

**“Those who control the present, control the past and those who control the past control the future.” - George Orwell 1984**

There is a great deal of frustration with regard to legacy and in particular how the Government has failed to challenge the actions of those who are seeking to rewrite the history of the Troubles.

The sad fact is that we have arrived in the position we are in at present, in no small part because successive British Governments have never sought to defend themselves and their actions in Northern Ireland with any conviction. Rather, successive administrations have appeared almost embarrassed at the role played by the UK in defending its territorial integrity, its sovereignty and its citizens, and in defeating a sustained and brutal terrorist campaign.

Certainly the Spanish Government showed no similar reticence when it came to facing down not only the violence from Basque separatists ETA, but crucially also their propaganda. The Spanish Government didn't issue 200 odd 'comfort letters' as part of a secret side deal with a bloody terrorist gang. Tony Blair's Government did.

Nor has there ever been a serious attempt to get the Republic of Ireland to face up to the role it played during the Troubles. Its territory was used by the IRA to import arms, store weapons, mount hundreds of cross border attacks, co-ordinate ethnic cleansing of minority Protestant communities in the border area, and act as a safe haven for IRA terrorists on the run. This has to change.

Northern Ireland is British because a majority of her citizens want to be part of the United Kingdom and have expressed that sentiment for almost a century. Rather than mount a sustained defence of the right of the people of Northern Ireland to exercise self-determination, London has all too often seemed embarrassed at the existence of Northern Ireland, and acted as if they just wish it would all go away.

### **The problem with legacy**

This attitude has served to give encouragement to the remnants of the IRA and their political allies who, having been defeated militarily by the Army and the RUC, are now trying to use British taxpayer funded legal aid and a veritable industry of self proclaimed 'human rights' lawyers and activists – aptly described as 'lawfare' - in a bid to besmirch the reputation of the Army and the Police through the courts. This is simply a bid to rewrite the history of the Troubles to propagate the false narrative that the IRA terror campaign was some kind of 'just war.'

This has now become a question of fairness and doing what is right. And it is most certainly not fair and not right, that those who stood bravely between the terrorists and the terrorised should be subjected to a politically motivated witch-hunt.

The legacy provisions of the Stormont House Agreement were fundamentally flawed from the start and never enjoyed the support of the Ulster Unionist Party. Firstly it proposed a parallel police force in the form of the Historical Investigations Unit (HIU) that would inevitably focus on the Army and Police due to the availability of accurate historical records, which obviously do not exist for terror gangs. Secondly it proposed a charge of 'non-criminal police misconduct' clearly indicating the target group.

**The key question remains, if the State won't defend those it sent out to fight terrorism, then who will?**

### **What do we want?**

In a word, we want fairness. Those who have broken the law should be held to account, and must face the consequences, whether they are a terrorist, a soldier or a politician.

The Ulster Unionist Party is opposed to any form of amnesty. We have not supported a statute of limitations for the Army because we know it will inevitably be extended to cover terrorists as well, and this is not acceptable to us or the victims of terrorism.

Fairness also demands an end to the Stormont House Legacy arrangements such as the HIU and the charge of 'non-criminal police misconduct' and an end to the mindset that dreamt up 'comfort letters' for terror suspects. It also demands that the Government stands up to the persistent republican efforts to use legacy as a means to rewrite history and demonise the security forces.

It is also important to nail the lie of there being any equivalence between the Police/Army and the IRA. The IRA's equivalent was the loyalist terrorist groups such as the UDA and UVF. The security forces targeted them just as they targeted the IRA, and the numbers of prosecutions, convictions and jail time served, are indicative of just how seriously the Police and Army took their role of thwarting the murderous illegal activities of terrorists from either side of Northern Ireland's divide.

We also want to see decision makers finally grasp the reality of what happened during the Troubles. 90 per cent of deaths were terrorist murders, 60 per cent by republicans, 30 per cent by so-called loyalists and every single act they carried out was illegal. The Police and Army were responsible for 10 per cent of deaths.

