

Introduction

This submission is made to the Group on behalf of the Northern Ireland Retired Police Officers Association, a social and welfare organisation representing the interests of 3000 plus former members of the Royal Ulster Constabulary GC and the Police Service of Northern Ireland.

The Association feels that it is uniquely positioned to contribute to the deliberations of the Group as it seeks to address the issue of the violent legacy of the past three decades and tries to chart agreed paths for this community to follow as it moves forward towards a shared future.

Our members consider themselves to be major stakeholders in the history of events now under scrutiny, as they played a pivotal role during that period in combating those organisations whose sole intent was to perpetrate further hurt and bloodshed on an already traumatised community and through the sacrifices made, helped bring about the realisation that violence would achieve no political objective.

LEGACY OF THE PAST.

The Association would remind the Group, that the Police Service paid a heavy price in the discharge of its duties with some 302 officers killed and a further 10,000 injured of whom 300 are maimed for life. Many former officers are still in receipt of psychological counselling as they struggle to re-establish themselves within their family circles and in the wider community. Regretfully almost 70 officers committed suicide during the years when the threat level to officers was at its peak and support services were still in their infancy.

These points are made at the outset, not to garner any special consideration but simply to illustrate to the Group that the police family were not mere bystanders in respect of the events of the past. Unfortunately the very nature of our public duties dictated that prepared, or otherwise, our members and their families were to be at the centre of the maelstrom, both as targets for ongoing paramilitary violence and as the lead organisation charged with the task of dealing with the aftermath of atrocities and the personal trauma that such work invoked.

Over the three decades of the troubles some 1,183 police officers and their families were forced from their homes, many on more than one occasion, as a result of direct attacks inspired by paramilitaries. As a consequence, many of our members, like many others in the community, still suffer from adverse physical and psychological reactions brought on by the stress induced by these unwarranted events and the accumulated horror of what they witnessed as a result of the work they were daily asked to perform.

Consequently we, like society at large, are equally keen to find a satisfactory mechanism by which closure can finally be achieved on what has been a traumatic and dark period of our collective past.

CURRENT APPROACH TO DEALING WITH THE LEGACY.

Before addressing the issue of what proposals the Association's membership would like the Group to consider as a means of dealing with the Legacy of the troubles it would first like to reflect to the Group what it feels is not working.

The Association is of the firm opinion that the "tribunal of Inquiry" approach is not the road to follow in terms of finding a mechanism suitable for allowing victims to come to terms with the trauma of the past. The current crop of tribunals is the cynical product of the negotiating tradeoffs made during the Weston Park and other political manoeuvrings that resulted in the establishment of devolved government in the Province.

They have created a hierarchy of victimhood and will demonstrably fail to address the needs of the vast majority of victims. They are in essence a cash cow for the legal profession and their remits unfortunately, are strongly reflective of the agendas of certain pseudo human /legal rights groups' intent on pedalling theories of alleged State conspiracies and institutionalised collusion as being a major causal factor in the deaths of many victims of the troubles.

The financial cost of such tribunals is estimated to be around £250 million pounds at present; none have yet reported and most, with the exception of Saville, are unlikely to do so for the next two years at least. Such a vast expenditure of public money, could in the opinion of the Association, be put to much more beneficial use in meeting the cost of the psychological and other welfare needs of a wide range of victims.

The very nature of these tribunals is such that they will of necessity and to justify their very costly existence, feel compelled to engage in major fault finding exercises, with the most likely outcome being that they will create a new raft of scapegoats to be further victimised, or worst still, held vicariously liable for the political, administrative and organisational failures surrounding matters over which they had little or no influence.

At the same time any real focus on the identity of the terrorist perpetrators that caused the actual deaths in the first instance will be minimised and the overall collective outcome certainly will not be a process that "heals rather than poisons".

RETROSPECTIVE CRIMINAL INVESTIGATION.

PSNI HISTORICAL ENQUIRIES TEAM

The Association is of the view that the time has come for a fundamental reappraisal of the various investigative methodologies that have been applied over the past seven years to dealing with the legacy of our violent past, as they all lack the necessary speed, flexibility and breadth of approach that is required to meet the many and varied needs of most victims and their families.

Indeed this whole area warrants a root and branch appraisal as to whether or not it is capable of delivering and at what cost to the public purse, especially given the number of prosecution cases against PIRA dissidents and others that have been withdrawn or failed during 2007/2008.

The appraisal needs to start with some frank and honest speaking by those currently engaged in this area of work as to what realistically is achievable in terms of making people amenable through the courts for past offences.

