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## Civil Control of the Military and Police In Ireland: the Armed Forces

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## **Civil Control of the Military and the Police**

### **8.1 The Irish Armed Forces: The Permanent Defence Forces - ‘Oglaigh na h’Eireann’**

**Are the Irish Defence Forces firmly under civil control?**

#### **Background**

#### **Independence and Civil War: Origins of Irish Defence Forces**

The Irish armed forces, known as the Permanent Defence Forces (PDF) or ‘Oglaigh na hEireann’ number approximately 10,000 personnel across the Naval Service, Army and Air Corps. The Defence Forces in Ireland play an active role domestically in ‘Aid to the Civil Power’ Operations or ATCP Ops with the Irish police force, An Garda Siochana. The Defence Forces are also active internationally in UN peacekeeping and peace enforcement operations in Europe, Asia, Africa and the Middle East.

As an organisation, the Irish Defence Forces is a direct descendant of the Irish Free State Army - initially formed in 1922 following the Irish War of Independence from Britain. From the inception of the Free State Army until 1954, the Irish armed forces were legislated for under the 1923 ‘Temporary Provisions Act’.

This act was repealed by the Defence Act of 1954. Subsequently, the Irish Defence Forces are legislatively regulated by the Defence Acts 1954 – 1998.

Throughout the turbulent years of the Irish Civil War and throughout the 1920’s, the Irish Free State Army operated under the constitutional authority provided for it under the auspices of the Irish Free State Constitution of 1922. This constitutional authority in tandem with the Temporary Provisions Act of 1923 enshrined in law the formal subordination of the Irish military to the civil authorities and the Irish houses of parliament known as the Oireachtas.

Throughout the fraught period of the Civil War and subsequent war years of World War Two – known in Ireland as ‘the Emergency’ – the Irish armed forces and the Irish military authorities remained loyal to and subject to the direction and control of their civilian masters of whatever political persuasion. Over time, serving members of the Irish armed forces came to be regarded both internally within the organisation and externally in the public service generally as ‘non-political servants of the State’.

Unlike some of our neighbouring EU states, the Defence Forces in Ireland are traditionally associated with compliance to the law and conformity to the twin concepts of accountability and subordination to the civil authorities. Throughout the lifetime of the Irish Republic to date, the Irish military have not been associated with independent military, political or lobbying activities. Nor have they ever been associated with any unilateral show of force, coercion or negative engagement in the democratic process.

## **The Irish Defence Forces and the Law**

The Irish Defence Forces are heavily prescribed for in law and their legislative *raison d'être* is firmly embedded in a clearly demarcated hierarchy of both constitutional and statute law along with international and EU law.

From the point of view of the Irish Constitution, Article 15.6.1 gives the Irish government the sole constitutional premise for raising and maintaining an army within the state,

The right to raise and maintain military or armed forces is vested exclusively in the Oireachtas.

Article 15.6.2 reiterates this point

No military or armed force, other than a military or armed force raised and maintained by the Oireachtas shall be raised or maintained for that purpose.

This existence of this particular article in the Irish constitution effectively refutes the claim made by organisations such as the Provisional Irish Republican Army to the title of 'Oglaigh na h'Eireann' and copper fastens the status of the Irish Defence Forces as the sole, legitimate armed force within the state.

In terms of control over the Defence Forces, Article 13.4.2 of the constitution vests command of the armed forces to the President of Ireland. Articles 13.5.1 and 13.9 of the Constitution go on to qualify the President's command so as to ensure the exercise of this command is both within the law – regulated and checked by law – and only under the explicit direction of the government through the Council of Defence. In this manner, whilst the President enjoys 'de jure' command of the Defence Forces, de facto command of the Irish armed forces lies firmly in the hands of the Minister for Defence and the Prime Minister or Taoiseach of the day.

The Defence Acts 1954 – 1998 further bind the Irish military to civilian oversight and control. With reference to the command and control of the Irish military, Section 17 of the Defence Act 1954 states

Under the direction of the President and subject to the provisions of this Act, the military command of, and all executive and administrative powers in relation to, the Defence Forces, including the power to delegate command and authority, shall be exercisable by the Government and, subject to such exceptions and limitations as the Government may from time to time determine, through and by the Minister.