These very figures nail the republican lie of the Army and Police running amok for 30 years. If 30,000 well trained and well armed troops and 20,000 police officers really had shown ill-discipline and disobeyed the rule of law they were sworn to protect, then ten

deaths a year over a 30 year period hardly bears that out. The reality is that the troops and police showed incredible restraint and discipline whilst the terrorists – republican and loyalist – murdered and maimed thousands of innocent people.

The adherence to the rule of law shown by the Police and Army is evident in the number of IRA terrorists who survived the Troubles. Many senior figures in Sinn Fein today would not be alive had they really been facing an Army and Police force that was permitted to operate beyond the rule of law. Instead, they were arrested, they were tried and on completion of sentence they were released from prison, some with Royal Pardons. It was the IRA who engaged in human rights abuses and torture. At the end of the Troubles they had no prisoners to release because they had murdered them all.

When we judge the actions of the Police and Army we need to take full account of the context of the time in which they were operating. 21<sup>st</sup> Century policing techniques weren't available or possible in 1972 in much of Northern Ireland, where the main task was to investigate yesterday's murders, try to prevent any happening today, and then hope to stay alive yourself so you could see tomorrow. And do it all over again.

The British Government needs to stand up for the policemen and soldiers they put in harm's way and not be shy in defending their reputation.

And the Government should also stand up for the reputation of the Police Service of Northern Ireland, and ensure they – and not some parallel police force like the Historical Inquiries Unit (HIU) - police our past, present and future. Fund the PSNI's Legacy Investigations Branch and show some confidence in them.

- **Whether the Government's proposed approach will meet the needs of victims, survivors and their families;**

The Government's proposals of the 18 March 2020 are more of an outline, and are rather vague and unclear in terms of detail. However, they are certainly an improvement on the Stormont House legacy arrangements and do at least indicate that the Government has listened to the consultation process, realises that the Stormont House legacy proposals are unacceptable and are seeking viable alternatives, which should definitely be welcomed.

The question as to '*whether the Government's proposed approach will meet the needs of victims, survivors and their families*' pre-supposes that victims, survivors and their families are a homogeneous group, and have similar needs. This is most emphatically and obviously not the case and in some cases their interests and needs will be competing.

For example, the relatives of IRA victims may well want to know who murdered their loved ones and who gave the orders, whilst the relatives of IRA terrorists killed by the Police and Army continue to demand inquiries in a bid to blame the State.

Indeed, the very fact that we are still labouring with the definition of a victim as set out in the Northern Ireland, (Victims and Survivors Order, 2006) which treats perpetrators exactly the same as innocent victims, says a lot about the treatment of victims in Northern Ireland.

The best the Government can realistically hope for is to arrive at an approach that is fair, and which does not seek to rewrite history, simply because the IRA's apologists are now in positions of political power, and demanding they do so.

The recent interview by the leader of Sinn Fein – Sunday 22 May - will serve as a warning for any proposed process. In it she simply yet emphatically said the terrorist campaign was justified and that she would have joined it. Therefore, the issue is that no matter what proposals are put forward, Sinn Fein will not accept them unless it has the ability to take the focus off them and the IRA and put it squarely on the State.

In the past, weak governments have tried to appease this narrative in a hope that things will settle, but that has clearly - and inevitably - not worked. It is now time that Sinn Fein were taken to task on their promotion and justification of a terrorist campaign that saw some of the worst human rights abuses in recent years. Given these abuses, there is something morally perverse about the IRA and its modern day apologists using 'lawfare' and seeking to hide behind Article 2 of the European Convention on Human Rights as they go after State forces.

- **What steps the Government can take to ensure that the proposed new legacy body is independent, balanced, and open, and complies with the Belfast/Good Friday Agreement and ECHR commitments;**

Northern Ireland has the most scrutinised political system and police force in Europe. We are confident that the British legal system - much copied throughout the world - is more than capable of delivering justice in a fair and impartial manner.

