

Obstacles to Cross-Border Policing

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

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

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

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

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

The Prevention of Crime

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

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

Ibid.

Interview with ACC, 27th November 2001.

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

The Investigation and Detection of Crime

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

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

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

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

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

The Prosecution of Offenders

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

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

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

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

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

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

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

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

The Enforcement of Criminal Penalties

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

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

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

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

Delivery of an Efficient Police Service

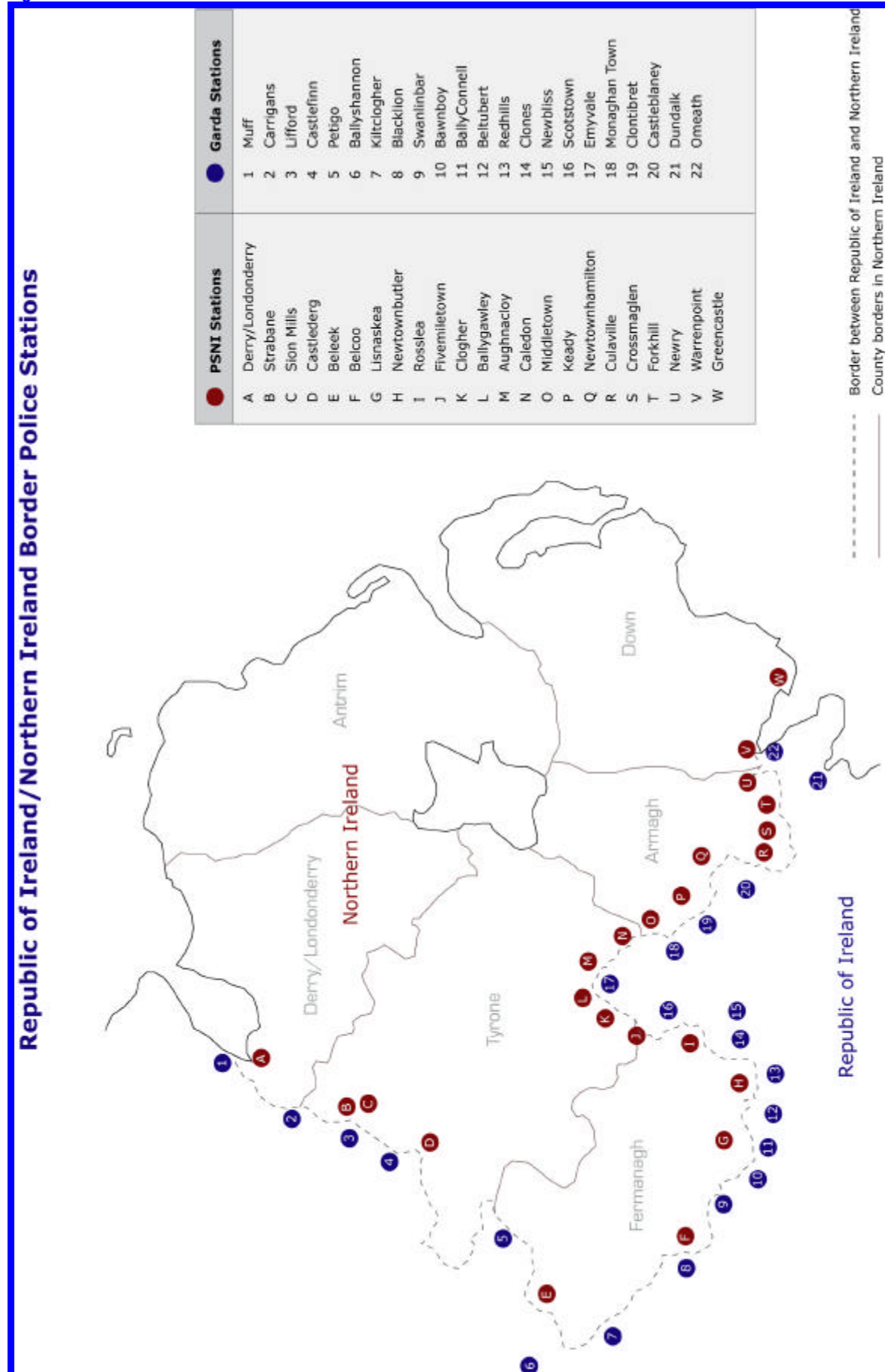
The delivery of an efficient police service is not confined to the prevention and detection of crime and the maintenance of public order. Much police time is spent responding to calls for assistance from members of the public. This can take the form of individuals coming to the police station or officers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

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

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

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

Fig 1: Distribution of Border Police Stations



Framework for Cross-Border Cooperation

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

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

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

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

Formal Procedures Pre-Patten

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

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

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

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

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

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

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

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

Informal Methods

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

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

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

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

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

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

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

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

The Patten Report and Recommendations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Joint Disaster Seminar, Garda and PSNI Feb 2002

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

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

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

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

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

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

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

Corresponds to Patten Recommendation 163

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

Corresponds to Patten Recommendation 165 and Recommendation 93

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

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

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

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

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

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

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

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

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

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

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