Very major hurdles have to be overcome in relation to historical investigations and the production of sufficient credible evidence to sustain a conviction in 2007 for offences which occurred over one ,two even three decades ago.

As of now sufficient time has passed for the PSNI and its Historical Enquiries Team to have assessed the likelihood of

achieving real progress in this area and they should now be capable of informing us as to the reality of what victims or their families can expect of such investigations and the areas where it can cost effectively deliver a service.

At the moment public expectation in some quarters appears to far outstrip what is being delivered with the inevitable result that major disappointment awaits those who have built up their hope on the HET achieving justice on their behalf.

Again considerable sums of public money (£34 million we are told) have been set aside for this unit and there is little sense in HET working its way through this sum simply to report at the end of six years, that the best it could achieve was the construction of a substantial archive of old investigation records. Such work is essential and if that is to be the major objective, it can be achieved by less expensive means than are currently being deployed.

THE POLICE OMBUDSMAN.

The Police Ombudsman for Northern Ireland has also attempted to embrace historical investigations within her remit, only to produce results that have been totally lacking in investigative probity, contextualisation or any credible evidential basis in respect of the findings pronounced. The resultant outcome of such flawed investigations has been seriously damaging to the Office of Police Ombudsman, with a total loss of confidence, recently being expressed by the representative bodies of both serving and retired officers, in respect of the impartiality and professionalism of the Ombudsman and her staff.

Until such times as that Office demonstrates, that it has acquired the capacity to recognise the essence of what Lord Scarman pointed out so succinctly in his report into the Brixton riots and which latterly in 2007, Deputy Assistant Commissioner Peter Clarke saw fit to re emphasised in a lecture addressing the current terrorist threat to the UK from Islamic extremists; i.e. that the dual responsibilities of preserving the peace and investigating crime were not always mutually compatible and that the latter, on occasions had to give way to the primacy of preservation of the peace.

We do not see a workable relationship existing between the respective bodies so long as the approach adopted is one that starts with a hypothesis that every action that was taken with that balance in mind is to be regarded with immediate criminal suspicion and to be treated as a major dereliction of duty or an attempt to conceal the occurrence of crime.

POLITICAL CONSIDERATIONS.

POLITICAL DESIREABILITY.

The second aspect that also needs clarification is the degree to which there actually exists real political desirability and a resolute determination towards achieving the conviction of past terrorists for crimes committed prior to April 1998. For to us in the Association, it is all too apparent that the Maze prison has been emptied and with its demolition, has gone any real political desire either by Her Majesty's Government or our Northern Ireland Assembly to fill any other location with redundant terrorists.

What is missing at present, is any sign of a political acknowledgement of this fact emerging amongst any of the

parties, or the presence within the same of any individual politician willing to risk his/her political career, by publicly debating the issue. However by fudging the issue or evading any upfront discussion of such a latent policy decision, if such has indeed been taken, deceives the public at large and victims and their families in particular, into believing that it is still a viable and desired response to the crimes of the past.

Whilst the initial political price for initiating such a debate might be high, the longer term kudos for anyone taking the lead in this policy breakout would be substantial. In particular reward must flow from the ability to initiate and guide a process of debate which will ultimately prepare this community for a coming of age, whereby we face up to a range of unpalatable truths that must be dealt with, for left unresolved, they constitute major obstacles in our ability to move on as a society focused on a shared future.

The first of these unpalatable truths would be an acknowledgement of the fact that if the Assembly is to survive, with the full participation of Sinn Fein, then there is no capacity for it to do so if there is the likelihood that current, politically active personnel, are to be regularly held accountable through the courts for past terrorist crimes.

The likelihood of the Assembly's collapse will, in the view of the Association, substantially increase if the issues as outlined in this paper are not addressed before the devolution of police and criminal justice responsibilities takes place during 2008 /2009 as currently intended by HMG.

Indeed if Sinn Fein were to be forced to abandon its support for its former activists, in order to remain in Government, it

would be a gift to the rump of dissidents that constitute the Real/Continuity IRA .They would readily adopt their plight as their cause célèbre and under the banner of being the true voice of Republicanism, would no doubt gain immensely from orchestrated campaigns to secure their release.

In a like fashion loyalist paramilitaries are being cajoled to go along the path of decommissioning their weapons at present, with the promise of considerable financial support to their communities and no doubt indirectly to themselves, if they acquiesce to the Assembly's demands and comply with the Decommissioning body's terms.

