irish Governments published our first two full reports on this subject in April and November 2004 and this report continues the six monthly cycle required by the International Agreement.
- 1.2 On 10 February this year the British and Irish Governments published our ad hoc report specifically on the robbery at the Northern Bank, Belfast, on 20 December 2004, and on some associated incidents. We presented that ad hoc report, as we are empowered to by Article 4, because of the nature of the robbery and all the surrounding circumstances, both before and after it occurred. We have drawn the analysis and conclusions of that ad hoc report into the full account of paramilitary activity which we give here.
- 1.3 We reiterate two important points we made in our earlier reports.
- 1.4 First, we continue to be guided by the objective of the Commission set out in Article 3 of the International Agreement.

The objective of the Commission is to carry out [its functions] with a view to promoting the transition to a peaceful society and stable and inclusive devolved Government in Northern Ireland.

- 1.5 Second, we continue to adhere to the principles about the rule of law and about democratic government which we enunciated in March last year, and which are set out in full in Annex II of this report.
- 1.6 We note that under the terms of the proposals for a comprehensive agreement which the two Governments published last December we would have had two specific tasks. The first was to produce an interim report that same month. The second was

¹ The text of Articles 4 and 7 is set out in Annex I.

to present our next regular report on continuing paramilitary activities (namely this one) in February 2005, the month before the agreement envisaged the possible restoration of devolved government. In the event these proposals were not agreed. We welcome any task that will enable us to contribute to peace and stability. In this context we draw attention to what we said in our ad hoc report about the need for us to have an adequate time so as to be able to make full and rounded assessments of paramilitary activity and to draw dependable conclusions².

- 1.7 During the course of the preparation of this report Sinn Féin initiated judicial review proceedings in the Northern Ireland courts. The proceedings addressed the IMC's remit and first report, the action taken by the Secretary of State as a result of that report, and the legislation which gives the IMC its statutory foundation in the UK³. The proceedings taken by Sinn Féin were unsuccessful on all grounds. Given this outcome we believe it is worth making the following point clear. We are appointed and report because the Governments of the UK and of Ireland entered into an International Agreement and the Parliaments of both countries passed legislation⁴ implementing it. In our view this puts beyond any doubt the democratic legitimacy of the role we have been given.
- 1.8 In our first report, published in April 2004, we said that "organised crime in Northern Ireland is significantly greater in its scale, impact and complexity than it otherwise would be because of the involvement of paramilitary groups" and we concluded that it might "present the biggest long-term threat to the rule of law in Northern Ireland." The information and analysis we set out in subsequent reports reinforced this view, as does this report. We are therefore glad to see that the focus of public discussion has significantly shifted, and that there are increasingly frequent references to all forms of the crimes which paramilitaries commit.
- 1.9 We have been asked a number of times how we make our assessments and on what information we base them. Some have asked us to put more material in the public domain. Some have challenged us on grounds that we may be or appear to be

² IMC Fourth Report, paragraph 16.

³ Northern Ireland (Monitoring Commission etc.) Act 2003.

⁴ The parallel Irish legislation is the Independent Monitoring Commission Act 2003.

biased, and we continue carefully to consider that issue. We hope it would be helpful if we say something about the way we work.

1.10 We believe it is a great strength that the four Commissioners come from different backgrounds and have different perspectives. We seek to maximise the benefit this gives us by challenging each others' thinking as well as challenging those we meet. We try to develop assessments based on more than one source. We see if there are links between what we learn from different people and we expect to be able to triangulate different perspectives before we reach conclusions. We probe the nature and logic of the information we receive. We examine whether there are any inconsistencies. We challenge any gaps there appear to be. We question whether there might be any bias either in our own approach or in that of others and take steps to ensure it does not influence our conclusions inappropriately. We ask ourselves and our interlocutors whether other conclusions might as reasonably be drawn from the same set of circumstances. We test the confidence placed in the material and in opinions associated with it. We do all this before we come to any view, and before we write our reports. The conclusions we draw are our own.

1.11 Our sources are wide ranging. They include the law enforcement and other agencies of the UK and Ireland, as well as of any other country from which we have things to learn. But they are much wider than that. In addition to government officials and police officers we have met people from the following categories in Great Britain, Ireland North and South and in the United States:

Political parties; government officials; police; community groups; churches; charities; pressure groups and other organisations; former combatants, including ex-prisoners; representatives of businesses; lawyers; journalists; academics; victims; private citizens, individually and as families.

We urge everybody with something material to our work to get in touch with us⁵. We also try to take account of the work of other boards, commissions and similar bodies in Northern Ireland and elsewhere⁶.

1.12 We are very careful what we say in our reports. From the beginning we have adhered to one firm principle. We treat everything we hear, including the identities of those who communicate with us, in complete confidence. Only in this way can they be expected to impart information to us, and without that information we cannot do the job the two Governments have charged us with. We will therefore not reveal our sources, though those people are free to say what they like about their communications with the IMC. The International Agreement lays down other constraints on us, for example so that we do not prejudice legal proceedings or jeopardise anybody's safety. But the most significant restraint is self-imposed: we will not say anything, or draw any conclusion, unless we have confidence in it, and we will qualify conclusions if we think that is necessary. We did this, for example, in our initial attribution of certain robberies in late October 2004⁷.

1.13 We are not infallible, but we do believe we are thorough in our methods and measured in our assessments. If we find one of our conclusions does not stand up in the light of later information we will acknowledge this in a subsequent report⁸.

1.14 We have continued to refine our understanding of the activities of paramilitary groups and of the associated issues. We share the generally held aspiration that

⁵ You can contact the IMC through our website: www.independentmonitoringcommission.org; by E-mail: imc@independentmonitoringcommission.org; by post at PO Box 709, Belfast, BT2 8YB or PO Box 9592, Dublin 1; and by telephone at +44 (0)28 9072 6117 in Belfast and +353 1 4752 555 in Dublin.

⁶ There are a large number of boards, commissions and other bodies in Northern Ireland concerned with the criminal justice system, the maintenance of standards and with the transition to a peaceful society. They fulfil a variety of roles: executive, supervisory, monitoring and advisory. All have some form of interest in this issue. Most are confined to Northern Ireland but some operate on a UK basis. We are not aware of a comprehensive and publicly available list. We believe it to be, in alphabetical order: The Chief Inspector of Criminal Justice; HM Chief Inspector of Prisons; The Commissioner for Judicial Appointments; The Electoral Commission (UK); Equality Commission; Independent Assessor of Military Complaints Procedure in Northern Ireland; Independent Commissioner for Detained Terrorist Suspects; The Independent Monitoring Commission; Independent Reviewer of the Terrorism Act (Lord Carlile); Information Commissioner (UK); HM Inspector of Constabulary; The Interception of Communications Commissioner (UK); The International Independent Commission on Decommissioning; The Justice Oversight Commissioner; Northern Ireland Commissioner for Children and Young People; The Northern Ireland Human Rights Commission; The Northern Ireland Policing Board; Northern Ireland Sentence Review Commissioners; The Office of the Oversight Commissioner; The Parades Commission; The Police Ombudsman for Northern Ireland; Prisoner Ombudsman for Northern Ireland; The Probation Board for Northern Ireland; Regulation of Investigation Powers Act Commissioners. There are also individual inquiries in Ireland North and South: the Saville Inquiry and those established as a result of the report of the Cory Inquiry.

⁷ In our Third Report we said that members of republican paramilitary groups were responsible for recent large scale robbery and violent theft but that we could not make more firm attributions. In our Fourth Report the availability of further information enabled us to attribute the incidents specifically to PIRA.

⁸ In our Third Report we said that the attribution of the murder of Michael O'Hare to an unspecified paramilitary group which we had made in our First Report was not correct, and we said that we and the PSNI had offered apologies and an explanation to the family.

paramilitary groups will cease all illegal activity. The Belfast Agreement of 1998 marked a watershed and, although we recognise that illegal paramilitary activity will not all be suddenly brought to an end, the transition to a peaceful society and stable and inclusive devolved government which it envisaged must not continue indefinitely.

1.15 This aspiration raises two particular questions for us. First are the indications which would encourage us to assess that a paramilitary group really was making material progress towards giving up all illegal activity. Second are the areas we would look at in assessing whether it had actually done so.

1.16 In addressing the first question on making material progress towards giving up all illegal activity encouraging indications would include whether a group had taken the strategic decision to give up illegal activity; had given a clear lead to its members that they must do so; and had declared that as a group it had stopped such activity. Other indications might include: whether the group was taking steps to end its capability to undertake criminal acts; whether it was co-operating with the police; and whether it was lifting threats against people, including those it had exiled.

1.17 **As far as the second question is concerned, namely assessing whether a group had actually stopped illegal activity, we would continue to monitor and report on whether or not it still:**

- used violence in any form;**
- committed other crimes;**
- recruited or trained members;**
- gathered intelligence, targeted people or procured material;**
- exiled or intimidated people.**

2. PARAMILITARY GROUPS: ASSESSMENT OF CURRENT ACTIVITIES

- 2.1 We make an assessment below of the current activities and state of preparedness of paramilitary groups, focusing on the period from 1 September 2004 until 28 February 2005. Once again we invite readers to refer to our first report for our account of the origins and structure of these groups⁹.