This section of the act explicitly 'corrals' control of the military within the civil sphere and makes amenable every aspect of Irish military activity to civilian and government direction and scrutiny.

Section Seventeen (3) of the Act provides the mechanism by which the Minister for Defence governs the day to day running of every aspect of the Irish military. It states

The Minister may make regulations applying to officers, as to the persons to be invested, as officers, with military command over the Defence Forces or any part thereof or any person belonging thereto and as to the mode in which such command is to be exercised.

This legislative mechanism for control of the Defence Forces finds expression through Defence Forces Regulations (DFRs) and Statutory Instruments (SIs) which are promulgated on an ongoing basis by the Minister for Defence. DFRs govern every aspect of Irish military activity across the full spectrum of command and administration, logistics and supply, operations and intelligence. In this way, the Defence Forces are fully subordinated to the Department of Defence. This process is ongoing, dynamic and responsive to changes in wider Irish society. Most recently, the Department of Defence and military authorities altered existing DFRs to reflect the integration of Irish women into the Defence Forces. The general staff, along with the Department of Defence also conducted an equality audit of all DFRs as part of their ongoing proactive and strategic management of a changing workplace in a rapidly changing and more diverse society.

### **The Troubles: Low Intensity Conflict**

Over the last four decades, Ireland has experienced considerable volatility in terms of its internal security associated with the ‘troubles’ - or low intensity conflict in Northern Ireland. The Defence Forces, under the stewardship and guidance of successive Irish governments, has handled Ireland’s internal security problems in a low-key and sensitive manner.

The deployment posture of the Defence Forces during this period has been extensive but understated. For example, in the year 2005 – many years after the Good Friday Agreement, the Provisional IRA ceasefires and announcement of disarmament – the Irish Defence Forces undertook 2,574 armed cash escorts, 176 armed political prisoner escorts, 81 bomb disposal call outs and operations, 23 armed commercial explosives escorts, 212 armed military escorts of weapons and explosives and 1, 682 armed patrols of vital installations such as airports, power stations and broadcasting facilities. In addition to this frenetic ‘Aid to the Civil Power’ portfolio of activities, the Defence Forces were also deployed on two major state occasions including the visit of President George Bush to Ireland in the Spring of 2005 and the visit of EU heads of state to mark EU Accession day in Dublin, on the 01<sup>st</sup> of May 2005.

Despite the thousands of daily interactions between armed Irish troops and their fellow citizens within Ireland, there are relatively few if any contested or negative exchanges or outcomes. This unproblematic deployment of an army among the civilian population, over such an extended period of time without rancour, incident or legal challenge, is perhaps unprecedented throughout the EU.

The unproblematic nature of this deployment is perhaps due to the strict policy of 'police primacy' that has existed within the Irish state throughout the period of the troubles. No matter where they are deployed throughout the state on Aid to the Civil Power Operations, Irish soldiers, where they are likely to interact with the Irish public are normally accompanied by unarmed members of An Garda Síochána. At checkpoints, or at cordons, searches or on armed escort duties, it is normally a member of An Garda Síochána who communicates with members of the public. This policy differs considerably for example from British government policy in Northern Ireland where British soldiers have regularly mounted independent checkpoints and routinely question civilians as to their identity, occupation and movements.

Whilst deployed among the general public in this manner, the Irish armed forces are subject to both military law and civil law in terms of their use of force. Though armed, Irish troops operating domestically on ATCP Ops enjoy no special privileges or entitlements in law. According to Humphrey and Craven's (1997), 'Military Law in Ireland', an Irish soldier on duty in Ireland is simply 'a citizen armed in a particular manner ... (who) cannot because he is a soldier excuse himself if without necessity he takes human life'.