Does anyone in political circles think that this delicate process has any remote chance of success, if now, or indeed at anytime in the near future, the PSNI or its HET unit seeks to parade a number of the current negotiators or senior members of the loyalist paramilitary leadership through the courts for past offences?

It would certainly convert what is a sensitive issue at present, into one totally unachievable under any circumstances, if the Government is seen to be attempting to pass over public monies however disguised and for whatever laudable purpose, to a body of people whose past terrorist exploits at the same time were being reported on by a worldwide media attending our Courts.

Locally, it would be in essence a political time bomb, for if conviction results were not being achieved in equal or higher numbers against former Republicans, then no doubt there would be a major reaction from certain sections of a community that already sees itself as being victimised and

isolated over the decommissioning issue and the lack of political representation.

POLITICAL REALITY.

The Association is strongly of the view that such political realities need to be outed, acknowledged and factored into a debate as to whether or not, the criminal justice system and its criminal investigation processes, have a productive role to play in addressing the legacy of our past, or if indeed they are redundant in all but the narrowest of circumstances, as a mechanism of affording any semblance of justice for those victims and families still seeking closure by this means.

We acknowledge that this statement flies in the face of the ethos upon which our members have based their service delivery for all of their working lives, namely that crimes are crimes and those responsible, however long it takes, should be made accountable for their actions before the courts.

However we now reluctantly adopt the following point of view, in a pragmatic acknowledgement of the fact that matters have fundamentally and irrevocably been changed, by the principle that all terrorist offences committed prior to 10th April 1998 are subject to the special provisions of the Northern Ireland (Sentences) Act 1998.

This Act creates the hypocritical situation for the courts and the criminal justice system in that no matter how heinous the crime, or heavy the sentence pronounced, the perpetrators once convicted will only serve a maximum of 2 years, less of course the generous remission that is still applicable to such custodial sentences.

In essence this has forced the Association to reappraise its former stance, that at all costs those guilty of terrorist acts should continue to be made accountable through the courts. For when coupled with the political and legal realities outlined above, it is clear to the Association that justice, in its true and accepted sense, cannot be considered as being capable of delivery to victims or their families.

It has been necessary to rethink how matters should now be taken forward and we have done so in a manner that accepts that the clock will not be turned back and that some radical approach might now be called for, in resolving how old offences are to be dealt with as part of the reconciliation of the past with our ability to move forward into a shared future.

Our Association now adopts the view that the Northern Ireland (Sentences) Act 1998 should be acknowledged as having already created an identifiable line in the sand that should now be accepted as having the potential to form the starting point from which further development of the law should take place in order to address comprehensively the issue of historical offences.

The effect the N.I (Sentences) Act 1998 was to render redundant any semblance that justice was being served in respect of the prosecution of any person for offences committed prior to April 1998 and as such it should now be removed from the statute books. In its place the Association invites the Consultative group to consider at length the following proposal which it believes is a more honest and upfront approach to the issue of historical cases.

PROPOSAL TO ESTABLISH A CREDIBLE EVIDENCE AND PUBLIC INTEREST TEST.

Assuming the Group, as part of its consultation programme, gets the clear signal from the community at large that there is a strong desire to move our society along pathways that are future focused and that willingness exists to distance ourselves from the events of the past.

Then our Association is of the view that this would clear the way for a potentially radical, yet necessary step forward, which needs to be taken if we are to break away from the paralysing and socially self wounding impact of constantly reinvestigating the darkest corners of our past.

We propose that the date of 10th April 1998 be adopted into new legislation that in effect ring fences the investigation of all incidents alleged to have occurred before that date and subjects any request for investigation to a twofold test.

(1) CREDIBLE EVIDENCE.

The essence of this test is that there should be in existence credible and compelling evidence to show that a prima facie case exists upon which to mount a full investigation. Too often such investigations are currently launched on the basis of unsubstantiated allegations or spurious "evidential" material and are massively wasteful of scarce investigative resources.

Many indeed appear to be undertaken simply to appease specific lobby groups or because the investigative body approached, lacks the legislative capacity to evaluate and reject such requests.

When we speak of credible evidence we mean in this context that there should be available in the hands of investigators evidence from primary sources such as identifiable eye witnesses, fingerprint or other forensic evidence which links a named suspect to an historical crime scene, or victim, statements from a victim or co-conspirator identifying the suspect and linking him/her to a crime.

In other words prima facie evidence that can be evaluated as to the weight of its probative value in the context of a clearly formulated investigation strategy, where there are definitive and identifiable lines of enquiry to be pursued and where the collective weight of the evidence and intelligence available points convincingly to the likelihood of the suspect's guilt in the matter.