Continuity Irish Republican Army (CIRA)

- 2.2 In our previous report we said that CIRA had been more active, including in efforts to attack the security forces and to maintain its terrorist capacity, that it was a dangerous organisation capable of effective sporadic attacks, and that it intended to continue to engage in terrorism and other crime.
- 2.3 CIRA has continued to be sporadically active. It has carried on with its policy of threatening District Policing Partnerships (DPP) in Northern Ireland, and has issued threats to places at which DPP meetings were held. In January it forced a taxi to take a bomb to a Belfast PSNI station, and the next day made a statement indicating that this was the “start of things to come in 2005”. It has monitored the security force reaction to hoax bombs to help it make future attacks. It has undertaken both assaults and shootings. Two members were arrested in the South in January 2005 in possession of an under-car explosive device. Nine members who had been arrested in 2003 were sentenced to imprisonment by the Special Criminal Court in Dublin.
- 2.4 CIRA has undertaken some reorganisation, particularly in the command structure. We believe this may indicate an intention to increase its level of activity. It is taking on new members, has continued to train, including in the use of rifles and explosives, and it makes efforts to improve its engineering capacity (particularly in relation to explosives) and its access to weapons. It has produced home made explosives and has moved munitions. As before, we believe it is a dangerous organisation capable of serious if sporadic attacks. It has no interest in ceasefire and

⁹ IMC First Report, published April 2004, Section 3 pp 11-18.

we believe that it plans to continue to engage in terrorism and other crimes, possibly more than in the recent past.

Irish National Liberation Army (INLA)

2.5 In our previous report we said that INLA remained a significant terrorist group whose members had been active in violence and organised crime.

2.6 INLA's activities and potential remain essentially the same although the level of activity is not high and it has not shot or assaulted people as it had in the previous six month periods. Members of INLA remain very actively involved in organised crime, including drugs. We believe it was responsible for the robbery of some £100,000 worth of goods from Debenhams in Belfast in October 2004, and that a few days before its members had stolen a similar sum from the Ulster Bank in Strabane having coerced an employee of the branch through threats to the lives of his family. The threat of the organisation's more active re-engagement remains.

Loyalist Volunteer Force (LVF)

2.7 In our previous report we said that the LVF was less active than it had been, with the exception of organised crime in which it was deeply involved, and that it did not appear to want to resume significant violence although it retained the capacity to do so should that intention change.

2.8 The LVF remains deeply involved in drug dealing, and in some areas it has recruited people solely for that purpose. On 14 January 2005 cannabis and ecstasy to the value of some £125,000 was discovered in Holywood along with LVF paraphernalia. In January LVF members fired shots at a taxi company with UVF connections. We conclude as we did in our previous report that with the striking exception of organised crime, especially in the form of drugs, the LVF remains less active than it used to be, shows no inclination to return to significant levels of violence, but retains a capacity to do so should its intentions change.

Provisional Irish Republican Army (PIRA)

- 2.9 In our previous report we said that PIRA continued to maintain its capacity as a terrorist organisation, had been involved in less violence, and remained active in certain kinds of organised crime. There were significant subsequent developments, as we indicated in our ad hoc Fourth Report in February 2005.
- 2.10 We said in our ad hoc Fourth Report that we were firmly of the view that PIRA was responsible for the robbery at the Northern Bank on 20 December 2004 and for three other major robberies in May, September and October of that year¹⁰. All of these cases involved violence or the threat of violence. It was also responsible for an arson attack against a fuel depot in early September.
- 2.11 PIRA continues to seek to maintain its medium term effectiveness. It recruits and trains new members, including in the use of firearms and explosives. It continues to gather intelligence. At the end of September 2004 the police discovered 10,000 rounds of PIRA ammunition suitable for use in assault rifles, of a type not previously found in Northern Ireland and manufactured since the Belfast Agreement. This may have been only part of a larger consignment and it demonstrates PIRA's continuing efforts to maintain its preparedness. PIRA allowed some people it had exiled to return home to the Short Strand area of Belfast after the murder of Robert McCartney. But there is no indication that PIRA is agreeing to the general return to Northern Ireland of those it has exiled. We believe that since the end of August 2004 it was responsible for some 5 shootings and 6 assaults. PIRA remains heavily engaged in organised crime, including for example the smuggling of fuel and tobacco. Recent events have shown PIRA's sophisticated use of money laundering as a means of securing long term the proceeds of serious crime.
- 2.12 In view of the attention it has attracted there is one other matter to which we wish to refer. The proposals for a comprehensive political agreement in Northern Ireland which the British and Irish Governments published on 8 December last year spoke

¹⁰ IMC Fourth Report, 10 February 2005.

of “an immediate, full and permanent cessation of all paramilitary activity by the IRA” (ie PIRA). With it was the draft of a statement which the two Governments had hoped that PIRA would put out in the event of the successful conclusion of the talks. This draft statement referred to the need not to endanger anyone’s personal rights or safety and to all PIRA volunteers being instructed not to engage in any activity which might endanger the new agreement. The statement which the PIRA actually put out following the failure to achieve an agreement contained the last phrase, but not the reference to ensuring the rights and safety of everybody. Two things are clear from what we say in this report and from our account of the activities of PIRA in our ad hoc report. First, there have continued to be occasions before and since early December 2004 when the rights and safety of others have been disregarded. Second, the manifest abuse of safety and rights which the abductions and robbery at the Northern Bank involved were being planned long before the December announcements; we are unable to say whether they would have been called off had there been a political agreement.

- 2.13 We conclude therefore that PIRA remains a highly active organisation. We note that in November 2004 two men were convicted of PIRA membership at the Special Criminal Court in Dublin, and a further five in February of this year. We believe that PIRA is at present determined to maintain its effectiveness, both in terms of organised crime, control in republican areas, and the potential for terrorism. We have no present evidence that it intends to resume a campaign of violence despite the collapse of political talks in December 2004, but its capacity remains should that become the intention.

Real Irish Republican Army (RIRA)

- 2.14 In our previous report we said that RIRA – within which there were two factions - remained an active organisation engaged in acts of terrorism and organised crime. It sought to maintain its capacity, though that did not always match its aspirations.
- 2.15 RIRA has continued to be the most active of the dissident republican groups and has been responsible both for brutal attacks and for robbery. It sent explosive postal packages to DPP members in September 2004 and again in January and February

2005. That same month, and again in October and December, it undertook shooting attacks against PSNI stations. It exiled somebody whom it had previously shot. It undertook a number of assaults. And in the run up to Christmas we believe it conducted a campaign of hoax and genuine explosive devices at commercial premises in different parts of Northern Ireland and sent further hoax devices in the New Year. In January 2005 it destroyed a store in Strabane by arson, and in February petrol bombed a person's home. RIRA has also recruited, trained members in the use of firearms and targeted police officers. It has continued efforts to improve its capacity in the use of explosives. We believe this is the work of an organisation which is ruthless and committed to terrorism. There have been some arrests of RIRA members in Northern Ireland and the South and three people are awaiting trial in the Special Criminal Court in Dublin. The organisation remains a threat.

Ulster Defence Association (UDA)

- 2.16 In our previous report we said that the UDA had planned to avoid disorder over the summer but had undertaken shootings and assaults, and was heavily involved in organised crime.
- 2.17 In November last year the Secretary of State announced the de-specification of the UDA following its statement that it would desist from all "military activity", focus on social and economic issues within the community, and work with the British Government towards an end to all paramilitary activity. Part of the period under review in this report therefore fell before this statement.
- 2.18 In September and October 2004 the UDA were involved in both violence and targeting. Members of the UDA shot Darren Thompson on 29 September 2004 (he died on 1 October)¹¹. On 19 September 2004 UDA members, with the approval of the local leadership, attacked Stephen Nelson who died on 18 March 2005. As part of a dispute with the LVF in Belfast they were responsible for an arson attack in late October. At the end of November 7 UDA members and an eighth associate were

¹¹ See Section 3, paragraph 3.4.

arrested before being able to commit an abduction and armed robbery, which were known to the North Belfast leadership of the organisation. More recently, they have engaged in targeting in anticipation of a possible dispute with the LVF following the release of Johnny Adair from prison in January 2005, and have monitored dissident republicans with a view to mounting attacks if they themselves are attacked. In January 2005 UDA members forced two families from their homes. We have found nothing to suggest that the UDA has agreed to the return to Northern Ireland of people it has exiled or that it is considering doing so. The organisation was, we believe, responsible for shootings and assaults. It remains involved in organised crime, and members were responsible for two robberies in February and March 2005.

- 2.19 We have always recognised that transition may be a messy and difficult process for a paramilitary group. To date it is not clear if the UDA will achieve the transition it pointed to in its statement of November 2004. Certainly the process is still very far from complete, and the fact remains that during the period under review it was responsible for 2 murders.

Ulster Volunteer Force (UVF) and Red Hand Commando (RHC)

- 2.20 In our previous report we concluded that the UVF remained active and violent and that it continued to be involved in organised crime.
- 2.21 This is still the case. The UVF undertook a number of attacks over Christmas and New Year as part of its continuing conflict with the LVF. Members of the same UVF unit shot at LVF members in Belfast in mid-January, as a result of which one person has been charged with attempted murder. It has also undertaken the targeting of rivals. It continues to recruit members. Several of the loyalist shootings and assaults over the period covered in Section 3 of this report can be attributed to the UVF and RHC. The UVF is also engaged in organised crime. Our previous conclusion thus stands. The UVF is active, violent and ruthless, and is prepared to use violence to promote what it sees as the interests of the organisation. We believe it would undertake greater violence than in recent months if it judged that those interests so required.

3. PARAMILITARY GROUPS: THE INCIDENCE OF VIOLENCE AND EXILING

3.1 This Section concentrates on, but is not entirely confined to, the 6 months since the end of August 2004. It compares them with the three preceding 6 month periods.

3.2 We want first to remind the reader of two points we have made before in this context but which are equally important now:

- Behind the bare statistics which we set out below lie vicious acts of cruelty that have left people permanently disabled and psychologically scarred.

- No criminal statistics can record the far more numerous occasions on which paramilitaries have intimidated people, thereby achieving the same ends through a fear which is none the less real because it stops short of actual violence. As we have said before, the activities described below are therefore only part of a continuing web of intimidation which particularly afflicts some local communities in Northern Ireland.

