

BOOK REVIEW

Shoot to Kill? International Lawyers' Inquiry into the Lethal Use of Firearms by the Security Forces in Northern Ireland, KADER ASMAL, Chairman, Mercier Press, Cork and Dublin, Ireland, 1985, pp. 173, including appendices.

Many books of far greater length accomplish less than this modestly-sized volume, the report of a "lawyer's inquiry" into the misuse of firearms by government forces in Northern Ireland. Two major achievements are immediately apparent. First, the report supplies a partial answer to that baffling question: "What is really the problem in Northern Ireland?" The International Lawyers' Inquiry (Inquiry) found that from 1969 through 1984 government forces on active duty in Northern Ireland killed more than 150 unarmed civilians, most of them Nationalists (Catholics). These killings, according to the Inquiry, were often reckless and unnecessary. Yet, punishment was rarely if ever meted out.¹ Under these circumstances, one can begin to understand why Nationalists have been unable to reconcile themselves to British rule.

Second, the book provides an admirable illustration of how international law may be used at the "grassroots" level. Here ordinary citizens, feeling powerless to affect their state's internal law and actions, have called upon lawyers to address Great Britain's conduct under international standards. The result is a most interesting case study in the practical application of international human rights law. Indeed, *Shoot to Kill?* would be an excellent illustrative text for a law school course on that subject.

Background

When Catholics first began to protest and demonstrate for equal rights in 1968, their efforts were met by violence from both private Loyalist (Protestant) organizations and the police.² Killings of Catholics and the burning of their homes sparked new life into the moribund Irish Republican Army (I.R.A.). The British response, then and since, has been to enact and amend a broad set of emergency laws and to militarize the province to a point

¹ See K. ASMAL, *SHOOT TO KILL? INTERNATIONAL LAWYERS' INQUIRY INTO THE LETHAL USE OF FIREARMS BY THE SECURITY FORCES IN NORTHERN IRELAND* 10, 18-23, 127 (1985).

² *Id.* at 16-17; see also L. DE PAOR, *DIVIDED ULSTER* (1970).

unimaginable to most Americans. In 1982, Northern Ireland's population of one and one-half million was policed by 8,000 heavily armed members of the Royal Ulster Constabulary (police) and 17,500 elaborately equipped soldiers. Collectively known as the "Security Forces," their actual impact is obscured due to the small size of Northern Ireland. A proportionate number for the population of the United States would be 3,600,000 heavily armed troops.³

"Shoot to kill" is a term used among Northern Irish Catholics to refer to their belief that the Security Forces are permitted to kill unarmed persons suspected of belonging to a Nationalist paramilitary group, usually the I.R.A. In other words, the "shoot to kill" allegation means that policemen and soldiers, in effect, execute Nationalist suspects on the spot, rather than attempting to arrest them. Nationalists are not alone in this belief. Amnesty International, the Irish Minister for Foreign Affairs, and the usually conservative *Irish Times* have all expressed concern about a series of killings in Northern Ireland in which unarmed political suspects were killed at close range by ten or more bullets.⁴

Despite this extraordinary accusation and the political storms surrounding it, the British Parliament long resisted commissioning an official investigation. Frustrated by the absence of official action, a group of Northern Irish sought help from lawyers in the United States. They requested that a lawyers' inquiry committee be convened so that the facts could be adduced and submitted to public scrutiny.⁵

The International Lawyers' Inquiry was formed as a result. It bears substantial indicia of legitimacy and academic respectability. The four lawyers conducting the inquiry are distinguished members of the bar from the United States, the United Kingdom, Ireland, and France. Their undertaking received the endorsement of three American lawyers' associations and two British

³ See W. FLACKES, *NORTHERN IRELAND: A POLITICAL DIRECTORY* 306-12 (2d ed. 1983) (statistics concerning number of police and soldiers on duty in Northern Ireland); see generally *NEW IRELAND FORUM, THE COST OF VIOLENCE ARISING FROM THE NORTHERN IRELAND CRISIS SINCE 1969* at 5 (1983).

