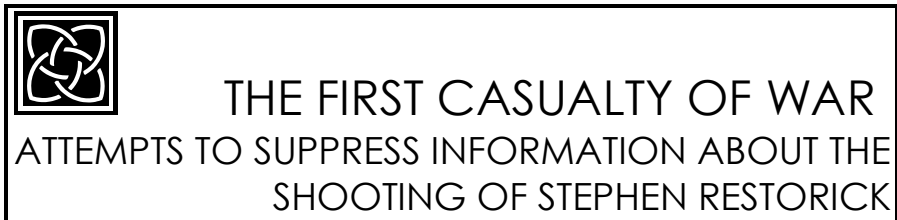




SUBMISSION TO THE UNITED NATIONS SPECIAL RAPPOREUR
ON FREEDOM OF EXPRESSION AND OPINION



 AUGUST 2004 

1. British Irish RIGHTS WATCH is an independent non-governmental organisation that monitors the human rights dimension of the conflict and the peace process in Northern Ireland. Our services are available to anyone whose human rights have been affected by the conflict, regardless of religious, political or community affiliations, and we take no position on the eventual constitutional outcome of the peace process.
2. This report to the United Nations' Special Rapporteur on Freedom of Expression and Opinion concerns the attempts by the United Kingdom Ministry of Defence to suppress information concerning the murder of a soldier, Stephen Restorick, in Northern Ireland. In its attempts to prevent this information from becoming public, the Ministry of Defence has sought, and obtained from the High Court, draconian injunctions silencing a former member of the army. It has also sought undertakings from Times Newspapers, who published the former soldier's information, and threatened them with legal action.
3. Lance Bombardier Stephen Restorick was a member of the 3rd Regiment of the Royal Horse Artillery. He was shot dead on 12th February 1997 whilst on duty at a permanent vehicle checkpoint outside the army barracks at Bessbrook, County Armagh in Northern Ireland.¹ Stephen Restorick was the last soldier to die so far in the Northern Ireland conflict. He was twenty three years old. The South Armagh Brigade of the Irish Republican Army (IRA) claimed responsibility for his murder². In March 1999 an IRA member, Bernard McGinn, was convicted of the murder and jailed for life³, but was released after 16 months under the terms of the Northern Ireland peace agreement, which allowed for the early release of paramilitary prisoners⁴. Bernard McGinn was later acquitted of the murder because he had not been properly cautioned by the police⁵.
4. On 20th June 2004, Tony Geraghty and Liam Clarke published an article in *The Sunday Times* suggesting that Stephen Restorick's death could have been prevented. They alleged that Bernard McGinn was not the actual sniper who killed Stephen Restorick, but had been "riding shotgun" to protect the gunman. He was carrying an AK 47 weapon which had been tampered with by the security forces. The gun carried a tracking device which transmitted the details of the IRA gang's whereabouts. There was another device attached to the gang's 626 Mazda hatchback car, from which the shot was fired. According to the article, the gang had been under surveillance for 6 months in an operation commanded by the Tasking Co-ordination Group (TCG), led by the RUC's Special Branch⁶, and the security forces may have had an

1 *Soldier murdered in Bessbrook*, RUC [police] press release, 14 February 1997

2 *South Armagh Brigade claims sniper attack*, *Republican News*, 27 February 1997

3 *IRA killer laughs at sentence*, BBC Internet News, 19 March 1999

4 *Crime and Punishment: Restorick mother is denied compensation*, by John Steele, *Belfast Telegraph*, 11 August 2000

5 *Court order against ex-soldier*, BBC Internet News, 26 July 2004

6 The intelligence wing of the Northern Ireland police, the Royal Ulster

informer within the IRA group. The surveillance team were monitoring the IRA from inside Bessbrook Barracks. The team went on standby, ready to intercept the IRA, but were ordered by the TCG to stand down. The TCG told them that the IRA were "just on an admin run". In other words, they were not about to attack anyone and were, perhaps, just moving a weapon. About 40 minutes later, the surveillance team heard the shot that killed Stephen Restorick. Later, the army's 14th Intelligence Security Company Northern Ireland, who had been carrying out the surveillance, asked the TCG for an explanation of what had gone wrong. Army and RUC TCG representatives told them, "You must expect casualties on jobs like this," and, "We didn't know they were going to do a shoot."⁷