3.3 We have also noted before our rejection of the term “punishment beating”. This is not because of some special sensitivity on our part or a desire to appear correct. It is because we believe that the word “punishment” serves merely to attach an air of respectability to a particularly nasty kind of lawless cruelty and misleads as to the wide range of purposes for which this violence is inflicted – not only to establish or maintain control within communities, as it implies, but in pursuit of acquisitive crime, against rival paramilitary groups and inter-communally. The word “beating” grossly underplays the severity of what the paramilitaries all too often inflict. We think the time has come when public figures and institutions should give a lead and stop using “punishment” in this context, and that the media should do likewise save where they feel obliged to do so in the interests of accurate reporting.

Paramilitary Violence 1 September 2004 to 28 February 2005

3.4 Over the 6 months from 1 September 2004 until 28 February 2005 we believe that the number of paramilitary murders was as follows:

	1 September 2004 – 28 February 2005	1 March – 31 August 2004	1 September 2003 – 29 February 2004	1 March – 31 August 2003
CIRA				
INLA				
LVF				1
PIRA	*			
RIRA				1
UDA	2		1	1
UVF		2	1	
Not attributable		1 ¹²		2 ¹³
TOTAL	2	3	2	5

Thus the total number of murders is similar to that in the two previous 6 month periods.

The following paramilitary murders have occurred since 1 September 2004:

Darren Thompson, shot 29 September 2004; died 1 October 2004.

Stephen Nelson, attacked 19 September 2004, died 18 March 2005.

The question might be raised of why the murder of Robert McCartney is not included in the above figures and box. The detailed categorisation of the murder is not yet definitive and for this reason it is asterisked in the table.

We are not yet in a position to comment on the killing of Stephen Montgomery on 13 February 2005 or the disappearance of Lisa Dorrian on 28 February 2005.

3.5 The number of casualties of paramilitary shootings and assaults in the 6 months since 1 September 2004 is as follows. As before, in these tables, and in the associated text and graphs, the figures and attributions are both subject to minor statistical adjustment.

¹² Information suggests this death may have been linked to a republican paramilitary group but the precise motivation and attributions remains unclear.

¹³ One of these was abducted and murdered by a republican group but we are unable to say which. One was a member of PIRA killed in the struggle when attempting to undertake a paramilitary attack.

Shooting Casualties

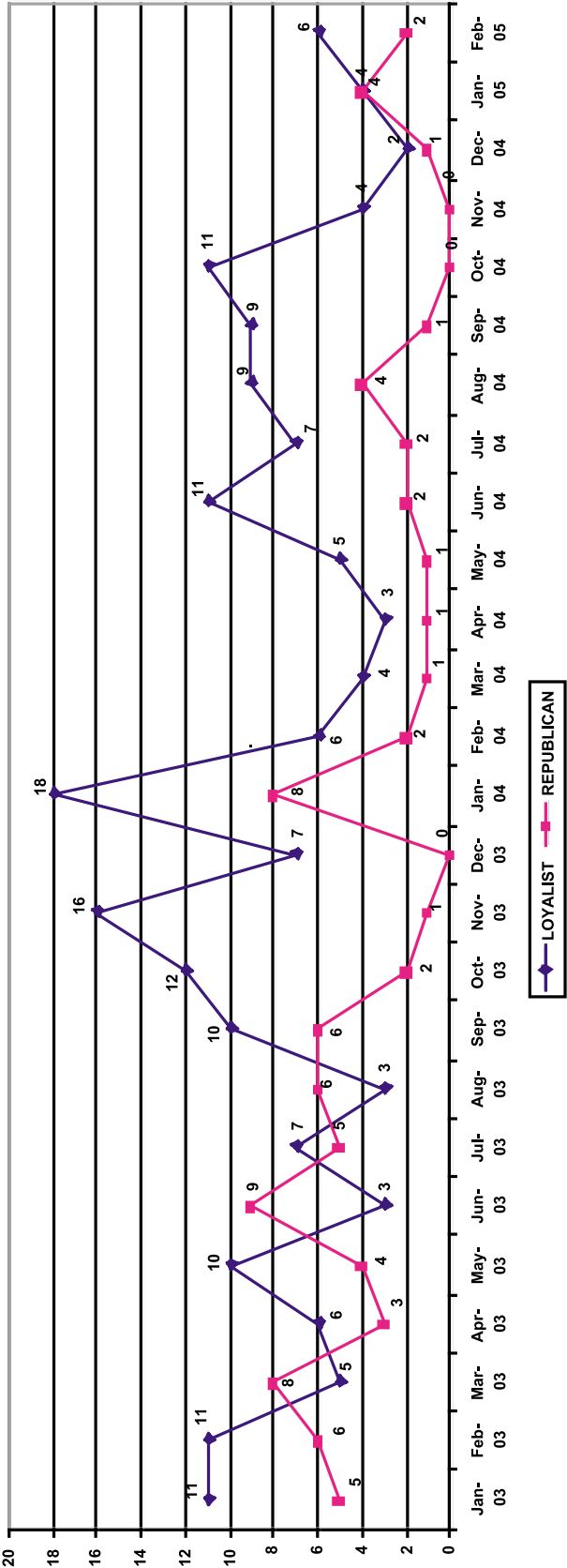
Responsible Group	1 September 2004 – 28 February 2005	1 March – 31 August 2004	1 September 2003 – 29 February 2004	1 March – 31 August 2003
Loyalist	36	39	69	34
Republican	8	11	19	35
TOTAL	44	50	88	69

Assault Casualties

Responsible Group	1 September 2004 – 28 February 2005	1 March – 31 August 2004	1 September 2003 – 29 February 2004	1 March – 31 August 2003
Loyalist	30	42	57	46
Republican	24	18	26	24
TOTAL	54	60	83	70

3.6 Our remit requires us to look at trends in paramilitary crime. The following graphs include the monthly figures we have previously published, extended by 6 months until 28 February 2005 so that the trends in shootings and assaults are clear.

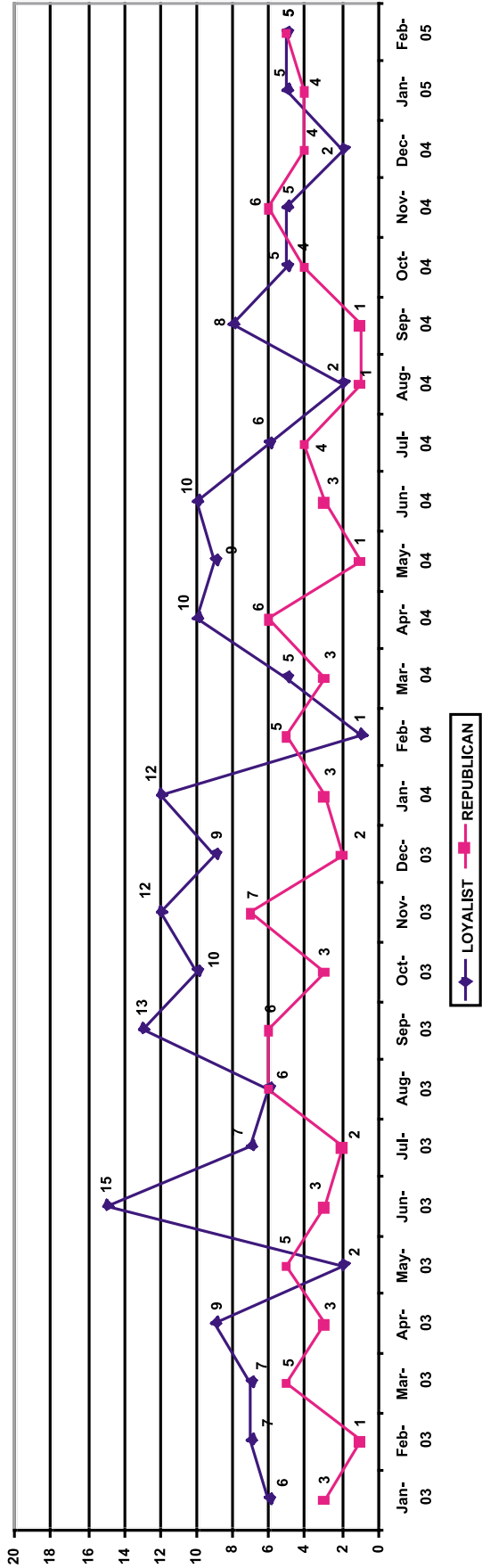
PARAMILITARY-STYLE SHOOTINGS: NUMBER OF CASUALTIES BETWEEN
JANUARY 2003 TO FEBRUARY 2005



TOTALS OVER THE PERIOD: LOYALIST SHOOTING CASUALTIES - 200 REPUBLICAN SHOOTING CASUALTIES - 84

Figures and attributions for the above period are both subject to minor statistical adjustment

PARAMILITARY-STYLE ASSAULTS: NUMBER OF CASUALTIES BETWEEN JANUARY 2003 TO FEBRUARY 2005



TOTALS OVER THE PERIOD: LOYALIST PARAMILITARY-STYLE ASSAULTS – 188 REPUBLICAN PARAMILITARY-STYLE ASSAULTS - 96

Figures and attributions for the above period are both subject to minor statistical adjustment

Exiling

3.7 In our Third Report published in November we commented at some length on the use of exiling by paramilitary groups. In declaring our abhorrence of this long-standing practice, which we described as one of the most insidious aspects of paramilitary activity, we made the following main points:

- It was an expression of paramilitary power and a means of exerting control over individuals and communities which existed only because of the known readiness of paramilitaries to resort to violence to secure their way. As such it was both a symptom of the pressure they exerted and a means of continuing it;
- It had a devastating effect on the individual and his (usually, his) family, and could ruin the person's life chances;
- Exiling by loyalist groups appeared to have increased since July 2003.