In this regard, the legal basis for Irish soldiers bearing arms in public is predicated on a combination of legal premise, including the common law right of individual citizens to defend themselves, the constitutional right of the government to call upon the military as citizens to assist in the maintenance of public order and all of the relevant statute legislation governing the use of force. The Irish military are fully amenable to the law in instances where force is used. The courts in Ireland, it is felt would not necessarily take an 'indulgent' view of the possible use of force by Irish soldiers - and Irish troops are briefed accordingly.

In my own experience as a serving army officer, it is standard operating procedure within the Irish military to fully brief Irish troops as to their legal obligations when engaged on ATCP operations. The internal legal brief to troops engaged on armed duties in public rests on four main principles, minimum force, justification, prevention and legal requirements.

In summary, minimum force emphasises to troops the requirement for an appropriate response to any given situation. Among the levels of force open to armed troops are unarmed response by weight of numbers to the use of batons and in extremis - the firing of ammunition as warning shots or to inflict non-fatal injuries. In terms of justification, the 'rules of engagement' for Irish troops are amenable to external scrutiny and are not - as is often the case in some EU states - secret. Irish troops may use force for example only in defence of their own lives, or the lives of members of An Garda Síochána or members of the public. In terms of prevention, such force may only be used to prevent loss of life and cannot be employed in a punitive manner after a criminal act has been committed by a third party. The legal requirements incumbent upon Irish soldiers include a broad range of provisions from evidence of proficiency with a weapon to the detailed exigencies of the Non Fatal Offences Against the Persons Act (1997).

In this manner, Irish troops operating in their day to day ATCP Operations are fully accountable to civil control and amenable to the law.

The legitimacy of Irish Defence Forces personnel's participation in Aid to the Civil Power Operations has been challenged in the courts. Arising from the arrest of suspected members of the Provisional IRA during boarding operation of the *Marita Ann* – a trawler carrying an arms shipment for the PIRA into Irish waters in 1984, a challenge was mounted to the arrest function of members of the Irish Defence Forces.

In remarks made by Chief Justice Finlay in *The People (D.P.P.) v. Ferris, Crawley and Brown*, the courts have taken the view that

The Gardai are entitled to call upon the assistance of the Defence Forces in support of the civil power; it would be ludicrous if it were otherwise.

The Chief Justice went on to state

There is no constitutional rule which rigidly separates the functions of one class of citizen thus uniformed and disciplined, from another such class; and the fact that day-to-day keeping of the peace is conventionally attended to by a police force does not prevent any other part of the State's service from being called in to supplement it in need.

(Humphreys, Craven, 1997)

It is perhaps the key phrase 'supplement' that in some way explains the relatively unproblematic operation of the Irish Defence Forces in – compared to our EU neighbours – an intensive, sometimes hyperactive role in Aid to the Civil Power Operations with an Garda Siochana. It is precisely because of 'police primacy' and complete subordination to the civil powers that the Irish military have thus far not overstepped their authority or role in civil-military relations. Indeed, in one key area, that of intelligence gathering – where a negative interface between the military and the civil populace is often most keenly felt – the Irish Defence Forces play a secondary role to that of An Garda Siochana. The Irish military restrict their intelligence gathering and evaluation role primarily to the international scene with the police force fulfilling the primary role domestically.

## **Conclusion**

Despite the fraught and turbulent times that gave birth to the Free State Army during the War of Independence and latterly, the tensions and challenges wrought by the Troubles for the Permanent Defence Forces, the Irish military authorities have remained accountable to and under the control and direction of the Irish civil authorities at all times.

The Irish military have never over-stepped their authority and have never unilaterally sought to expand their sphere of influence or operational mandate. Nor is there any

evidence to show that the Irish military authorities have ever sought to usurp their legal subordination to the civil authorities.

Each military officer – from the newly commissioned 2<sup>nd</sup> Lieutenant to the Chief of Staff – swears a solemn Oath of Allegiance to uphold the Constitution and to only follow lawful orders. The Irish military also undertake on oath not to become a member of any political party. As the Defence Forces integrates further into EU military structures such as the EU Rapid Reaction Force and the newly conceived EU Battlegroup framework, the organisation does so fully accountable to the Irish civil authorities.

#### References

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The Defence Acts (1954 – 1998)

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