5. The source cited for this information was a former soldier whose pseudonym is "Tony Buchanan". He was described as a special forces soldier who had worked undercover in Northern Ireland for nine years. During that time he was attached to the 14th Intelligence Security Company Northern Ireland⁸. Tony Buchanan had left Northern Ireland by the time of the shooting, but as an army instructor he was still in contact with his colleagues there⁹. He now works as a security adviser in Iraq¹⁰.
6. Following the publication of these articles, the Ministry of Defence applied to the High Court for injunctions restraining Tony Buchanan from making any further disclosures. The Ministry of Defence (MoD) first appeared before Mr Justice Astill of the High Court on 7th July 2004. The hearing was held in private, in the absence of Tony Buchanan or his lawyers, and no record was taken of the proceedings other than a full note taken by the MoD's solicitors. Not only was Tony Buchanan restrained from disclosing, without the express written permission of the MoD, any further information derived from his position as a member of the United Kingdom Special Forces Group to anyone other than his lawyers, but he was also restrained from disclosing the MoD's notes of the hearing and many of the documents relating to the proceedings. The judge also ordered that the Chief of Staff in the headquarters of the Directorate of Special Forces should be known only as MH; the second-in-command of Tony Buchanan's former unit should be known as Soldier F; and the Regimental Sergeant Major of his former unit should be known as Soldier G. These interim orders were extended "until trial or further order" by the same judge at a further secret hearing on 14th July of which Tony Buchanan was not informed. He was also given seven days to deliver to the MoD all relevant papers in his possession and ordered to

Constabulary

⁷ *Last British soldier murdered by IRA 'sacrificed' for spy*, by Tony Geraghty and Liam Clarke, *The Sunday Times*, 20 June 2004

⁸ *Soldier 'sacrificed' for IRA informer*, by Tony Geraghty and Liam Clarke, *The Sunday Times*, 20 June 2004

⁹ *Last British soldier murdered by IRA 'sacrificed' for spy*, by Tony Geraghty and Liam Clarke, *The Sunday Times*, 20 June 2004

¹⁰ *MoD gags agent over murder of soldier*, by Tony Geraghty and Liam Clarke, *The Sunday Times*, 25 July 2004

destroy any copies he stored electronically. He was further ordered to swear an affidavit giving the names and addresses of "all persons who have at any time collaborated with or assisted him" in connection with the *Sunday Times* articles.

7. On 21st July 2004, Tony Buchanan was called to the British Consulate in Baghdad's green zone and served with the injunctions made against him and a claim for £15,000.¹¹
8. On 22nd July 2004 the Treasury Solicitors, acting for the MoD, wrote to Times Newspapers, enclosing a copy of the injunction of 14th July. They asked for written confirmation that Times Newspapers "will not knowingly procure, induce or assist" breaches of security undertakings signed by members of the United Kingdom Security Forces. They also demanded that no relevant document was destroyed. They pointed out that there must be "prior reference to MOD so that express prior authority in writing can be properly determined before any disclosure or statement is made". It seems unlikely that the allegations concerning the death of Stephen Restorick would have seen the light of day had *The Sunday Times* been bound by such stipulations at the time of publication of the articles.
9. On 25th July, *The Sunday Times* published another article by Tony Geraghty and Liam Clarke, reporting extensively on the attempts to gag Tony Buchanan. They also reported on an exchange with the Defence Advisory Committee, as follows:

"Details of The Sunday Times story in which Buchanan talked about Restorick's murder had been checked with the defence advisory committee, an official body set up to advise journalists on issues of national security. The defence ministry used the advisory committee to request one change, which this newspaper agreed to.