3.8 Since then we have met victims of paramilitary assaults and shootings, including those for whom exiling had been a real and deeply terrifying prospect. Discussion with these victims brought home to us just how traumatic the effect of exiling could be, uprooting people – often those poorly equipped in terms of education and of social and vocational skills – from everything that was familiar to them and casting them into an environment where they would receive none of the support they needed if they were to have any reasonable hope of making worthwhile progress in their lives. It is of course just this traumatic impact on which the paramilitaries rely, to the point where we have heard that some would prefer successive assaults to exiling. This is one further indication of malign influence which paramilitaries exert.

3.9 It remains the case that there are no accurate figures on the extent of exiling. Instances are known within communities but are seldom reported to the authorities so that no comprehensive picture is available. However, information we have been given – which we cannot therefore test or verify as we would like – suggests there

has been no slackening in the extent of exiling since we last reported and that it is roughly evenly split between loyalists and republicans. We do not have any evidence that paramilitary groups have agreed to the general return to their homes of those whom they have exiled and who want to come back, or are considering doing so.

Conclusions

3.10 We draw the following conclusions:

- **While the level of paramilitary violence is still high, with one exception the downward trend apparent in the two preceding six month periods has continued.**
- **There were 2 paramilitary murder victims in the period from 1 September 2004 to 28 February 2005. This is broadly the same as in the two previous six month periods.**
- **Averaged out, there were nearer 2 victims of shootings a week than 1, and about 2 victims of assault a week over the same period.**
- **Since 1 September 2004 there have been fewer victims of violence short of murder, the reduction being larger in the case of shootings than of assaults. Loyalists continue to commit more violence than republicans: over four times as many shooting victims and 25% more victims of assault. But the one figure which does not show the continuing downward trend is that for republican assaults.**

- **The changes may be summarised as follows:**

Republican Groups

- **Shooting casualties are down by 27% compared with the preceding six month period and down by 58% compared with the corresponding period in 2003-2004.**
- **Assault casualties are up by 33% when compared with the preceding six month period and down by 8% when compared with the corresponding period in 2003-2004.**

Loyalist Groups

- **Shooting casualties are down by 8% when compared with the preceding six month period and down by 48% when compared with the corresponding period in 2003-2004.**
- **Assault casualties are down by 29% when compared with the preceding six month period and down by 47% when compared with the corresponding period in 2003-2004.**
- **Exiling continues to be an ugly feature of paramilitary crime and we have no indication that its extent has slackened.**

3.11 We are aware that these figures alone do not give the full picture of paramilitary violence, for example because they disguise local variations. We plan to examine such issues in future reports. We would welcome views on both the trends in these figures and the explanations for them.

4. THE MURDER OF ROBERT McCARTNEY

- 4.1 We think it is right to comment specifically on the murder of Robert McCartney, though we are very constrained in what we can say. There may be criminal proceedings and Article 13 of the International Agreement requires us to do nothing which would prejudice a legal case or put anybody's safety at risk.
- 4.2 Robert McCartney was murdered outside Magennis's Bar in central Belfast on the evening of 30 January 2005. Another man, Brendan Devine, was stabbed in the same incident. We believe that members of PIRA were involved in the murder. We do not believe that the central PIRA leadership sanctioned it in advance, but those concerned may have believed they were acting at the direction of a local senior PIRA member at the scene. After the event there was prompt PIRA intervention to protect its members and to obstruct the investigation, including by cleaning up the scene and by the intimidation of witnesses. By their immediate and subsequent interventions PIRA put the organisation and its members ahead of justice.
- 4.3 PIRA has issued a succession of statements on the murder. On 16 February it said that it had not been involved and that nothing should be done to impede the family's wishes for justice. On 25 February it announced it had dismissed three members following internal disciplinary proceedings, that one of these three had made a statement to a solicitor and the other two had been advised to do so. It said it would not tolerate (sic) the intimidation of those who wanted to help the family. On 8 March it referred to further discussions with the family, repeated its view that it believed those responsible should come forward, and said the PIRA sought only "truth and justice" and that it had told members of the family it was prepared to shoot those directly involved. This last claim to the right to impose summary justice attracted world-wide condemnation. In its Easter statement PIRA referred for the first time explicitly to the murder being a crime and that it was wrong.
- 4.4 Senior members of Sinn Féin have made a number of public references to the murder. They included encouragement to those with information to come forward so that the people responsible could be brought to justice, and included references to supporting the family's wish to see the perpetrators in court; referred to the need

for those responsible to account for their actions; supported the family's demand for truth and justice; and referred to the suspension of twelve members of its organisation. There was also criticism by Sinn Féin of the police investigation. Sinn Féin advised people to use other avenues for the indirect transmission of material to the police. But we note with regret that insufficient evidence has emerged to enable charges to be brought as we present this report.

- 4.5 Throughout these tragic events Robert McCartney's family have set an example to everybody by their courage and determination. Their demand has always been for justice, never for revenge. Throughout they have recognised that this crime could be properly dealt with only through the working of the justice system. The general acceptance of this principle would get to the root of many of the problems associated with paramilitary crime.

5. PARAMILITARY GROUPS: THE ACTIVITIES OF PRISONERS RELEASED UNDER THE BELFAST AGREEMENT

- 5.1 We have made clear before that we want those who have given up criminality to engage as fully as possible in all aspects of social and economic life. This is the case whether or not they have served a term of imprisonment. We have expressed our admiration of all those who work to promote peace and understanding and to develop communities in paid and voluntary capacities. We know that ex-prisoners are amongst those who make valuable contributions in these ways, and indeed that by virtue of their past they may be able to play a particularly key role. We have met some of them, have seen their work at first hand and have been impressed by what we saw. We welcome too the readiness of ex-prisoner groups from both communities to explore publicly with each other how they can contribute to the re-integration of their members and to social development, learning from each other in the process.
- 5.2 The key factor is that ex-prisoners should have put criminality behind them and have engaged in the life of the community as law abiding citizens. But not all ex-prisoners have done this. It is our task to report on paramilitary activity and we are keen to fulfil it from as many angles as we can. We believe that one indication of the strength and nature of paramilitarism and of the attitude of the leaders of paramilitary groups to its continuation, is whether those released have resumed criminal activity, and if they have, whether it is of a paramilitary kind.
- 5.3 To pursue this question we have taken a preliminary look at those who were released in Northern Ireland under the terms of the Belfast Agreement although at this stage we have not been able to take our enquiries as far as we would wish. These ex-prisoners are an identifiable category of people whose release took place over a relatively short period and was associated with a major step towards peace and normality – the watershed of the Belfast Agreement to which we refer above. What we say below relates to activities at any time during the whole period from the time of release until September 2004. It does not mean that these people are actively engaged as we submit this report.

5.4 Of the 447 people released under the terms of the Belfast Agreement in Northern Ireland, as implemented in the Northern Ireland (Sentences) Act 1998¹⁴, we have looked at the cases of the 430 who had paramilitary links before their imprisonment. We have examined the different groups and the different ways in which released prisoners have become re-involved in paramilitary and/or criminal activities.

5.5 Those with prior paramilitary links released under the 1998 Act were as follows:

Responsible Group	Number	Percentage Released of Total
CIRA	0	0%
INLA	29	7%
LVF	19	4%
PIRA	209	49%
RIRA	0	0%
UDA/UFF	103	24%
UVF/RHC	70	16%
TOTAL	430	

5.6 There are three main aspects:

- How many have been charged with and convicted of crimes or have prosecutions pending?
- How many have in some way become re-involved with paramilitary organisations?
- How many have become involved in organised crime¹⁵?

¹⁴ The Belfast Agreement provided for the establishment of a programme of accelerated release of prisoners convicted of scheduled offences. It was implemented by the Northern Ireland (Sentences) Act of that year. The scheme required the Sentence Review Commissioners to release qualifying prisoners where they were satisfied that various conditions were met, which included that the prisoner was not a supporter of a specified organisation, was not likely to become one, would not commit acts of terrorism, and in relation to life sentence prisoners, would not be a danger to the public if released immediately. Those released are under licence and subject to recall for its breach during the period when they would otherwise have been in prison.

¹⁵ For the purposes of this analysis we define this as drugs (importation, sale, distribution); the smuggling of fuel and tobacco; the sale and distribution of contraband alcohol and tobacco; counterfeiting; fraud and money laundering; robbery and hijacking; and extortion.

5.7 Information on the released prisoners who have been charged and convicted of criminal offences, or have prosecutions pending, is precise and in the public domain. In the period until September 2004, some 3% of the prisoners released in Northern Ireland had been convicted or were being prosecuted for paramilitary type offences and 11% for non-paramilitary offences, making a total of 14%. The proportion varies considerably between the different groups and between paramilitary and non-paramilitary activity, as the following table indicates.

Conviction or Prosecution

	Paramilitary activity – (charged and convicted, or prosecution pending)		Non-paramilitary activity (charged and convicted, or prosecution pending)		Total	
	Number	% of members released	Number	% of members released	Number	% of members released
INLA	1	3	1	3	2	7
LVF	4	21	1	5	5	26
PIRA	4	2	15	7	19	9
UDA/UFF	4	4	14	14	18	18
UVF/RHC	1	1	14	20	15	21
TOTAL	14	3	45	11	59	14

Thus the two republican groups have the lowest percentage of released members convicted or with a prosecution pending. The LVF had by far the highest percentage for paramilitary offences, and the UVF/RHC the highest for non-paramilitary offences, in each case at around one released prisoner in five and one in seven respectively being convicted or with a prosecution pending. (The figures for the South suggest a very low level of minor offending for the equivalent groups of people).