(2) PUBLIC INTEREST.

Central to this test is the necessity to reflect the views expressed by the majority of citizens that we should be focused on the future and not the past. Therefore the test would require that it be demonstrated to the appropriate authority that there was an overriding need to investigate a matter, as not to do so, would potentially be more damaging to society than the outcome of any successful investigation and resultant prosecution.

However there are clearly many other matters that would warrant detailed consideration under this test and it would be wrong for any legislation to be totally prescriptive as to what constitute the test as each case would need to be individually examined in detail.

For example there is the highly complex issue of previous convictions for offences that might have a tangential relationship to the alleged crime currently under consideration and where the courts might have handed down concurrent sentences had the matter been before them at the time of the original conviction.

Other issues such as the age and health of the suspect, his/her availability within the jurisdiction and not least the expressed wishes of the victim's family might all in such unique circumstances warrant detailed consideration. There could also be consideration given to whether or not a particular prosecution would aid community reconciliation or enhance democracy.

Overall, whilst there would rightly never be an absolute prohibition on the investigation of historical offences, the presence of a twofold test would bring to such investigations as are commissioned, a clear public understanding of the gravity and purpose behind them being investigated and that they were being taken forward with the public interest having been fully considered.

Such cases therefore that are cleared for investigation would have a high likelihood of being successfully investigated and prosecuted through the courts and the perpetrators should as

a consequence be liable for the full sentence which the courts can administer and should only be eligible for the standard remission applicable to other criminals at the time of their conviction.

We make this recommendation specifically from the perspective that the dual test should be applicable to all historical allegations or suspicions about criminal activity. For it is wholly unjust as it appears at present for terrorists, in the interests of political expediency, to continue to evade investigation; whilst investigative bodies are given a free hand to mount retrospective investigations into alleged past actions of the police or military without even the benefit of the doubt being afforded to them by the media, that their actions would continue to be considered as having been lawful, until such times as there was compelling evidence to the contrary.

ADDITIONAL FACTORS UNDERPINNING THIS PROPOSAL.

This proposal is particularly pertinent as there is emerging at this moment in time, a pervasive propaganda campaign that is seeking to rewrite history in support of a false ideology that implies parity, between the actions of the police where deaths of terrorists or civilians occurred and those murdered by the actions of paramilitaries.

This is a patently absurd assertion that is incapable of being sustained by any credible analysis of the facts but nevertheless its postulation and hoped for acceptance, serves the ideological needs of the paramilitaries, where there is an incapacity to accept the futility of the violence they perpetrated in the pursuit of unconstitutional political objectives, or the so called defence of communities.

The undeniable truth remains that no police officer ever set out from his/her home with the intent of causing the death of any citizen and where such incidents unfortunately did occur, the actions of each officer involved was subjected to the most detailed of investigation and independent scrutiny. No similar accountability ever arose in respect of any terrorist organisation where even admissions of responsibility were slow to emerge if indeed at all.

Independently assembled statistics will show that of the 362 deaths that occurred as the result of action taken by the State forces, 55 deaths occurred through the actions of the RUC in three decades of violence. Considerably less than the 381 members of the Roman Catholic community alone who were murdered by the PIRA over the same period.

Consequently if the police are to be investigated for alleged criminal acts we wish it to be on terms applicable to all who stand accused of historical offences.

We will not be drawn into participation in any alternative forum, commission, or other body that is intent on pandering to the wholly spurious, cynical and absurd attempts currently underway by various "justice" groups and other apologists to rewrite history by equating the actions of the police in combating terrorism with those of so called "freedom fighters".

Nor indeed will we participate in any process that seek to elicit from any terrorist grouping a qualified apology on the basis that it will in whole or in part absolves them from being held fully accountability for their actions, especially to those communities they claimed to be protecting.

SOCIETY'S FAILURES.

The Association in making the above comments acknowledges the magnitude of the task facing the Group in determining how we own up to the failures of the past and begin the process of accepting both individual and collective responsibility for the legacy of the violence it produced and above all the immense hurt caused.

With the media and other commentators instinctively looking to the State agencies and the paramilitaries as having been the main protagonists over the past three decades, there has emerged a simplistic line of argument that goes along the lines that if those bodies are made to own up, as it were, to their misdoings this would prove to be the catharsis that society needs in order to move out from the dark shadows of the past and into a new era of community solidarity and forgiveness.

The Association acknowledges how simple and convenient would be the task of the Group if this were to be the solution to us facing up to the legacy of our past, at least we would have some identifiable persons or groups to blame for the pain and suffering we endured and public vilification of the perpetrators might afford some sense of justice for those afflicted.