It is time the Government stood up and made it clear that our justice system IS fair and balanced and that our judiciary IS independent. To accept anything other than this is to undermine UK justice in its entirety.

To create any form of secondary or parallel police force is simply saying that our present police force is not fit for purpose, raising the obvious question, that if that is indeed the case, then why is it allowed to operate? As stated earlier, let the police - in the very capable form of the Police Service of Northern Ireland - police our past, present and future trends, as every other police force does, only the PSNI does it with a higher level of scrutiny.

- **The differences between the Government's new proposals and the draft Stormont House Agreement Bill;**

As stated earlier, the Ulster Unionist Party did not support the Stormont House Agreement legacy proposals, primarily because we believe the HIU would deliver a parallel police force and focus its energies on the Police and Army, whilst being unable to access equivalent records for the terrorists responsible for 90 per cent of Troubles related deaths.

We also stated earlier that Government's proposals of 18 March 2020 are more of an outline, and are rather vague and unclear in terms of detail. However, they are an improvement on the Stormont House legacy arrangements and at least indicate that the Government has listened to the consultation process, realises that the Stormont House legacy proposals are unacceptable and is seeking viable alternatives.

If the Government's new proposals can indeed live up to the billing and "*end the cycle of reinvestigations that has failed victims and veterans for too long*" then that will indeed be very welcome progress from Stormont House, as will "*ensuring that Northern Ireland veterans receive equal treatment to their counterparts who served overseas.*"

- **Whether and how the Government's proposals will promote reconciliation in Northern Ireland;**

This is a huge question and our starting point is, do republicans want reconciliation? Thus far Sinn Fein has displayed a complete absence of understanding of the impact of the IRA's campaign, its naked sectarian nature and the damage they did to this society and indeed to their own cause of a United Ireland. To this day the Sinn Fein leadership attends IRA commemorations where mass murderers are venerated without a care for their victims.

It is very hard for the IRA's tens of thousands of victims to reconcile with that and it is wholly unreasonable to expect them to do so, yet somehow the onus always seems to be placed on the victims of terror to forgive, rather than on the perpetrators to ask for forgiveness. That is neither realistic nor acceptable.

- **The potential merits of consolidating the bodies envisaged in the Stormont House Agreement into a single organisation;**

Our main aim was and is to end the prospect of a parallel police force in the shape of the HIU and the charge of non criminal police misconduct. It is essential that we arrive at a legacy process that delivers the prospect of justice and in a manner that is fair.

It was proposed that the HIU would only look at some – not all - deaths. It is little short of a scandal that throughout this process we have ignored the injured, treating attempted murder as of little consequence. This in effect has allowed the terrorists a get out of jail free card even though they would have been responsible for the injury of over 35,000 UK citizens.

In our submission to the NIO of October 2018 we outlined our views on the Independent Commission on Information Retrieval (ICIR) and the Oral History Archive (OHA), plus the academic report on themes and patterns. Our comments there still stand, but suffice to say, it is our opinion that the ICIR will not be able to deliver for families, and will not deliver anything that approximates to evidence that helps identify the perpetrators who killed their loved ones. With regard to the OHA, we would want to see safeguards in place so that information could be assessed for accuracy because if all accounts are accepted uncritically as being equally valid, there is a very real risk that storytelling becomes nothing more than propaganda.

Republicans still subscribe to the fiction that Gerry Adams was never in the IRA, and indeed, listening to Sinn Fein representatives, the average bystander could be forgiven for wondering if anyone was ever in the IRA and who exactly was responsible for the litany of atrocities committed by that organisation including Kingsmill, La Mon,

Enniskillen and Teebane. It is obvious that Sinn Fein are attempting to re-write the history books and give the impression that the IRA did nothing wrong. Sinn Fein in Northern Ireland is demanding the State reveals all, whilst the IRA invokes a code of omerta that would do credit to the Sicilian Mafia. They will not tell what they know, yet demand others do so.

Indeed, in giving evidence to the Saville Inquiry into Bloody Sunday, Martin McGuinness demonstrated just how telling the truth for republicans is an impossibility.