⁴ K. ASMAL, *supra* note 1, at 14, 43. The *Irish Times*, in an editorial dated June 11, 1984, characterized roving patrols of British soldiers as "death squads." See *id.* at 42-43.

⁵ *Id.* at 10, 22-23. An official investigation into police conduct was initiated after the Inquiry conducted its hearings, but has foundered due to allegations made against the official in charge. See Clines, "Shoot to Kill" *Ulster Issue: Rights Group Faults British*, *N.Y. Times*, Sept. 30, 1986, at A12, col. 1.

human rights organizations.⁶

The Inquiry proceeded in a fashion recognizable to lawyers everywhere. Its members gathered the relevant laws, judicial decisions, depositions, and documents. Information was solicited from a wide range of interested parties, including lawyers, human rights groups, the government, and the police.⁷ Finally, the committee held public hearings in three Northern Irish cities, at which community leaders, relatives of victims, and other persons were heard.

The committee investigated a number of issues, ranging well beyond the initial charge that the Security Forces kill political suspects rather than arrest them. In fact, the committee refrained from reaching a conclusion on the "shoot to kill" issue. Instead, focusing on the pattern of civilian deaths as a whole, the committee uncovered a "toleration of killing" equally antipathetic to the rule of law. Its report discloses that more than 250 persons have been killed by the Security Forces while on active duty. Over fifty percent of the victims were unarmed persons with no known connection to any paramilitary organization; at least twelve were children under the age of sixteen. At the time the committee conducted its hearings, so far as could be ascertained, no policeman or soldier had ever been disciplined or punished for these deaths.⁸

The report documents the circumstances of these shootings, explores their causes, and examines the effectiveness of the current system for identifying and sanctioning those responsible. Four separate approaches are used in the report: a recitation of the evidence gathered; assessment of the deaths and of British law under the international requirement that the state protect its citizens' "right to life;" an examination of the criminal justice system as applied to the Security Forces; and recommendations for bringing both law and practice into compliance with international law.

The Evidence

Out of the cascade of evidence that came pouring forth from

⁶ K. ASMAL, *supra* note 1, at 10-11.

⁷ *Id.* at 12-13, 151-53. The Crown Solicitor declined, on behalf of all official agencies, to participate in the inquiry. *Id.* at 12-13.

⁸ One soldier had been convicted of manslaughter, but received a suspended sentence. After the committee completed its hearings, another soldier was convicted of murder. *Id.* at 23-24.

the citizens of Northern Ireland, the Inquiry focused on that concerning the twenty persons shot in cold blood by the Security Forces. The Inquiry concluded that each of the twenty was killed unnecessarily.

This section of the book explains the Nationalist anger that led to formation of the committee. The death of Danny Barrett, a 15-year-old boy, provides a good example. While sitting on a garden wall outside his home, young Barrett was shot dead by a British soldier.⁹ At the time he was shot, the boy was conversing with his father who stood nearby in the doorway to the home. Despite these relatively simple facts, no inquest was held for over a year. No prosecution was ever brought against the soldier responsible for the death, his name was never revealed, nor was any reason for the lack of official action ever given. In short, Danny Barrett's needless death was met with a loud official silence.

The evidence section of *Shoot to Kill?* relies in large part on oral testimony from eyewitnesses, sometimes substantiated by forensic or other proof. The authors duly note discrepancies in the testimony, and the soldiers' versions are faithfully given when available. This section may be considered too anecdotal by some, but it must be remembered that the Inquiry's mission was to conduct hearings, not trials. In general, the Inquiry discusses and evaluates highly emotional events in a sound and responsible manner.

Application of International Law

In what may be its most significant contribution, the committee applied various international law standards to the facts gathered. Specifically, it consulted major provisions of both the United Nations International Covenant on Civil and Political Rights (the U.N. Covenant) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention). These two international treaties, which have been ratified by the United Kingdom contain lists of individual rights that the ratifying countries have agreed to provide to their citizens. The provisions resemble the first eight amendments to the United States Constitution, but the treaties provide much lengthier lists of protected rights than the Bill of Rights.¹⁰

⁹ *Id.* at 54-56. At the time of his death, Barrett was unarmed. Neither he nor any member of his family belonged to any paramilitary organization. *Id.* at 54.