Alas such an artificially constrained view of our past would in itself be tantamount to a massive cop out in relation to the task set by Government and it would ultimately result in paving the way for this society to collectively evade the responsibility we all share to a greater or lesser degree for the trauma and pain suffered by many and for the injuries we inflicted on each other.

The history of our conflict is much too complex to distil it down to an examination only of the activities of the paramilitaries

and the agencies of the State. The NIRPOA accepts that the police have a major exercise in accountability to perform and indeed part of that accounting process is already under way with the various public inquiries and other retrospective investigations currently taking place.

However if the focus was to remain solely on this highly selective area we would by default be absolving large numbers of our society whose actions facilitated, condoned or encouraged the continuance of violence, whilst not actively participating in any violent act themselves.

The paramilitaries did not exist or operate in a vacuum, they came by and large from one community or the other and people in those communities knew of their identities and witnessed their activities. The same citizens provided them with safe houses when required, stored their weapons and explosives, bought their stolen goods and provided them with the intelligence that quite often enabled them to target their victims.

The same good citizens often commissioned those paramilitaries to deal with the criminal and anti social elements in their midst and the victims themselves, after punishment, often declined to identify their assailants in return for their capacity to continue living within the community that had requested their punishment.

In a like fashion the business community often reached an accommodation with the paramilitaries contributing regularly to alleged welfare collections or paying for so called security provisions or ghost workers. They knew who was extorting finance and could well speculate the use to which it was being

put, yet they chose to remain silent and to offset their losses via sympathetic taxation procedures and inflated contract charges. In the construction industry in particular such arrangements often became a sought after condition as it had the effect of denying other competitors a legitimate opportunity to bid for work in given areas.

The same accommodation was afforded to the paramilitaries by other trades, businesses and professions whereby individuals loaned vehicles that were later claimed to have been hijacked, willing moved weapons and bombing making material later claimed to have been done under duress; or made statements claiming not to have witnessed crimes occurring when clearly they did; or made false assertions that the perpetrators wore masks or were unknown to them when clearly they were.

Actions such as this occurred on a daily basis right across N Ireland and whether through fear, a misguided sense of loyalty, a desire to show solidarity with their community, or for purely pragmatic business reasons, those involved individually and collectively contributed to the continuance of paramilitary activity and the violent legacy of our past.

Few therefore can rightfully absolve themselves from shouldering some of the responsibility for the violence perpetrated, even those whose homes and families were directly touched by violence. Was all that was possible done to keep sons and daughters out of the paramilitaries before they became victims of the violence themselves or did encouragement come from words incautiously spoken or old hatreds or prejudices openly expressed?

The Association is concerned that given the magnitude of these individual collaborative contributions to the totality of the violence in all its forms, we as a society at this moment in time, could be embarking on a journey that will further poison and polarise emerging relationships.

HISTORY IS FOR HISTORIANS TO DETERMINE.

By trying, at this stage in our journey towards an inclusive society, to untie the Gordian knot of emotions, convictions, beliefs, conspiracy theories, suspicions, half truths and lies that will fight for inclusion in the record of our historic past; many of our members legitimately are asking if it would not be more prudent to let time have the opportunity to heal divisions, dull the pain of still raw emotions and the leave the history of the troubles for historians to unravel.

Given the fairest of winds, in our present circumstances massive swaths of information about our past will still remain hidden, especially that contained within Government records, with the result that any picture that does emerge will be so distorted and argued over that it will be in need of constant revision to the point that it will be impossible to arrive at an agreed view of our past.

The cumulative sum of the individual incidents that make up our collective past produces a dreadful picture the history of which should not be avoided unless the truth is to be designedly pushed out of sight and fiction substituted for history. Consequently it is the Association's firm view that the time is not yet right for a task of such magnitude to be undertaken and at this moment in time we might all do well to take heed of the quotation that,

“The truth that makes men free is, for the most part, the truth which men prefer not to hear.”⁽¹⁾ and grant to our community the time and space in which to prepare for such reflection.

Irish history in particular has shown a remarkable resistance when it comes to determining and agreeing upon the true circumstances and chronology of events in our past, as even for historians, perfect impartiality is not easy of attainment and if and when attained, it is not readily recognised as such by those against whom judgement is given.

Indeed the truth when told is apt to take on a libellous aspect and to be bitterly resented as it often challenges the romantic fiction that through constant repetition has become the accepted dogma.