Last night Rear Admiral Nicholas Wilkinson, secretary of the committee, said the injunction obtained by the defence ministry had relied on secrecy clauses in the contracts signed by members of the special forces and not on any argument about national security.

'I do not believe that there was any danger to national security in the article,' he said.

'It is hardly a matter for the Official Secrets Act because these things aren't secret. What they are doing is trying to frighten people who have signed a contract and trying to frighten newspapers into not dealing with them.'¹²

10. Rita Restorick, Stephen's mother, has become a high-profile campaigner for peace in Northern Ireland since her son's death, and has also

¹¹ Ibid

¹² Ibid

campaigned for recognition, in the form of a special medal, for members of the armed forces killed in Northern Ireland. When she heard of *The Sunday Times'* allegations, she complained to the Police Ombudsman for Northern Ireland, who deals with complaints against the police¹³. The Police Ombudsman can only deal with police misconduct, but since the TCG had control of the surveillance operation, this death comes within her remit.

11. It would appear that the injunction prevents the Police Ombudsman from seeing a number of relevant documents. She is also unable to interview Tony Buchanan himself, MH, Soldier F or Soldier G. Her office has been reported as saying that they will be seeking clarification and if necessary would seek to have the order amended to enable them to investigate¹⁴.
12. Rita Restorick would have liked to complain to her Member of Parliament, Geoff Hoon, but he is the Minister of Defence¹⁵. Patrick Mercer MP, who is the Opposition spokesman on homeland security, has put down three parliamentary questions asking for the following information:
 - a) what advice the TCG gave to the security forces before the shooting¹⁶;
 - b) what measures were taken once it became known that an IRA operation was likely¹⁷; and
 - c) what prior intelligence the RUC had about IRA operations in the Bessbrook area¹⁸.

The MoD's response was:

"The Police Ombudsman has agreed to investigate the issues surrounding the allegations, therefore, it would be inappropriate for me to comment further."¹⁹

13. If it is true that the murder of Stephen Restorick might have been avoided, that is a matter of public importance which ought to be investigated so that such an event is never allowed to happen again. If his life was indeed sacrificed in order to prevent the exposure of an informer within an IRA sniper team, which claimed other lives²⁰ apart from that of Stephen Restorick, then questions arise about the handling of intelligence and the trade-off of lives for information. The pressure

¹³ *Probe into 'sacrifice' of British soldier*, by Liam Clarke and Tony Geraghty, *The Sunday Times*, 11 July 2004

¹⁴ *MoD gags agent over murder of soldier*, by Tony Geraghty and Liam Clarke, *The Sunday Times*, 25 July 2004; *Mum slams Restorick 'gagging'*, by Jonathan McCambridge, *Belfast Telegraph*, 26 July 2004

¹⁵ *In focus: reliving the agony after learning that their son's death 'could have been avoided'*, by Rachael Gordon, *Peterborough Today*, 27 July 2004

¹⁶ PQ 183674

¹⁷ PQ 183675

¹⁸ PQ 183676

¹⁹ *Hansard*, col 197W, 20 July 2004

²⁰ According to *Bandit Country*, by Toby Harnden, Hodder & Stoughton, 1999, p. 306, nine members of the security forces were killed by the sniper team

brought to bear on *The Sunday Times* makes it difficult for them to probe further into Stephen Restorick's death or into other accusations of wrongdoing by the UK's special forces.

14. The Special Rapporteur on Freedom of Expression and Opinion is respectfully requested to transmit our report to the United Kingdom government and to query whether the taking out of such draconian injunctions is the most appropriate response to media reports such as these. We end our report by quoting Stephen Restorick's brother, Mark, who is reported as having said:

"I don't want anybody to be nailed to the wall. We just want someone to put their hands up and say, 'yes, there was a mistake made'. We just want to know the truth."²¹

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²¹ *Shot Stephen – truth plea, This is Nottingham, 27 July 2004*