¹⁰ The voluminous literature on international human rights law is catalogued in

Each treaty also sets up a mechanism through which violations may be prosecuted in much the same way that violations of the United States Constitution may be pursued in federal courts.

The Inquiry found three sets of violations of international human rights guarantees. It determined that in the twenty cases examined in detail, "it appears to us that more force was used than absolutely necessary" and therefore "at least 20 *prima facie* violations" of the "right to life" provisions of the U.N. Covenant and the European Convention had been committed by the Security Forces in Northern Ireland.¹¹

The committee then examined the statutes and judicial decisions governing the official use of lethal force in Northern Ireland to determine whether they adequately protect the "right to life" in the sense required by both the U.N. Covenant and the European Convention. The United Nations Human Rights Commission has interpreted this requirement to mean that "the law must strictly control and limit the circumstances in which a per-

Vincent-Daviss, *Human Rights Law: A Research Guide to the Literature*, 14 N.Y.U.J. INT'L L. & POL. 209, 232 (1980). The use of such law in United States courts is described in Bazylar, *Litigating the International Law of Human Rights: A "How To" Approach*, 7 WHITTIER L. REV. 713 (1985); Hartman, *Enforcement of International Human Rights Law in State and Federal Courts*, 7 WHITTIER L. REV. 741 (1985).

The operation of a multilateral human rights instrument is nicely illustrated by *Ireland v. United Kingdom*, 23-I Eur. Ct. H.R. (ser. B) (1976). In that case, the Government of Ireland brought an application before the European Commission on Human Rights alleging that Great Britain's actions in Northern Ireland violated the provision of the European Convention for the Protection of Human Rights and Fundamental Freedoms that forbids torture or inhuman and degrading treatment of prisoners. The Commission and the European Court of Human Rights both held that Great Britain had treated certain Northern Irish prisoners (again, almost exclusively Nationalists) in an inhuman and degrading fashion. See Donahue, *Human Rights in Northern Ireland: Ireland v. the United Kingdom*, 3 B.C. INT'L & COMP. L. REV. 377 (1980). For unknown reasons, the Government of Ireland has not yet chosen to pursue the "shoot to kill" allegation in any international forum, though it has repeatedly stated its concern that British soldiers appear to have acted unlawfully in this regard.

¹¹ K. ASMAL, *supra* note 1, at 127 (referring to U.N. International Covenant on Civil and Political Rights, Art. 6(1) and European Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 2). Article 6(1) of the U.N. Covenant provides: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." K. ASMAL, *supra* note 1, at 67 (quoting U.N. International Covenant on Civil and Political Rights, art. 6(1)). Article 2(1) of the European Convention is nearly identical and provides: "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law." K. ASMAL, *supra* note 1, at 68 (quoting European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 2(1)).

son may be deprived of his life by the authorities of the State."¹² The emergency laws of Northern Ireland resoundingly failed this test. The committee found the law ambiguous at best and highly permissive at worst, allowing a member of the Security Forces to kill with impunity so long as he later alleges a belief that the victim was a member of a paramilitary organization.¹³

Finally, the committee investigated the remedies afforded to the families of innocent persons killed by the Security Forces. Although Article 13 of the European Convention¹⁴ requires the state to provide an "effective remedy" for violation of any right set forth in the Convention, the Inquiry observed that no remedy has been provided in many cases. It expressed particular offense at the offer of "trivial sums" to settle some wrongful death claims. The report cites, for example, the Ministry of Defense's offers to bereaved families of sums of less than \$5000 as failing to satisfy the "effective remedy" requirement.¹⁵

Oddly, the Inquiry neglected to note that the U.N. Covenant contains a provision virtually identical to that of the European Convention.¹⁶ *Shoot to Kill?* therefore offers no finding on Britain's compliance with Article 2(3)(a) of the U.N. Covenant. The portions of the book devoted to international law are, on the whole, regrettably brief. In particular, the issue of the adequacy of current legislative and judicial protections could have been developed not only at greater length but to even greater effect.¹⁷

¹² *Id.* at 67 (quoting United Nations Human Rights Committee, 1982 Columbia decision).