He refused to answer some questions regarding the activities of other IRA members at the time of Bloody Sunday because:

*".... there is a Republican code of honour .... For me to identify who these people are would be a betrayal .... I have a duty, in my view, stretching back 30 years, to those people and I am not prepared to break my word to them under any circumstances."*

The key phrase there is clearly 'Under any circumstances.'

The Smithwick Tribunal into the 1989 IRA murders of RUC officers, Chief Superintendent Harry Breen and Superintendent Bob Buchanan is a further reminder to anyone who needed it, of the IRA's bloody past which cannot be whitewashed or wished away and exposed three major weaknesses - regarding the IRA at any rate - which impact upon efforts to find the truth.

Firstly, the IRA chose to engage with Smithwick only on THEIR terms and they specifically refused to be cross-examined, which is the very process at the heart of verifying statements in our legal system.

Secondly, the IRA chose to engage at their own timing and Justice Smithwick expressed his frustration at the length of time it took the IRA to respond.

Thirdly, the Smithwick report was further proof that the IRA tells lies. Their evidence was not found to be credible and provided further proof – if any were necessary - that a Truth Commission will not work.

Given the republican movement's past record, unionists will be forgiven for being hugely sceptical when faced with any information that is presented to them as 'the truth.'

Indeed, it is not just unionists who have doubts as to how committed the so-called republican movement is to telling the truth. In the Belfast Telegraph on Thursday 20 September 2015, Fianna Fail Leader Micheal Martin said:

*"I think the Sinn Fein response has lacked honesty from the outset and continued to show this impulse to protect the IRA and protect Sinn Fein at all costs."*

The Ulster Unionist Party is in no doubt. The crimes committed by the republican movement cannot be downplayed or allowed to pass into history. These crimes and their consequences should haunt them to their graves.

To retain all these mechanisms under one roof must mean that there will be multiple rooms and that one of those rooms must be about looking at the terrorist bombing campaign, how they were funded and who exactly provided the political support and cover that gave them the fuel to allow so many of our citizens to be killed or injured.

In simple terms, we have held numerous inquiries into State actions and brought forward recommendations that have fed the terrorists' narrative of the past. This needs to be put right through mechanisms that look at the other side of the scales, the terrorist campaign. And it must look closely at the whole range, from politician apologist at the top to the individual terrorist at the bottom. Only then can a single organisation capture all the facets of the Troubles and the concerted terrorist campaign that has led us to where we are now.

In examining the Government's proposals we would urge the Committee to pay close attention to the advice from the victims of terrorism, because they are the people who will be expected to engage in any legacy process and their voices must be heard.

- **The equity of the Government's proposed approach to the investigation of cases;**

Focus is key to the equity of any process. Impartiality and fairness must drive all the mechanisms and that can only be delivered if the issue of the Troubles is looked at holistically. The simple fact that the terrorist groups were responsible for 90% of the deaths, while the State only 10%, is core to equity. But it is also clear that of the 40,000 casualties of the Troubles – mainly caused by bombings - terrorists were responsible for the vast majority.

How can we consider a system that ignores those who were killed and injured outside the borders of Northern Ireland? This creates a hierarchy of victims and will not produce equity. Neither will ignoring those that had a HET inquiry report.

Furthermore, how can any legal system worthy of the name, simply ignore the thousands of attempted murders?

The latter point is a real issue and it needs a bespoke solution. A unit set up to ensure that terrorist acts are looked at in a collective manner, identifying those responsible and those who directed both the terrorists and the terrorist bombing campaign in particular.

Finally we must turn our attention towards those at the top of the terrorist campaign who directed the slaughter be they politician or high-ranking terrorist. This includes looking at



those who have received Royal Prerogatives of Mercy and OTR comfort letters. There should be no hiding place from justice.

- **What legislative steps the Government can take to address what have been described as vexatious claims against veterans.**

As stated earlier, people have had enough of watching republicans attempt to rewrite history and the Government needs to do what is right.

