



UNIONIST VOICE POLICY STUDIES

FROM WARFARE TO LAWFARE

Response to Independent Reporting Commission Report

NOVEMBER 17, 2020

Introduction

This analysis is published as an academic discussion paper in response to the publication of the third report of the Independent Reporting Commission, released on 17 November 2020. The 124-page report explores a range of issues in relation to the transition of paramilitary groups. It is divided into various sections which addresses different issues. The full report is available to download from the IRC website.¹

Unionist Voice Policy Studies ('UVPS') is a think-tank designed to provide analysis and stimulate debate within the grassroots unionist and loyalist community. It is not affiliated to any political party or loyalist organisation, rather UVPS seeks to provide a platform for all viewpoints to be explored and scrutinised.

UVPS has provided written and oral submissions to the Northern Ireland Affairs Committee Devolution and Democracy inquiry and provided written submissions to the Committee's inquiry into Organised Crime within Northern Ireland.

The group has also provided written policy papers and engaged with a wide range of government bodies on providing an analysis on issues pertinent to the grassroots unionist/loyalist community.

This written analysis of the IRC report is designed to provide a general viewpoint in relation to transition, and to stimulate discussion and debate on the relevant issues. It does not purport to be reflective of the views of all the grassroots unionist/loyalist community, or any constituent part thereof. Rather this analysis simply seeks to present- in a generalised manner- issues of common interest and concern across grassroots loyalism.

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¹ <http://www.ircommission.org/publications>

What is transition?

Transition is ill-defined, a fact which appears to be recognised by the IRC panel. Often discussions in relation to paramilitary groups adopt an approach of simply saying (in various linguistic formulations) that organisations need to 'go away'. This, on the face of it, seems like an attractive proposition and is in substance designed to present an absolutist moral position which is difficult to argue against.

The basic logical conclusion is that anyone who would argue against groups simply 'going away' must be arguing for them to remain in existence, and as such must be supporter of terrorism and/or crime and as such their opinion is to be dismissed in any event. That is the parameters within which 'transition' discussions are often framed.

In a similar vein there is a very real agenda within sections of the media to de-platform any voices who put forward a different analysis as to transition (different than simply repeating ad nauseum groups must 'go away' or agreeing with blanket criminalisation).

In order to define transition, it is necessary to first understand what paramilitary groups actually are, and what they are not. The significant focus within the report is on 'group' rather than individual transition. We therefore must assess what defines the 'group'- and plainly it is a structure. The next step is to then understand what that structure is; what underpins it. On a *prima facie* basis it is militaristic structures or ranks, but this analysis is flawed; military structures in of themselves amount to nothing. Unless there is a cohesive group of people, all the structures and ranks in the world are not relevant.

Any individual could decide to appoint themselves with a military rank and form an organisation, however unless there is a cohesive group of people underpinning that then it amounts to nothing more than words. That brings us to that which should be the real target for transition, socially cohesive structures. For many members of organisations their paramilitary group is also their friends, includes family members

and is often their social circle. If the group name, or militaristic structure (if any exists) disbanded tomorrow, then this socially cohesive group of people would remain the same. Nothing would change.

The challenge therefore is to transition the socially cohesive groups of people, in order that *those* structures can be used to exercise positive influence, without crossing into coercive control and/or illegality. That is what transition really means; it seems that the IRC and public discourse in general often focuses on the wrong 'target' for transition. In order to change the direction of a socially cohesive group, you must change individuals. It is an error to focus on group rather than individual and/or area-based transition. Those involved in paramilitary groups must be given opportunities and pathways to develop their own *personal* capacity via educational opportunities, and furthermore provided with pathways in order to put their learning and abilities to use for the betterment of communities. That is the process of building personal individual capacity in order to influence group transition. You can not transition a 'group' without first genuinely transitioning the *individuals* which make up that group.

The Twin-Track approach

The IRC report focuses on a 'twin-track' approach.² Whilst these tracks are broader than transition of paramilitary groups, for the purposes of this report we focus on that issue and how those groups fit into the 'Fresh Start' Structure.

The process for groups is, in short form, the carrot and the stick. The carrot being (albeit ill-defined) transition, whilst the stick being the Paramilitary Crime Task Force ('PCTF').