5.8 Inevitably information on the second and third issues – re-involvement in paramilitary organisations and in organised crime in Northern Ireland – is far less precise and is not generally in the public domain. For that reason we need to subject this information to the kind of scrutiny we described above and we hope to return to the issue in a future report. The picture appears to be broadly as follows. We should welcome comments on what we say:

- The level of re-involvement in paramilitary activity appears to be substantially higher than that for conviction or pending prosecution. Re-involvement is also a broad term and could in some circumstances mean, for example, that somebody exercised a restraining influence. It seems that a substantial proportion of all the released prisoners have been re-involved at some time over the period since their release, though not necessarily continuously or at the present time. It is important to note that licences may have expired at the time of these activities so that the person was not liable to recall. It appears that there are differences between groups. There also appears to be some variation between groups in the nature of the activity. For many the main activity seems to have been the exercise of command within the group or control within the community. But in every group some were apparently involved in serious criminal activities.

- The level of involvement in organised crime appears to be a good deal lower, although a high proportion of those involved in organised crime were also involved in the paramilitary activities referred to above. As is to be expected, the nature of the organised crime reflects the nature of the crimes in which the group is mainly involved.

- Overall this suggests that of the people released in Northern Ireland under the Belfast Agreement with former paramilitary links a considerable proportion were apparently involved in either paramilitary activity or organised crime, or both.

5.9 We want to refine and develop in the future our analysis and assessment of data available to us about re-involvement in paramilitary activity, and involvement in organised crime before commenting further on this. In the meantime if people would provide us with any additional material or with views on the subject we would very much welcome that.

6. PARAMILITARY GROUPS: ORGANISED CRIME AND OTHER PARAMILITARY ACTIVITY

Organised Crime

6.1 In our previous full report we described the seriousness of the threat posed by organised criminals associated with paramilitary groups and how there was no reason to think that the threat would lessen as conventional terrorism declined – indeed some reason to fear the opposite. We saw organised crime as a major continuing legacy of terrorism, with some 60% of all organised crime gangs in Northern Ireland, and some two thirds of the most serious gangs involved in international activities, having paramilitary links. We pointed out that these paramilitary associations brought to organised crime a ruthlessness, expertise and infrastructure that was unique to Northern Ireland.

6.2 We have continued our analysis of paramilitary organised crime, this time from two particular angles. We have looked at the activities of some of the crime gangs associated with different paramilitary groups, and we have analysed some aspects of how organised crime operates through legitimate businesses and what obstacles there may be to making an effective response to this. We have also identified issues we want to explore in future reports.

Organised Crime – individual gangs

6.3 Our analysis of a number of individual gangs has reinforced the concerns we previously expressed. We have looked at gangs with a wide range of criminal activities, all involving some combination of violence and means of gaining very substantial resources, often by exploiting the border. The range of the different activities of one gang can be very striking, as we illustrate in the box below. Some gang leaders have been deeply committed to crime and terrorism for over twenty years; they are ruthless and experienced, sometimes with past convictions but skilled in avoiding detection. All have roots in communities where their paramilitary infrastructure and use of intimidation enables them to shelter. They vary in the extent to which the proceeds are for personal or organisational gain,

though in all cases the personal element is significant. But as it was put to us, it matters not at all to the victim where the proceeds end up – those who are robbed or subjected to extortion are victims whoever gains, as are those led into drug dependency so as to support the trade which makes some paramilitaries very rich. Society too is often the victim in a larger sense in the case of crimes such as smuggling and counterfeiting.

Activities of two paramilitary crime gangs

Gang 1

Money laundering
 Robbery and kidnapping
 Smuggling and sale of drugs
 Extortion
 Nightclubs

Gang 2

Robbery
 Smuggling and sale of fuel
 Smuggling and sale of tobacco
 Manufacture and sale of counterfeit goods
 Theft and resale of vehicles
 Counterfeit currency

Organised Crime – Use of legitimate businesses

- 6.4 The paramilitary use of legitimate business goes back a long time and is complex. As is to be expected, it varies between individual paramilitary groups and between loyalists and republicans. On the whole, republicans have a more organised and structured approach to involvement in business, less reliant than are loyalists on individuals.
- 6.5 Money fuels paramilitary groups and they use it for a variety of purposes: to procure weapons and munitions; to pay their members; to support families, less often now of prisoners but still of those killed or on the run; to meet the logistical costs of operating day to day, such as transport, premises and communications; and in some cases the costs of political activity. None of them is cheap; together they show that paramilitaries cannot operate on a shoestring.

- 6.6 Funds for these purposes have long come from donations and from criminal activities such as those to which we refer above. They also come from businesses, normally purchased with money gained illegally and then run as enterprises operating for profit. These businesses may be entirely legitimate or they may mix lawful trade with illegal activities, as for example in the case of pubs or garages selling commercially purchased products alongside smuggled alcohol or fuel. Businesses which operate in part illegally may well employ staff who are unconnected with paramilitaries and ignorant of the illegality.
- 6.7 The reasons for moving into fully or partly legitimate business can be varied. The cover it offers might be helpful for political activity; it offers sources of funds that are lower risk to both the organisation and its individual members; it provides better protection for the organisation's assets; and those involved have the prospect of an income into the future. The paramilitaries are likely to have laundered the funds for the purchase of these businesses, passing illicit money through a series of exchanges so that its origin is very hard to identify until it can safely be used to invest in lawful enterprises. To do this the group is likely to have used sympathetic legal and financial experts.
- 6.8 We have looked at the paramilitary use of licensed premises and at their involvement in security firms and with taxis. These areas have characteristics appealing to paramilitaries. They provide opportunities to move significant quantities of cash, including in parallel with but outside the normal accounts; they have their roots in local communities, thus securing a measure of protection; they are susceptible to the use of intimidation; licensed premises provide opportunities for the retailing of smuggled goods, and taxis for distributing them at community level.
- 6.9 Paramilitary groups own, control or make use of licensed premises. They can provide a lucrative source of income as well as opportunities to launder money and dispose of illegal goods. Paramilitary involvement is often closely associated with the use of threats or other means of exercising local control.

- 6.10 Northern Ireland has some 1500 pubs and nearly 150 licensed hotels. The licensing system is comparable to those elsewhere in the UK and Ireland but it does not prevent paramilitaries profiting from licensed premises through some combination of threat and the use of apparently respectable front people. It does not therefore address in the round the problem which we are charged with monitoring, namely paramilitary activity. We recognise that there are ample opportunities for objection to be made to unsuitable licensees or premises. But we have been struck by the difficulty of pulling together a holistic view. Companies Register gives information on directors and accounts; the Land Registry and the Registry of Deeds on the ownership of premises; local courts give information on the name of the licence holder; credit reference agencies on the credit worthiness of licensees or directors. None of these are linked. Other organisations hold information on people of a kind properly not in the public domain, such as tax, social security and driving licences. But, to give one example, there is no ready means of drawing together the information on company accounts or directors with that on the licensees whose pubs often trade under company names. Nor, perhaps more important, does there seem to be a single holistic view of all the publicly available and confidential material.
- 6.11 It is widely and correctly believed that paramilitary groups play some part in the security business. We have received direct evidence of building firms which have been subjected to pressure by so-called security firms, and have suffered extortion as a result. We know too of other examples of paramilitary involvement, such as in providing doormen and event security. Every such instance exposes legitimate operations to pressure. It is the use of paramilitary muscle which enables them to raise substantial sums of apparently clean money. The relationship between a security firm and a paramilitary group may be indirect, and indeed on the surface it has to be in order to circumvent the licensing regime which has long existed. Symbiotic relationships between criminals and apparently legitimate operators are however notoriously difficult to investigate and control.
- 6.12 The control regime in Northern Ireland is on the face of it less stringent than that in England and Wales, which the Scottish Executive has decided should be applied in Scotland as well. The Northern Ireland regulations ensure that the owners or directors are not themselves unsuitable, and it allows action to be taken if it comes

to light that they are. But there is no inspection process as there is in England and Wales and no one authority which has an overview of all the means of detecting illegality and a responsibility for following information up - tax or other aspects of a company's finance; the social security position of employees; criminal intelligence on staff, directors and their associates, including powers to prevent companies being passed on to associates who are ostensibly clean and to prevent the disclosure of sensitive material. In short, there is a licensing regime but not an authority charged with the prevention of paramilitary infiltration by all means available. Yet we believe such infiltration is the key danger and that there should be a means of tackling it as one aspect of addressing the problem of paramilitary involvement in organised crime in the round.

6.13 We note the view of Lord Carlile in his review of the operation during 2004 of the Terrorism Act 2000 that continuing consideration should be given to extending the licensing system for England and Wales to Northern Ireland; he mentions that there may be difficulties in doing so exactly. We know that the Northern Ireland Office is reviewing the existing arrangements, taking account of both the system in England and Wales and that in the South, as is necessary because some paramilitary organisations operate on an all-Ireland basis. We welcome this and will wish to return to the issue in a later report.

6.14 Taxi businesses controlled by paramilitaries show some similar characteristics, and give rise to some similar conclusions. Although a licence is required to drive a taxi lawfully none is needed to operate a taxi business. We believe that paramilitaries control some businesses, and while the individual drivers may not themselves be members of the organisation they may find themselves obliged to undertake tasks which benefit the paramilitaries such as the delivery of drugs or illicit tobacco. Taxi driving is essentially a cash based activity and drivers in these circumstances typically pay their employing depot in cash. They may be prevented from moving to work with a rival firm. Legitimate operators may be forced out of business, thus harming the interests of the very communities that some paramilitaries claim to support. Thus drivers and legitimate businesses may be victims. All this provides opportunities for the laundering of money and for supporting other criminal activities such as smuggling. It rests in part on the exertion of paramilitary control over individuals and communities.

6.15 We do not suggest at all that this is the normal state of affairs with taxis in Northern Ireland or wish in any way to tarnish the reputation of lawful operators. We also recognise that some lawful operators face major pressure from those who operate illegally. But these activities are one manifestation of paramilitarism. It prompts questions about the need for powers to regulate not only drivers but also businesses so as to increase the pressure on paramilitary groups by reducing, and ideally preventing, the opportunities they have to operate illegally in the normal economy, and so both to generate ostensibly lawful income and to support their other illegal activities.