¹³ *Id.* at 85-86.

¹⁴ Article 13 of the European Convention provides in relevant part: "Everyone whose rights and freedoms . . . are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity." K. ASMAL, *supra* note 1, at 68 (quoting European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 13).

¹⁵ *Id.* at 128.

¹⁶ Article 2(3)(a) of the U.N. Covenant states:

"Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity[.]" U.N. Covenant Art. 2(3)(a), *reprinted in* INTERNATIONAL LAW—THE ESSENTIAL TREATIES AND OTHER RELEVANT DOCUMENTS 493 (von Munch and Buske eds. 1985).

¹⁷ Cf. R.J. Spjut, *The 'Official' Use of Deadly Force by the Security Forces against Suspected Terrorists: Some Lessons From Northern Ireland*, PUB. L. 38 (Spring 1986). Professor Spjut's account of some shootings differs from that accepted by the Inquiry, but his detailed examination of the law confirms that few legal restraints remain on the Security Forces' use of lethal force.

The Inquiry's work, nevertheless, represents a pioneering effort and signals a direction in which the discussion of Northern Ireland might fruitfully move.

The "Terms of Reference"

Through what the committee called its "terms of reference,"¹⁸ the Inquiry examined the various stages by which the police and prosecutorial agencies identify misuses of lethal force and decide whether or not to pursue sanctions. One term of reference centered around police investigations set in motion by a death caused by the Security Forces. The report records abundant testimony that such police investigations are delayed and often perfunctory. They are widely perceived as ineffective and biased in favor of the Security Forces.¹⁹

A second term of reference required the Inquiry to examine coroners' inquests, which are ordinarily held on the heels of any sudden or suspicious death. The report describes an unusual restriction on the type of conclusions that Northern Irish coroners may reach as well as a bizarre set of evidentiary rules governing their investigations. Again, when deaths were caused by the Security Forces, delays amounting sometimes to two years were found. The Inquiry concluded that this pattern of law and practice is apparently designed ". . . to protect members of the security forces from all public criticism."²⁰

Under yet another term of reference, the Inquiry examined the role of both the Director of Public Prosecutions and the British Attorney General in deciding whether to prosecute members of the Security Forces. Once more a pattern of unexplained delay and inaction emerged and again the report calls for reform of a system widely perceived as deliberately covering-up misconduct of the Security Forces.²¹

This section, too, represents the creative application of legal methods to inherently complex and potentially explosive problems. The committee has made out a strong case not only that the number of civilians shot dead by the Security Forces is "unacceptable", but that the government's failure to curb such killings "supports the view that a certain level of death . . . is

¹⁸ K. ASMAL, *supra* note 1, at 11-12.

¹⁹ *Id.*, at 98-103. Amnesty International has also criticized British methods of investigating police conduct in Northern Ireland. See Clines, *supra* note 5.

²⁰ K. ASMAL, *supra* note 1, at 112.

²¹ *Id.* at 127.

officially regarded as acceptable, on condition that it is primarily confined to one section of the community in Northern Ireland."²²

Recommendations

One of the Inquiry's most important contributions is a wide-ranging series of proposals for reform, designed to bring Great Britain into compliance with international law and to ameliorate the long-standing mistrust of the civilian population. *Shoot to Kill?* sets forth twenty or more specific recommendations as to the law governing the operation of the Security Forces and the administrative procedures for enforcing it. The recommendations include a call for reform of the criminal law to prohibit the use of lethal force except where absolutely necessary; the institution of an independent board to review complaints against the Security Forces; reform of the rules governing coroners' inquests; and a call for the restoration of jury trials for all crimes.²³ The Inquiry suggests that if the British government fails to implement such reforms, the Government of Ireland should bring an interstate application to the European Commission of Human Rights alleging violations of the European Convention.²⁴