These tracks are each pointing in a different direction; therefore, it is wholly illogical to view them as complimentary. Plainly one is designed to offer opportunities to

² IRC Report 17 Nov 2020 para 1.35 p20

transition, this is effectively the 'legitimisation' track. The other is designed to criminalise, and as can as such be described succinctly as the 'criminalisation' track.

These two tracks (to use the IRC's terminology) cannot happily co-exist; a 'group', or individual, cannot logically be on both tracks at the same time for the obvious reason that they both are travelling opposite directions.

And this is where we come to the problem with the IRC's twin-track approach when viewed in the context of transition; unless there is an objective standard to decide which track a particular group, or persons within it, are on, then it becomes arbitrary. If groups are to be placed on one of two tracks, then there must be an objective standard by which this decision will be made, and groups need to know what that standard is.

The alternative is that loyalism turns inwards on itself- which may well be the political objective- and by virtue of seeking a pathway onto the transition and legitimisation track, standards of comparison will necessitate that those who want to present as good loyalists will seek to reach that subjective standard by virtue of comparison with those deemed bad loyalists. However, an objective standard by which individuals and groups could be judged would alleviate this intra-loyalist 'competition'.

Notwithstanding that 'design fault' within the Fresh Start process, it is important to note to loyalist organisations do not get the credit deserved for the manner in which the respective groups have been held together in a cohesive manner. There are no dissident loyalists, and that is to the credit of the loyalist leadership which has moved at a pace which has for the most part brought all its constituent parts on the journey. Whilst there may be many legitimate differences of political opinion, loyalism is united on the core issue of believing that violence must remain firmly in the past and activism must now be carried out by purely peaceful means.

The IRC, to their credit, sought to avoid the 'good loyalists' and 'bad loyalists' narrative by on this occasion deciding to provide a holistic overview of

paramilitarism in general (loyalist and republican) without specifying any groups corporately, let alone offering an analysis of different factions within the various groups. This welcome approach- which self-evidently is designed to restore some balance to a skewed public debate- stands in contrast to the PCTF practice of regularly specifying groups as being responsible for various crime, very often without any supporting evidence or credible intelligence.

One downside to this approach is however the reality that it again allows the IRA to evade scrutiny for the covert, but significant, financial and other crime undertaken under the banner of its 'movement'.

Notwithstanding that, in a similar vein to the careful approach of the IRC, which seeks to reflect nuances and complex issues, the PCTF need to work from an objective standard and methodology, rather than simply being driven by (often malicious) political whims, or worse by Sunday tabloid reporting, in terms of identifying 'priority targets'.

A 'more considered debate'

In Section A2 paragraph 1.53 the IRC recognise that there has been a "more considered debate" on the issue of paramilitarism, including within the media. This, it seems, is a nod to the difficult debates which have taken place on mainstream media platforms, allowing for different analysis of the situation beyond the simplistic demand that paramilitaries 'go away'. It seems paragraph 1.53 is a deliberate repudiation of those, such as large sections of the BBC establishment, which would seek to *de-platform* 'unhelpful' voices.

In order for a more considered debate to gain traction, it is necessary for opportunities to be presented for different analysis to be subjected to public scrutiny and debate, rather than a consensus 'professional peace processing' analysis, which is often exclusionary of the majority of those within loyalist organisations or grassroots communities.

Loyalist organisations must be afforded the opportunity to provide a rationale and considered analysis of what transition means for those organisations, and how they envisage it is to be achieved. More importantly, there must be a serious engagement from all sections of society- including statutory agencies- as to what transition actually looks like. We must move beyond the buzz words and the simplistic answers to complex questions. These answers act more as a hindrance to achieving real and meaningful change because ultimately such linguistic phraseology, whilst morally appealing, is devoid of any real substance.

IRC Recommendations

Memorialisation

The IRC report recommends, it appears to society in general, that memorialisation (which would encompass murals, commemorations etc.) should be undertaken in a sensitive and appropriate manner. This recommendation whilst on a *prima facie* basis is sensible, does not provide any objective standard by which this is to be judged.