6.16 **The very involvement of paramilitaries means that the police and other enforcers such as the tax authorities face even more formidable difficulties in obtaining usable evidence than is often the case with activities on the fringe of the legitimate economy. We recognise that much law enforcement effort is going into combating these sorts of activities. We also welcome the careful thought that is being given to some aspects of enhanced controls which would further combat these activities, as we indicate above. But we are not persuaded that a sufficiently strategic view has been taken of paramilitary involvement in all activities where there is an ostensibly lawful business. Through the Organised Crime Task Force (OCTF), to which we refer below, law enforcement bodies are taking a very welcome multi-agency approach. The same targeted multi-agency thinking does not seem to apply to these licensing and control regimes. The challenge is to bear down in all possible ways on illegal paramilitary activities. The control or licensing regimes that apply to ordinary businesses should in our view be fashioned as far as possible to face that challenge in the round. These regimes must operate in close conjunction with other law enforcement as a concerted means of addressing paramilitary activity. We intend to return to this question in future reports and will be discussing it with interested parties.**

Responding to Organised Crime

6.17 The OCTF, which is a networking rather than executive body, brings an inter-agency focus to the strategic response to organised crime in Northern Ireland. We

welcome the review which the Secretary of State announced in February to explore what more the partners which it brings together can do and await the outcome with interest.

- 6.18 The British Government is intending to establish a new national agency directed against organised crime – the Serious and Organised Crime Agency (SOCA), due to come fully into operation in 2006. SOCA will not materially affect the lead role that the PSNI now has on organised crime though it will assume some of the responsibilities of HM Customs & Excise who are key partners in the fight against organised crime, and so the paramilitaries, in Northern Ireland. HM Customs & Excise has increased the resources it devotes to combating Northern Irish organised crime in recent years. In our view it is essential that the establishment of SOCA does not in any way diminish the present focus or lessen these resources. We hope on the contrary that SOCA's assumption of the investigative responsibilities for customs and excise offences will enable the effort in Northern Ireland to be increased by making the resources of a larger law enforcement agency available. We will follow with close interest the introduction of these changes and their impact on paramilitary organised crime, as we will the other changes due to take place in the UK – the amalgamation of HM Customs and Excise with Inland Revenue into HM Revenue and Customs, and the assumption by the Security Service in Northern Ireland of lead responsibility for national security intelligence work.

Assets Recovery

- 6.19 We noted in our previous full report the importance of assets recovery in the fight against paramilitary organised crime and the value of the work of the Assets Recovery Agency (ARA), the police and customs in Northern Ireland and of the Criminal Assets Bureau (CAB) in the South. The adoption of a strategic approach to assets recovery, within the overall OCTF strategy, is vital to maximising ARA's contribution. We are glad to see the progress there has been on a number of the points we referred to before. The simplification of the civil recovery process recently enacted in the UK, and the publication earlier in the year of new guidelines enabling ARA to work in parallel with other law enforcement agencies before a decision is taken on whether to proceed through prosecution or civil recovery, are

both welcome developments. So too is the decision considerably to increase the resources for ARA in Northern Ireland, coming as it does on the back of the earlier announcement that from April 2006 assets recovery agencies in the UK will be able to invest half their proceeds in their further work. We also welcome the new powers recently made available to CAB, including to seize off-shore assets. We note the important distinction between CAB, where officers seconded from the Garda and other agencies bring their existing powers with them, and ARA where that is not the case. We will continue to take a close interest in this subject.

Tax

- 6.20 In our Third Report we said that we thought the criteria for the deployment of Inland Revenue resources which made sense in the rest of the UK did not necessarily reflect the seriousness of the threat of paramilitary crime in Northern Ireland. We recommended that the Inland Revenue, within the OCTF strategy and in conjunction with other law enforcement agencies, should ensure its priorities for the enforcement of the tax laws fully reflected this special challenge, recognising that this might mean the development of a policy specifically for Northern Ireland.
- 6.21 We have noted the steps being taken by the nascent HM Revenue and Customs to bring together the investigation of direct and indirect tax fraud, working with OCTF partners and other public agencies, and the intention to tackle both kinds of fraud with increasing effectiveness. We have noted too the value of the provision of taxpayer information to other law enforcement bodies, the increasing use of Revenue expertise in financial investigation and the use of tax enforcement to disrupt organised crime. We continue to believe that tax enforcement has a key role to play in combating paramilitary organised crime in Northern Ireland and to believe that it must receive a priority reflecting the very special threat that such crime presents. We will want to follow this subject further.

Charities

- 6.22 In our previous full report we noted the very limited controls over charities in Northern Ireland and the South and we referred to the frequent allegations that

paramilitary groups were able illicitly to use funds raised for ostensibly charitable purposes as well as to divert money obtained from crime. We welcomed the announcements by the British and Irish Governments of their intention to introduce further regulation over charities, and we asked them to keep us advised of their progress. This they have been doing.

- 6.23 We are glad to see the proposals which the British Government published in a consultation document in February for a full statutory regime and the appointment of a charity commission¹⁶. The Government said inter alia that it needed to address concerns that the lack of tight controls in Northern Ireland provided opportunities for abuse by organised criminals. We hope that in considering the responses to the consultation and in drawing up the subsequent scheme they give full weight to the need to ensure it is robust against both the suspicion and the reality of abuse by paramilitaries or those associated with them. In the case of the South, approval is being sought for new institutional arrangements for the regulation of charities. Once that approval has been given the intention is, we understand, to move quickly with the preparation of the necessary legislation to give effect to a new charities regime. We equally welcome this. The threat from paramilitaries in Ireland North and South is unique, and the controls need to take account of this. We await the detailed proposals.

Conclusions

- 6.24 Several key points emerge from what we say above. The organised crime threat is very significant and will be effectively tackled only by vigorous targeted action over a long period. There has been much welcome progress, and we applaud the PSNI, AGS, ARA, CAB and others who have made it. But we are aware of no evidence suggesting the trend is yet firmly set in the right direction. We are not persuaded that there is yet a sufficiently holistic approach which encompasses all possible means of preventing paramilitary organised crime and which devotes the resources to the problem that it deserves. The concerted operation of law enforcement and licensing is one example of this; our earlier views on tax and charities were others.

¹⁶ Consultation on the Review of Charities Administration and Legislation in Northern Ireland in 2005; Department for Social Development, February 2005.

6.25 We will continue our examination of paramilitary organised crime and the means of combating it in future reports. The nature of the threat is such that it is imperative to explore every approach. Some other countries have different legal structures and different attitudes towards prosecutions. Some target organisations and the networks they give rise to rather than the criminality of individuals. We recognise that many of these issues have been explored before, but we believe it is worth looking at them again, and this we plan to do.

7. RESPONDING TO PARAMILITARY GROUPS: SOME OTHER ISSUES

- 7.1 We return here briefly to two other issues to do with combating paramilitary activities on which we have previously commented. They are:

Restorative Justice

Deference to Paramilitary groups

Restorative Justice

- 7.2 In our last full Article 4 report we considered community restorative justice at some length¹⁷. We concluded that properly operated it could be one of a range of measures which could help end the role paramilitaries currently play in certain local communities, though we emphasised that it was never acceptable that it should be a cover for paramilitary influence. We recommended that the Secretary of State should consider whether research could usefully be undertaken on how and the extent to which restorative justice schemes could help people turn away from paramilitaries in a way which ensured that standards were maintained and safeguards fully observed.

- 7.3 Since then the Justice Oversight Commissioner, Lord Clyde, has published a further report¹⁸. In it he spoke of the need to weave the processes of restorative justice into the whole criminal justice system. Lord Clyde commented that the recommendation of the Criminal Justice Review on community schemes was being unacceptably delayed; urged flexibility of approach on those concerned with its implementation; and said that the schemes offered an opportunity for community involvement which should be seen not as a threat but as a possible advantage to the whole criminal justice system. He expressed the hope that the opportunity should not be lost for securing community involvement in a way which was consistent with human rights and which supplemented the work of the statutory agencies. We believe that Lord Clyde's conclusions are directly relevant to our earlier conclusions, and we warmly endorse what he said.

¹⁷ IMC Third Report, paragraphs 6.2-6.5.

¹⁸ Third Report of the Justice Oversight Commissioner, January 2005.

- 7.4 In the meantime we have more fully examined community restorative justice on the ground. We remain firmly of the view that, with the appropriate safeguards and the assurance of proper standards, it can play a valuable part in weaning communities and individuals from paramilitary influence. Restorative justice can help repatriate the administration of justice back to communities, where people feel involved and responsible. We have spoken both to the victims of crime and to young offenders. We were struck by the way in which the victims felt that the restorative justice scheme, because it was community based, had been able to reflect their needs and had engaged on their behalf with agencies able to address the underlying problems which had made them more vulnerable to crime. And we saw at first hand how it had offered victims and offenders alike an alternative to involvement with paramilitaries.
- 7.5 Many communities in Northern Ireland have a strong sense of identity. This can be a source of division and sometimes conflict. For restorative justice it can mean that the schemes are able to have a sure foundation and thereby to gain widespread support for what they do. Schemes can in their turn help such communities build their own capacity to influence behaviour in an acceptable way. They can help communities and can also help guide communities to a proper co-operation with and reliance on statutory agencies, including the police. We have also heard that for ourselves from participants.
- 7.6 We have examined evaluations and other academic studies of community restorative justice. They reinforce our earlier view. In the published evaluation of one scheme 90% of the young people were under verified paramilitary threat at the time of their referral. Evaluation has shown a decrease in the number of paramilitary attacks and exiling, and there are indications that paramilitary groups have increasingly accepted schemes and were finding it more difficult to exert their will violently. These evaluations also show clear signs of community support.
- 7.7 **We recognise that at a time of transition no path is likely to be risk free, and community restorative justice certainly is not. That is why we continue to emphasise the importance of applying proper standards and safeguards, and of not allowing community schemes to be a cover for the very paramilitary**

influence we believe they are capable of lessening. Nor are such schemes a complete answer. But we remain of the view that, given adherence to these standards and safeguards, they can play a valuable role in helping communities break from paramilitary control. We believe support for them should be forthcoming from the criminal justice agencies. We hope that greater momentum will be put into the schemes, that there will be a courageous and imaginative approach to their development and that schemes meeting proper standards should not be held back by those which do not. We are very pleased to see that the British Government is consulting interested parties about the terms of guidelines on the interaction between community schemes and the criminal justice system. As we previously recommended, we also hope that consideration will be given to research into how they can encourage people to turn from paramilitaries.