For the same reasons our Association would caution strongly against any temptation to construct a truth commission along the lines used elsewhere in the aftermath of community conflict. Our fear is that this community is not yet ready to face up to the reality of the past or the magnitude of individual involvement that the true history of events would reveal and old enmities could arise especially when there are still in existence paramilitary groups capable of exacting revenge.

Large sections of the community still see themselves as having done no wrong or as having had a legitimate cause to pursue or right to defend that warranted the extremes of violence used and therefore they will remain resolute in not participating in such an exercise.

Certainly from our members' perspective they, as former police officers, do not see themselves as having any matters to address in such a forum, or indeed, any apology to make for

their record of public service as it has been a matter of public knowledge and accountability throughout the past three decades.

Participation in any forum where former terrorists were even remotely minded to apologise for past criminality, could easily lend itself to misinterpretation and the misrepresentation of the fact that the legitimate and lawful actions of the police could ever be equated with terrorist acts.

THE ILLUSION OF COLLUSION.

Collusion is a word that has been prominent in its usage by many in Northern Ireland especially when attempts are made to discredit the work of the Security Forces or to denigrate in particular the relationship between the intelligence agencies and their agents within the paramilitaries. Here the imperative is always to imply that an unlawful relationship existed or that there was a conspiracy to do unlawful acts.

Its effect, through sustained usage and in the clear absence of any legal definition, or the production of any credible evidence to support substantive criminal charges, has nevertheless had limited success in that it is now synonymous in the mind of the average citizen with adverse images of policing during the troubles.

In this respect the objective of police detractors has been achieved and many commentators, some of whom should have known better, have failed to realise the subtlety of the ploy being used, in that by repetition of the term with all its adverse connotations, the age old principle that a lie told often enough becomes the truth was being well and truly exercised.

That said however, the Association openly acknowledges that with nearly a quarter of a million persons passing through the military and 30,000 through the police service over the duration of the troubles, a number of individuals serving therein developed relationships with paramilitaries on both sides of the political divide and that wrongdoing resulted.

The bottom line however still remains that there never was, even at the darkest time of the troubles, any hint of what is often referred to as "institutionalised collusion" on the part of the State or its agencies with any of the paramilitary organisations whereby such criminal relationships as did exist were ever condoned, authorised, or encouraged as a matter of policy or practice.

Major investigations conducted by outside agencies into such allegations of "institutionalised collusion" have markedly failed to discover any evidence to this effect and the illusion that institutionalised collusion ever existed now needs once and for all to be put to rest.

Where individuals were found to have formed illegal relationships with paramilitaries the police made those offenders amenable to the courts for substantive offences as no definition in law exists of "collusion" as a specific criminal offence.

However, if as a community, it is decided that in addressing the legacy of our past, we need an examination of the issue of "collusion", then the Association is strongly of the view that it cannot be confined solely to an examination of just the paramilitaries and the security forces.

Instead in an open, responsible and accountable manner we must consider the wholesale "collusion", i.e. specific offences of conspiracy, aiding and abetting, counselling or procuring etc. (examples of which are given above,) that occurred between communities, businesses, and members of professional bodies with the paramilitaries. Such offences contributed substantially to the continuation of the troubles and the legacy of hurt and suffering endured by many.

FUTURE PATH.

The above said, this Association and its membership will be prepared to assist where it can in any constructive proposals made by the Group where such proposals do not constitute the continuance of the narrow legalistic or investigative mechanisms engaged in to date. Our desire however would be to see a new wholly victim centred approach emerge from any proposals made by the Group.

Mechanisms need to be found for the vast majority of those who see themselves as victims to express their feelings, record their memories for others to note and to access a range of support services that helps them chart a path to a better future. There is no one suit to fit all and each victim will need to be helped find the road that leads to his or her own accommodation with the past.

We accept that some however will never be able to come to terms with what occurred and the desire for some form of justice will always dominate their lives, but the majority we believe, will find the capacity to move on in tandem with society provided there is an equality of dignity and

acknowledgement afforded to the memory of their loss however it occurred.

ONE STOP SHOP.

The Association is of the opinion that central to the delivery of a first class victim focused service would be the creation of a Victims Commission headed by a Commissioner of international standing in order to avoid any debilitating debate over his/her partiality or otherwise.

We favour the creation of a well staffed commission so that anyone choosing to access their services would have to make only one approach to a body that has the capacity to discuss and assess all requests for assistance and above all the capacity to direct and finance any support granted. This would bring a much needed element of co ordination to an area where access to finance or support services is currently a lottery in that a diverse body of agencies have to be contacted and in some cases no capacity exists to assist victims or their families at all.