What is sensitive and appropriate for one community, may be wholly inappropriate and deliberately provocative in the eyes of another community. Given the contested nature of the future and present, let alone the past, it is clearly difficult to envisage a situation whereby memorialisation- on any side of the 'conflict' divide- commands cross-community support.

It is important to note that there is a grave imbalance in terms of how loyalist memorialisation and republican memorialisation is viewed by civic society, statutory agencies and the media. As explored briefly in a recent report ³, there is a disparity in how loyalists are demonised meanwhile republicans are legitimised. The fact that Sinn Fein, as part of the Government of Northern Ireland, continues to glorify the actions of the IRA and is permitted to do so by large sections of the media and civic society, contrasts with the reality that loyalists are not afforded the same latitude.

³ Loyalism and the Media report [2020]

This feeds into a constant frustration and resentment at the one-sided nature of the political process.

Linking the Twin Tracks

As identified by this analysis, the Twin Tracks are not complimentary. The IRC recommendation appears to acknowledge this and recommends “sustained, long term investments” within communities. This in essence is the means by which to empower communities generally, and loyalists in transition, to build capacity and self-reliant advocacy skills. Often investment into loyalist communities is targeted at ‘peace building and reconciliation’. Whilst this appears to be a noble objective, it achieves little. Indeed, often the manner by which investment comes into loyalist communities acts as a barrier preventing greater capacity building and empowerment. Whilst an educational cross community trip to Derry’s Walls or the Boyne is indeed worthwhile in some respects, it does nothing to enhance community capacity. Holding workshops discussing reconciliation, which more often than not are simply an echo chamber for those who have made a career out of the ‘peace process’, again is a noble pursuit and indeed is, in some respects, worthwhile. However, it again adds nothing in terms of building community capacity.

Investment must be targeted to provide pathways into professional careers for those from working class loyalist communities. Programs must focus on providing opportunities for young loyalists to embark on an educational journey to become legal professionals, journalists or active members of civic society. The young loyalist community must also be equipped with the educational tools to enable the next generation to be sufficiently academically capable to obtain posts at senior levels within the civil service, on Commissions, boards or within high ranks of other statutory agencies. The establishment, in the post Belfast Agreement decades, has been consistently weighted against the loyalist community which has contributed to increasing resentment and isolation. Providing a pathway for paramilitary transition must have a component of offering the mechanism for communities from which

paramilitary groups spring to feel they have an important role to play in the governance of the country, and indeed within the professional class.

It would be helpful if the IRC would undertake to explore means by which young loyalists could specifically be provided opportunities to engage with the law.

Developing a culture of lawfulness is a nice phrase, but in order to be effective there must be a means whereby those disengaged from the law, or currently involved in politically motivated illegality (such as membership of a proscribed organisation)⁴, can understand the law and be able to use it in order to advance political objectives using the law rather than any other weapon.

Real transition must be about offering those who are involved in paramilitary groups based on political convictions with the means of pursuing their objectives via lawful means. There is nothing wrong with weaponising the law; indeed, it may be said that the purest route to transition and a culture of lawfulness is empowering communities to use the law as their weapon. That is the true essence of transition; from warfare to lawfare.

It would further be prudent for the IRC to place focus on engagement with the media (especially Sunday tabloids), not only to encourage a more nuanced understanding of loyalist communities, but to seek to develop pathways for loyalism to positively engage with the media and furthermore to develop this by encouraging young loyalists to pursue journalism as a career, and to make the opportunities available.

That request to assist loyalism with professional pathways presents a challenge to statutory agencies and Government when it comes to loyalism. If the objective is genuinely about empowerment, capacity building and community transition, then the core focus must be on providing the pathways to obtaining the tools for communities to pursue political or social objectives via lawful means.

⁴ Membership of a paramilitary organisation is an offence under the provisions of the Terrorism Act.

A loyalism that is vibrant, empowered and using the law, journalism or politics to advance political objectives is an impediment to the trajectory of the Belfast Agreement, which is designed to incrementally empower nationalism and disempower unionism/loyalism. It is beyond the scope of this short analysis document, but there needs to be a genuine public debate about whether there is structural design- deeply embedded with the institutions and organs born out of the Belfast Agreement- to dehumanise and de-legitimise the loyalist community.