Ending Deference and Denying Legitimacy to Paramilitary Groups

7.8 We examined at some length in our previous report the question of ending deference to paramilitary groups and denying them legitimacy¹⁹. We set out carefully our view on what was proper and what was not in dealing with paramilitaries. We recognised the difficult issues to which this gave rise; praised those who courageously and successfully navigated these waters in their quest for harmony and community development; and recommended that the Secretary of State should consider the preparation of suitable guidance which could both help and encourage people through this time of transition. The very fact, as we said above²⁰, that the Belfast Agreement marked a watershed and that the period of transition to the devolved government and a peaceful and stable society which it envisaged must not continue indefinitely, reinforces us in this view. Such guidance could sharpen the challenge to the paramilitaries.

7.9 We have received very little comment on what we said, and none that took issue with our thesis that deference and the conferral of legitimacy needed to be addressed. We understand that the British Government is pursuing our

¹⁹ IMC Third Report, paragraphs 6.6-6.17.

²⁰ Paragraph 1.14.

recommendation. We continue to consider it important that thinking should develop around the formulation of guidance. The issues are intrinsically difficult; the ground will continue to move; we believe that people are entitled to a lead so that they can conduct themselves with confidence on the basis of careful consideration of the questions; and we think that such guidance could play a useful role in denying legitimacy to paramilitaries. We will be glad to play a part in this.

8. PARAMILITARY GROUPS: LEADERSHIP

- 8.1 Article 4 requires us to assess whether the leadership of paramilitary groups is directing activities or seeking to prevent them.

Relationship between Paramilitary and Political Leadership

- 8.2 We have dealt at some length in our earlier reports with the relationship between paramilitary and political leadership:

- In our first report in April 2004 we found there were associations between the leadership of Sinn Féin and the Progressive Unionist Party and respectively the PIRA and the UVF/RHC. We recommended that the Secretary of State consider exercising the powers he had in the absence of the Northern Ireland Assembly in respect of the salaries of Assembly members and/or the funding of parties, and he removed the latter for a period of twelve months;
- In our second report on paramilitary activity in November, noting that the measures the Secretary of State had implemented still had six months to run, we said we would consider the matter further in the light of the talks involving the Northern Ireland political parties and the British and Irish Governments which were then taking place;
- In our ad hoc report in February this year on the abductions and robbery at the Northern Bank and on previous PIRA robberies we addressed ourselves to the position of Sinn Féin and concluded that its association with PIRA had not materially changed from the one we had described in the previous Spring. We said that it should therefore bear its responsibility for all the incidents we covered in that report, and we recommended that the Secretary of State should consider exercising the powers he had to implement measures applicable in the absence of the Assembly, namely the financial ones. The Secretary of State announced on 22 February that he proposed, subject to any representations made by Sinn Féin, to extend

by a further twelve months from the end of this April the removal of block financial assistance to the party. He also said he would propose to the British House of Commons a motion suspending financial assistance to Sinn Féin at Westminster; such a measure was implemented in April.

- 8.3 In the case of the Progressive Unionist Party we said in our first report that we did not believe it had sufficiently discharged its responsibility to exert all possible influence to prevent illegal activities on the part of the UVF and the RHC. In the light of the recommendation we then made the Secretary of State removed the financial support given to the PUP in the Northern Ireland Assembly; this sanction expires at the end of April 2005, as we present this report.
- 8.4 The PUP responded to our recommendations and views of a year ago in a full and detailed statement, which we have studied. The PUP said that it was committed to peaceful and democratic means and was using its influence to that end with the UVF and the RHC. It outlined its work in support of community harmony, including in restorative justice, and made clear its commitment to continuing it.
- 8.5 We have reviewed the situation. Regrettably we do not believe it has materially changed. The UVF is still involved in violence and other crime. We describe it in Section 2 as “active, violent and ruthless”. We believe now as we did a year ago that the PUP has not done as much as it should in exerting influence to prevent such activities. **We therefore recommend that the Secretary of State should continue the financial measures against the PUP in the Northern Ireland Assembly.**
- 8.6 The same issues of association between political parties with elected members and paramilitary groups do not arise with the dissident republicans, and their intentions are a great deal clearer. Both the paramilitary groups themselves – CIRA, INLA and RIRA – and the associated political parties – Republican Sinn Féin, the Irish Republican Socialist Party, and the Thirty Two County Sovereignty Movement – are committed to the achievement of a united Ireland by any means, including the use of violence²¹. As we describe in Section 2 above, each of the groups is engaged in

²¹ We set out the background and thinking of CIRA, INLA and RIRA and of the associated political parties in Section 3 of our First Report.

terrorist violence and organised crime and each is committed to the use of violence to further its aims. The restraint is not their intentions but their capacity.

8.7 We have also considered the position of the Ulster Political Research Group in the light of the UDA's statement in November that it would desist from "military activity", focus on social and economic issues within the community, and work with the British Government towards an end to all paramilitary activity, and of the Secretary of State's despecification of the UDA/UFF.

8.8 We note the UDA's stated commitment to engage in a process leading to the eradication of all paramilitary activity and the UPRG's stated desire to work to the same end. But as we show above²² the UDA was still engaged in illegal activity throughout the 6 month period on which we report here. We indicate above matters we will look at in assessing whether a paramilitary group is making progress towards giving up illegal activity or has actually done so²³.

Leadership by Political Parties

8.9 We think it might be helpful if we indicated in this report the sort of thing we believe political parties generally need to do in order to demonstrate that they are giving the right leadership, whether they are parties which are associated with paramilitaries or over whom they may have influence, or not. We also think that it is right to set out a challenge to any political parties which may find themselves in positions of influence over paramilitaries.

8.10 **Given the normal standards expected of political parties in a democratic society, what should Northern Ireland political parties achieve? They should:**

- Make their commitment to the ending of all forms of paramilitary crime credible and vocal.**
- By any lawful means exert the maximum possible influence to the same end over paramilitary groups and over individual members.**

²² Paragraphs 2.16-2.19.

²³ Paragraphs 1.15-1.17.

- **Credibly and vocally challenge those members of paramilitary groups who may be reluctant to give up crime, and give full support to those who are ready to do so.**
- **Give credible, vocal and practical support to all parts of the criminal justice system, including policing, and similarly accept the definition of crime that the law lays down.**
- **Play a full and constructive role in the participative organs of the criminal justice system such as the Policing Board and the District Policing Partnerships.**
- **Within the framework of support for the rule of law, engage in open and constructive debate with the two Governments and with the various commissions and other bodies in Northern Ireland concerned with the criminal justice system over the ending of all forms of paramilitary crime and the establishment of firm community support for the criminal justice system.**

8.11 We referred in our ad hoc report in February on the robberies committed by PIRA at the Northern Bank and elsewhere to Sinn Féin appearing at times to have its own definition of what constitutes a crime. It is axiomatic that anybody in a democracy, and so any political party working within that democracy and publicly committed to exclusively peaceful and democratic means, should accept the definition of crime that the law of that country lays down. There can be no equivocation over this issue, and the increasing focus on paramilitary crime as a whole has raised it in the public consciousness. This is not just an issue for Sinn Féin. It is a fundamental point about the commitment of any of the Northern Ireland political parties to democratic principles and their readiness fully to dissociate themselves from illegal paramilitary activity.

8.12 We hope there will be open debate about these considerations and that people will tell us what they think of them. We have no doubt that they can be developed and

refined. In addition to offering a challenge to political parties we believe that debate will help clarify questions that all have to face in this context.

- 8.13 In the aftermath of the murder of Robert McCartney and the Northern Bank robbery, and at this point in the peace process, there are a number of questions in people's minds about Sinn Féin's long term aims and the nature of the leadership it may give to PIRA now or in the future. These include the following. How does Sinn Féin now view the claim made by PIRA to be the lawful government and representative of the people in Ireland North and South? Does the party seek power in Ireland North and South using paramilitary muscle to back its participation in the political process? Does it ultimately intend to participate fully in democratic politics, and to observe all the standards that requires, but to reach that position maintaining for the time being some form of slimmed down military capability? Or is it now ready to ensure that PIRA ends all forms of illegal activity and to engage whole heartedly in democratic politics and in policing? In his statement of 6 April 2005 as President of Sinn Féin Gerry Adams indicated views related to some of the considerations we raised earlier in this Section and if he is able to develop this and to deliver as he seems to have suggested he will have demonstrated leadership of a high order.

9. CONCLUSIONS AND RECOMMENDATIONS

Conclusions

9.1 Our objective under Article 3 is to carry out our functions with a view “to promoting the transition to a peaceful society and stable and inclusive devolved Government in Northern Ireland”. Once again, we have tried to do this by clearly setting out the facts on paramilitary activity as we find them. We have also examined a number of issues which we think are relevant to this objective, and we make recommendations below which we believe will help serve it.