Additionally by having as it were only one access point, the delivery of the support required by each victim can be much easier monitored and the current practice by some victims or victims groups of touring different agencies with their complaints or request for support would be abolished.

The multi disciplined group as we envisage, would have the authority to task through the Commissioner any investigations or information requests made by victims or their families and the role of the Historical Enquiries team and the Police Ombudsman would be to provide the Commissioner with the service he/she requested.

In this respect the Victims Commissioner would in conjunction with appropriate legal authority apply the aforementioned dual test in respect of both public interest and credible evidence before assigning any information request or investigation requirement to the appropriate body. They in turn would report back through the Commissioner the results of their enquiries and the information released into the public domain would be carefully controlled and constructive in content and not designed to promote the public image of any person or group as at present.

The balance achievable through this form of tight control would eliminate many of the grievances that exist in respect of the current procedures and above all ensure that the investigations of past events are only undertaken in the interest of healing rather than poisoning relationships and of learning from the mistakes of the past if such an objective is truly within the capacity of the human race.

AMNESTY.

The Association recognises that at a macro level the issue of an amnesty appears at first glance to have a compelling attraction in that it has at its core key ingredients that would appear to offer a solution to many of the complex issues facing the Group such as: unsolved murders and other serious terrorist crimes, historical investigations, public enquiries, on the run terrorists and the need for further information to meet the demands of victims and their relatives.

However such apparent attraction, is in the minds of our members fatally flawed, especially if its application is to be conditional on the Government declaring that the past four

decades of terrorist activity are now to be retrospectively classified as having been a "war", that all combatants are now to be viewed as having been on military service and that the violent means used to prosecute their objectives was a legitimate use of force.

The term "war" has a certain accepted definition in the eyes of the Northern Ireland public and whilst we can debate ad nauseam the finer points as to how you classify some of the recent low intensity campaigns fought in different part of the world and their similarity or otherwise to the terrorist activity here; it will do little to shift the general mass of public opinion that the past four decades of what are euphemistically termed as the troubles are incapable of being view as a "war" and of being classified as such.

To do so is viewed by many as an insult to the dead of two world wars and of the many campaigns fought since then. Primarily this is because the public see it as elevating the terrorist to the position of a combatant who observed the conventions of warfare; for as the Group will be well aware, even wars are fought to certain internationally accepted standards and any action which occurs outside of the normal conventions of warfare are viewed as war crimes and subject to investigation and prosecution by international appointed authorities.

By no stretch of the imagination can the actions of terrorists in Northern Ireland be regarded as having observed those conventions. Any study of the statistics independently amassed by observers of the violence here over the past four decades will prove the point. Of the 3,524 deaths recorded, civilians make up 53 % of the total killed with the British Army as the

second largest category totalling 15%, Republican terrorists accounting for 13%, the RUC for 8% and the other groups each accounting for less than 6%.

Of the 1,020 killings attributed to Loyalists 713 killings are recorded as sectarian killings of catholic civilians.

Likewise of the 2,056 killings attributed to Republican terrorists only 50% are classified as British forces and this figure includes former prison officers and former RUC and UDR members who were civilians at the time of their deaths. The remaining 50% are a diverse mixture of victims ranging from 140 civilians killed during attacks on British Forces or who were mistaken for British forces, to 60 odd civilians killed as alleged informers. (2)

Statistically this was not a "war" waged against armed combatants on opposing sides but one primarily waged against the civilian population by all the terrorist groups involved. So to dignify their campaigns as war simply affords a veneer of legitimacy to their previous posturing that they were "soldiers" operating within legally accountable military structures. Additionally it panders to their own propaganda that they individually are not capable of being held to account, as they bore their victims no personal animosity and were merely obeying the orders of their commanders as if they in turn had legitimacy arising from the fact that they considered themselves to be at "war".

In respect of the Loyalist terrorists in particular, to afford them the status of having being at "war" the Group must first be prepared to answer the question as who specifically they were fighting, for their success rate against Republican terrorists accounted for only 42 deaths whilst at the same time they

managed to kill 14 members of the British Forces.⁽³⁾ The only way therefore that our Association sees it open to the Group to reclassify their actions is to accept republican propaganda that every catholic death thereafter was as the result of a grand collusive alliance between Loyalist terrorists and the State.

This of course is rubbish in the extreme for again statistics will show that as a loyalist terrorist you were twice as likely to be imprisoned for the killing of a civilian as was your republican counterpart. We as an Association have elsewhere vigorously refuted any suggestion that there was any alliance between Loyalist terrorists and the agencies of the State in any form and the record of the Police service's success at arresting and prosecuting Loyalists for act of terrorism bears out that assertion.