In terms of building broad community capacity, it must also go beyond pathways into professional vocations and provide other opportunities to upskill in trades or the relevant educational areas required for obtaining sustainable long-term employment.

Furthermore linking the 'twin-tracks' faces the difficult task of bringing together two different directions of travel (criminalisation and legitimisation) under the umbrella of one objective standard when it comes to deciding which track any particular group finds itself. The potential in this is that criminalisation will be more incisive and targeted, rather than (as if often currently the case) being subjective and arbitrary.

The danger however is that by effectively sub-contracting policing decisions out to factor in non-policing and largely political considerations, the operational independence of policing is upended. This is not only constitutionally dangerous in regards the separation of powers but is also dangerous in that it could permit even more arbitrary criminalisation for political purpose.

There must be careful consideration as to how 'linkage' between the two-tracks is structured. No easy answer exists, and that makes it even more crucial for there to be a considered public debate around this complex issue, factoring in all views and opinions.

Review of Governance to ensure political ownership

The IRC recommends, in essence, more political engagement in the process. This is beneficial in so far as often working-class loyalist communities are politically disengaged, but also presents dangers in that a process of community empowerment, transition and capacity building becomes political. Whilst those aforementioned outcomes (empowerment etc.) may ultimately be put to political use, it is nevertheless important that transition and empowerment opportunities are provided equally to all, regardless of whether such tools may be politically inconvenient for the system when placed in the hands of any specific community.

Women and Peace building

The IRC reiterates their commitment to the role of women. Within loyalism there has been a problem whereby talented women who have stepped forward into public discourse have been subjected to vile torrents of abuse, designed to discourage such persons from continuing to engage. Had such tactics been deployed against a female from the nationalist community, there would have quite rightly been outraged. It appears however that it is 'acceptable' (in the minds of the establish and even some in civic society) to troll, abuse and vilify loyalist women, in keeping with the overarching dehumanisation of loyalism in general.

In 2019 a new online platform Her Loyal Voice⁵ was formed by a group of loyalist women. It was designed to platform various female loyalist voices and to some extent provide a support network for females politically active within the loyalist community. This excellent project has attracted positive commentary from a wide-range of persons and the IRC should look at this community-based voluntary project as a model of self-empowerment.

⁵ www.HerLoyalVoice.com

Civil Recovery of Criminal Assets

The IRC recommends a Northern Ireland agency for the civil recovery of the proceeds of crime. Notwithstanding the public interest in recovering criminal assets, there is clearly a danger that any such agency would be open to political bias and interference for political purposes. In the absence of an objective standard for the twin-track legitimisation and criminalisation strategy, there is plainly an obvious risk that any such agency would be tainted by the subjective whims of the institutions.

The Assets Recovery Agency, which was headed by former PSNI ACC Alan McQuillan was actively impeded when it came to targeting IRA assets due to political considerations⁶. It was at the time of operation necessary to politically empower republicans, therefore the criminal justice system- and Assets Recovery Agency- was deployed in a manner that 'overlooked' republican crime. There was no such political necessity to empower loyalism, rather the political convenience necessitated that loyalism would be dehumanised and criminalised and as such the Assets Recovery Agency was disproportionately targeted at the loyalist community.

There are already significant draconian powers in the form of NCA Civil Recovery tools and the wider Proceeds of Crime Act, which are all- to some degree- subject to stringent judicial scrutiny. These weapons in the criminal justice armoury- via the work of the PCTF- is perceived to have been disproportionately deployed against the loyalist community. Despite multi-million-pound networks of white-collar crime and money laundering, the NCA or wider PCTF has not deployed a solitary civil recovery or money laundering investigation into any individual associated with PIRA. It is not difficult to understand how loyalism- quite legitimately- sees that it is one law for republicans, and quite another for everyone else.

It is imperative that the PCTF engages publicly in explaining the rationale for their operational decisions. In general terms, there must be an objective standard- driven

⁶ <https://www.newsletter.co.uk/news/probes-ira-assets-were-blocked-peace-process-1271034>

by policing rather than political issues- in how the PCTF direct resources. Given there is either no such standard, or it is misunderstood due to the lack of public debate around how any applicable standard is applied, it feeds the perception that it is often arbitrary and driven by what should be (from a policing point of view) irrelevant considerations.