9.2 We draw the following key points from the preceding sections:

- In view of the judicial review proceedings in the Northern Ireland courts, and bearing in mind the judgment, it is timely to restate that the role of the IMC stems from the International Agreement and its embodiment in the law of the UK and of Ireland, and that the enactment of these laws by the respective Parliaments gives full democratic legitimacy to that role.
- Paramilitary groups continue to be active in violent and other crime and none have materially wound down their capability to commit violent or other crime. It continues to be the case that dissident republican groups are the most committed to continuing terrorism.
- We dislike the use of the word “punishment” in connection with the vicious assaults and shootings which paramilitary groups inflict on their victims, and believe that the time has come to stop giving it currency, though we recognise the obligation of the media to report accurately those public figures who themselves use the term.
- For the most part the downward trend in paramilitary violence has continued though the number of paramilitary murders was comparable to that in the previous two six month periods. Loyalist groups remain responsible for more violence than republican ones.

- There is no sign that paramilitary groups have reduced their use of exiling, and none we have found that they are agreeing to the general return of those they have exiled or that they are considering doing so.
- While we know that ex-prisoners have been amongst those who work to promote peace and to develop communities, there are indications that a considerable proportion of the prisoners released under the terms of the Belfast Agreement have re-engaged in paramilitary activities or have become involved in organised crime, or both.
- We remain concerned by the extent and nature of the involvement of paramilitary groups in organised crime and are struck by the range of criminal activities of some groups.
- We do not believe that the control and licensing regimes which apply to licensed premises, security firms or taxis sufficiently reflect multi-agency thinking or face the challenge of paramilitary involvement in business of this kind. We think they should do so, as one means of bearing down on paramilitary groups in all possible ways.
- We note the establishment in due course of the Serious and Organised Crime Agency in the UK and will follow its contribution.
- We welcome the amendments made to the law and guidelines on the Assets Recovery Agency in Northern Ireland and the law relating to the Criminal Assets Bureau in the South and continue to emphasise the importance of assets recovery in both jurisdictions in combating paramilitary organised crime.
- We continue to believe that tax law enforcement has a key role to perform in combating paramilitary organised crime in Northern Ireland. We believe it must receive a priority reflecting the very special threat that such crime presents.

- We welcome the public consultation on the establishment of an effective regime for the supervision of charities in Northern Ireland and emphasise the importance of its being robust in combating the threat that paramilitaries or their associates may abuse charitable status to their own advantage. We equally welcome the advanced stage reached in establishing a new regime in the South.
- We warmly endorse Lord Clyde’s view that early progress should be made with the proposals on restorative justice in the Criminal Justice Review; believe that, given adherence to proper standards and safeguards, community restorative justice has a valuable role to play in combating paramilitaries and their community control; and hope the momentum behind such schemes will be developed so that those adhering to the standards are not held back by others.
- We continue to believe that thinking should develop around the formulation of guidance designed to help end deference to paramilitaries and to deny legitimacy to them. We are glad the British Government is pursuing our previous recommendation and will be glad to play our part.

9.3 The indications which would encourage us to assess that a paramilitary group was making material progress towards giving up illegal activity would include: whether a group had taken the strategic decision to give up illegal activity; had given a clear lead to its members that they must do so; and had declared that as a group it had stopped such activity. Other indications might include: whether the group was taking steps to end its capability to undertake criminal acts; whether it was co-operating with the police; and whether it was lifting threats against people, including those it had exiled.

9.4 **In assessing whether a group had actually stopped illegal activity, we would continue to monitor and report on whether or not it still:**

- **used violence in any form;**

- committed other crimes;
- recruited or trained members;
- gathered intelligence, targeted people or procured material;
- exiled or intimidated people.

9.5 On the role of political parties, given the normal standards expected of them in a democratic society, we have considered what Northern Ireland political parties should achieve. They should:

- Make their commitment to the ending of all forms of paramilitary crime credible and vocal.
- By any lawful means exert the maximum possible influence to the same end over paramilitary groups and over individual members.
- Credibly and vocally challenge those members of paramilitary groups who may be reluctant to give up crime, and give full support to those who are ready to do so.
- Give credible, vocal and practical support to all parts of the criminal justice system, including policing, and similarly accept the definition of crime that the law lays down.
- Play a full and constructive role in the participative organs of the criminal justice system such as the Policing Board and the District Policing Partnerships.
- Within the framework of support for the rule of law, engage in open and constructive debate with the two Governments and with the various commissions and other bodies in Northern Ireland concerned

with the criminal justice system over the ending of all forms of paramilitary crime and the establishment of firm community support for the criminal justice system.

9.6 We hope there will be open debate about these issues and that people will tell us what they think of them. Such debate can only serve to help clarify questions all must face about the role of political parties in the ending of paramilitary crime.

Recommendations

9.7 Article 7 of the International Agreement allows us to recommend:

- Any remedial action we consider necessary in respect of matters on which we are reporting under Article 4.
- Any measure we think might appropriately be taken by the Northern Ireland Assembly²⁴.
- The second part of the Article is not applicable while the Assembly remains unrestored, but that does not prevent us from saying what we would have done had it been sitting, or from making recommendations to the Secretary of State about the exercise of the powers he has in these circumstances. We have done both these things in earlier reports.

9.8 In responding to paramilitary crime **we recommend that:**

- The review now being undertaken of the licensing regime for the security industry should take account of the need to ensure it bears down to the maximum extent possible on paramilitary involvement, in conjunction with other control regimes and other aspects of law enforcement;

²⁴ Article 7 is at Annex I. A summary of the statutory measures the IMC can recommend for action by the Northern Ireland Assembly is at Annex III.

- the arrangements for supervising the alcohol and taxi trades should be examined with the same end in mind.

9.9 On leadership **we recommend that the Secretary of State continues the financial measures in force in respect of the Progressive Unionist Party in the Northern Ireland Assembly.**

ANNEX I

INTERNATIONAL AGREEMENT BETWEEN THE GOVERNMENT OF THE UK AND THE GOVERNMENT OF IRELAND – ARTICLES 4 AND 7

Article 4

In relation to the remaining threat from paramilitary groups, the Commission shall:

(a) monitor any continuing activity by paramilitary groups including:

- i. attacks on the security forces, murders, sectarian attacks, involvement in riots, and other criminal offences;
- ii. training, targeting, intelligence gathering, acquisition or development of arms or weapons and other preparations for terrorist campaigns;
- iii. punishment beatings and attacks and exiling;

(b) assess:

- i. whether the leaderships of such organisations are directing such incidents or seeking to prevent them; and
- ii. trends in security incidents.

(c) report its findings in respect of paragraphs (a) and (b) of this Article to the two Governments at six-monthly intervals; and, at the joint request of the two Governments, or if the Commission sees fit to do so, produce further reports on paramilitary activity on an ad hoc basis.

Article 7

When reporting under Articles 4 and 6 of this Agreement, the Commission, or in the case of Article 6(2), the relevant members thereof shall recommend any remedial action considered necessary. The Commission may also recommend what measures, if any, it considers might appropriately be taken by the Northern Ireland Assembly, such measures being limited to those which the Northern Ireland Assembly has power to take under relevant United Kingdom law.

ANNEX II

THE IMC'S GUIDING PRINCIPLES:

These guiding principles were set out in the statement the IMC issued on 9 March 2004.

- The rule of law is fundamental in a democratic society.
- We understand that there are some strongly held views about certain aspects of the legal framework, for example the special provisions applying to terrorism, and that those holding these views will continue to seek changes. But obedience to the law is incumbent on every citizen.
- The law can be legitimately enforced only by duly appointed and accountable law enforcement officers or institutions. Any other forcible imposition of standards is unlawful and undemocratic.
- Violence and the threat of violence can have no part in democratic politics. A society in which they play some role in political or governmental affairs cannot – in the words of Article 3 – be considered either peaceful or stable.
- Political parties in a democratic and peaceful society, and all those working in them, must not in any way benefit from, or be associated with, illegal activity of any kind, whether involving violence or the threat of it, or crime of any kind, or the proceeds of crime. It is incumbent on all those engaged in democratic politics to ensure that their activities are untainted in any of these ways.
- It is not acceptable for any political party, and in particular for the leadership, to express commitment to democratic politics and the rule of law if they do not live up to those statements and do all in their power to ensure that those they are in a position to influence do the same.

ANNEX III

SUMMARY²⁵ OF MEASURES PROVIDED FOR IN UK LEGISLATION WHICH MAY BE RECOMMENDED FOR ACTION BY THE NORTHERN IRELAND ASSEMBLY BY THE INDEPENDENT MONITORING COMMISSION (IMC)

Article 7 of the International Agreement specifies that the IMC may recommend measures for action by the Northern Ireland Assembly, such measures being limited to those which the Northern Ireland Assembly has powers to take under UK legislation. The full text of Article 7 is in Annex I.

Measures which may be taken under UK legislation

- (1) A Minister or junior Minister may be excluded by the Assembly from holding office as a Minister or junior Minister for a period of not less than three months and not more than twelve months.
- (2) Members of a political party may be excluded by the Assembly from holding office as Ministers or junior Ministers for a period of not less than six months and not more than twelve months.
- (3) A Minister or junior Minister may for a specified period have his salary, or part of it, stopped by resolution of the Assembly.
- (4) Members of the Assembly who are members of a particular political party may for a specified period have their salaries, or part thereof, stopped by resolution of the Assembly.
- (5) The financial assistance which is payable to political parties may be stopped in whole or in part by resolution of the Assembly.

²⁵ This summary does not purport to be an authoritative legal interpretation of the relevant legislation. For the actual legislative provisions see Northern Ireland Act 1998 and the Northern Ireland (Monitoring Commission etc.) Act 2003.

- (6) A Minister, or a junior Minister of a political party may be censured by a resolution of the Assembly.

Powers similar to those set out in (1) to (5) may in certain circumstances be exercised by the Secretary of State.