For all the innovations of its approach and the excellence of its work, the Inquiry lessened the effectiveness of its report by organizing the material in a somewhat fractured way. Often the reader, although beguiled by the readability and fascination of the text, cannot tell precisely what relationship a given part bears to the whole, nor how its many disparate parts should be fitted together. This organizational flaw could have been remedied by the simple expedient of casting the entire report in the framework of assessing Britain's compliance with international law and by adding a section on the "obligation of result."

The U.N. Covenant requires not simply that certain laws be enacted, but that they receive true enforcement, and that the state "genuinely ensure to all individuals within its territory the rights recognized" in the Covenant. This requirement has been termed the "obligation of result."²⁵ Had the Inquiry added this provision as a fourth step in its international law analysis, several

²² *Id.* at 125.

²³ *See id.* at 126-34.

²⁴ *Id.* at 134; *see also supra* n.10.

²⁵ *See* Schachter, *The Obligation to Implement the Covenant in Domestic Law*, in *THE INTERNATIONAL BILL OF RIGHTS THE COVENANT ON CIVIL AND POLITICAL RIGHTS* 311 (L. Henkin ed. 1981).

chapters would be subsumed under it, rendering the whole more unified and logical. The facts discussed under the terms of reference, for example, purport to demonstrate how Britain fails to meet its obligation of result because of ineffective police investigations, weak coroners' rules, and permissive policies on prosecutions. The chapter on deaths from plastic bullets and the discussion of the Diplock court trials would also fit smoothly into this framework.

Under this approach, the Inquiry's invaluable "recommendations," already relevant and welcome, would take on a far more august status. The obligation of result requires the state "to adopt such legislative *or* other measures as may be necessary" to guarantee the rights enshrined in the Covenant.²⁶ Against this standard, the Inquiry's many suggestions for reform approach the status of required legislative and administrative steps.

To those unfamiliar with the legal complexities of the Northern Irish conflict, *Shoot to Kill?* serves as an excellent introduction, a concise compendium of strange law and troubling fact. The volume contains five helpful appendices, ranging from a legal bibliography to a kind of "roll call" of the dead, a list of the names, ages, and circumstances under which more than 100 unarmed Catholics have met their deaths at the hands of the British Army or police.

A sixth appendix containing the texts of the relevant statutes and rules, however, would have been most welcome. Even more fundamentally, had the publisher simply added an index, a lawyer or scholar would be greatly assisted in relocating facts, laws, and quotations. The publisher committed a further error by inserting repeated pages at several points in the book, slightly marring the over-all appearance of professionalism.

But these are rather ungrateful cavils concerning a work which has many virtues. Not least of these, the tone maintained by the authors is exactly right for a topic so controversial in nature. On the one hand, the report is realistic and non-Utopian. It acknowledges that the Security Forces have been responsible for a minority of the deaths occurring in the fifteen-year period under examination, and that they operate under special difficulties inherent in their "counter-insurgency" role.²⁷ On the other, the committee rightly insists that the state must operate within

²⁶ U.N. Covenant, Art. 2(2) (emphasis added), *reprinted in* INTERNATIONAL LAW, *supra* note 16, at 492-93.

²⁷ K. ASMAL *supra* note 1, at 14, 19, 99, 102.

the constraints of law. Repeatedly, the Inquiry urges that the government's own lack of responsiveness has political consequences of the most serious kind. It echoes the words of Britain's National Council of Civil Liberties that "[t]he denial of civil rights [in Northern Ireland] feeds the conflict from which the paramilitary emerges. It breeds greater contempt for the Government and for the legal system."²⁸ To the extent that identification of causes is necessary or helpful in solving a problem, the Inquiry has made an important contribution to Northern Ireland's hopes for peace.

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²⁸ *Id.* at 118 (citation omitted).

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