Where people have broken the law they should face the consequences. There should be no amnesty and nothing should be put in place that opens the door to an amnesty for terrorists. The Government should take great care to ensure that former soldiers and police officers are not subjected to a campaign of vilification which is part of a wider attempt to rewrite the history of the Troubles to give credence to the IRA's myth that it was engaged on a just war.

The undeniable fact is that many leading Sinn Fein politicians were members of the IRA and were convicted of terrorist crimes. Now that they wear suits instead of balaclavas, they are doing their utmost to go after the very police officers and soldiers who defeated them when the Troubles were raging, in a bid to besmirch their reputation.

The Committee should be well aware of the IHAT fiasco, where politically motivated prosecutions and false prosecutions of troops were facilitated by unscrupulous lawyers availing of vast amounts of legal aid. We simply cannot make the same mistake with Northern Ireland.

The Government must therefore ensure that legacy arrangements are put in place that enable justice to be done and which do not repeat the mistakes of the Stormont House Agreement legacy arrangements which were set up to facilitate a one-sided approach, biased against the Police and Army.

The Government also needs to recognise that they may never get agreement from all the political parties, but they need to reach a conclusion that recognises the HIU as proposed by the Stormont House Agreement and which lacks cross community support, is not the answer.

## CONCLUSION

The Ulster Unionist Party is determined to prevent the rewriting of history.

The Government should be aware that there is probably no set of legacy arrangements that can settle the deeds of the past to the satisfaction of everyone, but it would be beyond shameful if any Government were to facilitate a process that placed undue emphasis on the men and women who stood between the terrorists and the community they sought to terrorise.

Any serious attempt to look at the legacy of the Troubles must include a comprehensive inquiry into the terrorist groups involved and those who gave them political cover. As politically inconvenient and uncomfortable that may be for some, it is essential to help us find out what happened, who authorised it and why they thought they had the right to murder and maim innocent people.

In dealing with legacy it is also vital to recognise the role played by the Republic of Ireland so that it can be the subject of proper scrutiny.

The Irish Republic is a good neighbour, but that wasn't always the case.

The role played by the Republic in the Troubles is one which has never received the scrutiny it merits. The role of successive British Governments has long been discussed, and been the subject of much media scrutiny in particular, but the Republic has come to be regarded as the equivalent of a passive bystander. That is far from the case.

Fifty years ago the Dublin Government was rocked by allegations that Cabinet Ministers and Irish Military Intelligence were involved in a plot to import weapons and pass them on to the IRA. Within a matter of weeks Charles Haughey and Neil Blaney were dismissed from Jack Lynch's Fianna Fail Cabinet. Others ministers followed and a trial ensued. Haughey was cleared, the case against Blaney collapsed and the story was allowed to slip into history as the Troubles gained an ever increasing momentum. In spite of the lack of convictions, the then Taoiseach Jack Lynch insisted there had been an illegal plot to import arms.

If there is ever to be a serious examination of the Troubles and the legacy they have left, then there needs to be an honest assessment and acknowledgement of the role played by the Republic. This will include the presence of IRA arms dumps and training camps on its territory, the network of safe houses, the hundreds of gun and bomb attacks the IRA was able to mount from the Republic against targets in Northern Ireland, the ethnic cleansing campaign against border Protestants, the burial of the bodies of the disappeared in unmarked graves, collusion between rogue elements of the Garda and the IRA as was proven in the Smithwick investigation into the murder of RUC officers Breen and Buchanan, the ease with which IRA terrorists were able to live freely in the Republic and the overwhelming difficulties the UK repeatedly faced in trying to extradite terrorist suspects from the Republic.

Successive Dublin Governments have shown little appetite to seriously address these issues. The reality is that the Republic played a central role in the Troubles and this needs to be both highlighted and acknowledged if we are to have a full understanding of what really happened during those dark times.

As stated above, we are not settling the deeds of the past, rather, we are setting the conditions for the future of a peaceful Northern Ireland as laid out in the 1998 Belfast Agreement.

*2 June 2020*