Throughout three decades of the terrorist campaign the Police Service had primacy in terms of combating terrorism and the Army served in a support capacity to the civil power. Like the police service elsewhere in the United Kingdom our role was one of law enforcement and in that respect 70% and more of our resources was employed daily on routine policing matters. The police service had the responsibility of protecting life and property and of making perpetrators of crime amenable to the courts for their actions.

Of necessity and primarily for personal protection officers were armed. We were not engaged in a military role as one would be in a "war" situation of hunting down and imprisoning the enemy for the duration of hostilities. Instead in a purely policing capacity we made offenders amenable to the courts where

their guilt or otherwise as criminals was determined solely on the weight of the evidence against them.

To now talk about an amnesty in such circumstances would make a mockery of a judicial system that has served N. Ireland well over the past four decades. Persons convicted for terrorists offences were not treated as POW's they were afforded full legal representation and were acquitted and released as free men and women where the evidence against them was deemed to be inadequate to prove their guilt beyond reasonable doubt. Every person convicted of terrorist offences in a Diplock court had an automatic right of appeal to the highest court in the land complete with full legal aid at each stage to pursue his/her case.

Whilst the Association has expressed the above views in relation to the declaration of an Amnesty, it has not entirely closed its mind to the possibility that an amnesty, unrelated to any declaration that a state of "war" had existed in the Province for the past four decades, is a matter that must remain under consideration by the Group.

However before the Association's membership could begin to reconsider their position, there are many questions that need to be addressed by the Group in order that a much more detailed understanding emerges as to the outcomes that would result from such a controversial step.

To whom exactly would the Amnesty apply, is it only those not previously charged with terrorist offences?

Or does it apply to those previously convicted who now wish to admit to further offences?

How will it be determined that a full admission has been made and will the granting of amnesty status be conditional on such full disclosure being made?

Will a failure to make such full disclosure render the participant open to future prosecution for offences not disclosed?

Will current intelligence files be used to verify admissions and the existence of the offences confessed to?

To whom will these confessions/admissions be made?

Will victims get sight of such confessions in detail or have a right to question the participant seeking amnesty?

Will PSNI and MI5 have access to the confessions/admissions to update records or to verify that full admission has been made for known offences?

Will the amnesty programme involve the use of police personnel to record statements of admission/confession?

Will others named in confessions/admissions be followed up on if they have not participated?

What will be the position of those who choose not to participate and who's terrorist past later becomes the subject of investigation?

Will the opportunity to participate in the Amnesty programme be time limited?

Will the identities of those who do participate be made public?

What is the nature of the information the Group thinks it realistically will get from such participants that it does not have at present and how will it assist the victim or his/her relatives?

What exactly will participation in the amnesty process secure for those who participate?

Will the outcome of the amnesty process mean that all criminal records are expunged of terrorist related offences and all

former terrorists are eligible for employment as if they had a clean past?

What are the Human rights implications of such an Amnesty programme where effectively victims and their families will forever be denied the further investigation of the crimes from which they have suffered?

Who will own the archive of information acquired during the process and who will have a right of access to the information held?

Only when these and no doubt many other concerns are satisfactorily answered will we as an Association feel capable of responding to this complex, controversial and indeed unpalatable proposal. The vast majority of our members recoil with recognisable distain even at the very word "amnesty" itself because it creates the spectre of an emerging movement towards historical revisionism that seeks to imply a "moral equivalence" between those that joined an organisation to protect life and property and those who joined organisations to take lives and destroy property.

An amnesty as proposed is viewed by many as the ultimate betrayal of the memory of those who gave their lives in the cause of upholding the law and whose relatives have for many years, drawn some comfort from the fact that their sacrifice was not in vain, in that it was made as part of a valiant effort that ultimately succeeded in preventing this Province sliding into the horror of a full blown civil war.

Those who gave their lives in the service of this community exercised no choice as to whether or not they put their lives at

risk, it was part of their daily existence, whilst those that set out to take the life of another and in the process lost their own, did have that choice. In such stark circumstances there can be no "moral equivalence" attributed whatever the potential political and socially beneficial outcomes, they cannot be bought at the price of such a betrayal of innocence.

(1) Herbert Agar

(2) (Mapping Troubles- Related deaths in Northern Ireland 1969-1998

Fay, Morrissey and Smyth 1998.

(3) Index of Deaths from the Conflict in Ireland 1969-1993 (updated 2002). Malcolm Sutton.