A Transition for Paramilitary groups

This recommendation has been addressed extensively within the substantive body of this analysis. The IRC are going somewhat further than in recent reports in actively encouraging engagement and public discourse as to developing a transition process. Whilst this will be met with fury by some, it is nevertheless a necessary discussion to initiate.

Conclusion

The IRC report adopts a different approach in many nuanced ways in comparison to that traditionally deployed by political, statutory and Government bodies. The report seeks to begin a more difficult conversation which goes beyond the morally appealing phraseology and seeks to drill down into developing a process of substance.

It seems that the vehicle for the development of an all-encompassing transition process will be, at least initially, the paper to be presented by the Department of Justice ('DoJ'). It would, especially in light of the IRC report, be prudent for the DoJ to hold a public consultation, allowing for a wide range of contributions, and also to put specific focus on engaging with international experts in post-conflict transformation and re-integration of former armed groups into society.

The PSNI, via the PCTF, must pay more attention to their own mantra of 'we can't arrest our way out of paramilitarism'. Following this to its logical conclusion then at some point the PCTF will need to genuinely engage with the notion that applying broad brush attribution of crime to specific organisations, or sections thereof, is counter productive in so far as it- as discussed earlier in this paper as to 'structures'-

criminalises the entire socially cohesive structure which sits under that groups banner. This impedes transition and dehumanises entire socially cohesive groups of persons, many of whom who are- or were- affiliated to paramilitary groups for ideological reasons and who are not involved in any crime. It is notable that not once since its inception has the PCTF ever attributed any crime to PIRA, despite the plethora of white-collar crime carried out by those under the banner of that organisation, or their wider political movement.

If any individual, or collection of individuals, are involved in crime then such persons should face the full rigour of the law. No one within any section of loyalism has ever argued otherwise. However, such individuals must be dealt with via the criminal justice system based on any alleged crime *they* have committed; those individuals commit crime as an individual. When it comes to crime it should be viewed through the prism of *individual responsibility*.

The IRC report requires careful consideration by all of society. It presents opportunity for a new direction of travel, but firstly there must be a willingness on the part of the Government, statutory agencies and PSNI to explore alternative pathways for delivering the transition of former armed groups.

Loyalism, unlike the IRA, did not have the same opportunities and assistance provided post-1998. Due to the manner the Belfast Agreement was sold, the bulk of the loyalist community became *de-politicised* given that the agreement was presented as being a settlement. In short, the message to the loyalist community was that the conflict was over and therefore politics could now be left to politicians.

Meanwhile the agreement to the nationalist community was sold as the start of a 'process', the advancement of which required the continuation of conflict via political and community activism. As such the nationalist community was politicised and energised.

This is the root of the isolation, resentment and disengagement within the working class loyalist community at the present time. The design of post-98 Northern Ireland

was deliberately created to ensure that outcome; therefore, loyalism has a lost generation of politically motivated activists. All this factors into the wider socio-economic issues which underpins paramilitarism.

Loyalist organisations were as politically motivated as the IRA, yet as addressed often throughout this discussion paper are viewed through a purely criminal lens by the media and civic society. This is in the opinion of many driven by deliberate design and until those structural inequalities are addressed, there will also be a resentment and isolation bubbling below the surface.

All of these complex issues need discussed, debated and addressed. Loyalist voices, from right across the spectrum, must be heard. The loyalist community is a mixed bag of views and opinions; however every constituent part must have the opportunity to have their voice heard and considered.

It is too often the post-98 practice, especially by 'establishment' sections of the media and civic society, to dismiss, de-platform and dehumanise 'unhelpful' loyalist voices (those who do not aid the progress of the 'process' - which by necessity requires acceptance of a self-defeating trajectory for loyalism/unionism).

There should never be a need to suppress any voice or viewpoint- and in any event that is not the role of the media in a democracy- because all views should be tested in the fires of public scrutiny. It is time loyalist voices were heard; it is it time loyalism stopped accepting the suppression of loyalist identity; *if the establishment can't hear us, we must collectively shout a little louder.*

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