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GELYK EN INTIMIDASIE

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Subject : REPORT

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**COMMISSION OF INQUIRY REGARDING
THE PREVENTION OF PUBLIC VIOLENCE
AND INTIMIDATION**

REPORT ON THE INQUIRY INTO THE EVENTS AT THE
WORLD TRADE CENTRE ON 25 JUNE 1993.

THE STATE PRESIDENT

THE COMMISSION OF INQUIRY REGARDING THE PREVENTION OF PUBLIC VIOLENCE
AND INTIMIDATION HAS THE HONOUR TO PRESENT ITS REPORT ON THE INQUIRY
INTO THE EVENTS AT THE WORLD TRADE CENTRE ON 25 JUNE 1993.



R J GOLDSTONE
CHAIRMAN OF THE COMMISSION

PRETORIA
13 JULY 1993

1. On 25 June 1993, the State President, in terms of section 7(1)(b) of the Prevention of Public Violence and Intimidation Act, 139 of 1991, referred to the Commission, for inquiry, the events which occurred at the World Trade Centre in Kempton Park on that day. Pursuant thereto, on 7 and 8 July 1993, the Commission held a preliminary inquiry into the events. As stated in a press release on 28 June 1993, the terms of reference of the inquiry were the following:

- 1.1 The planning and organisation of the public gathering and demonstration which took place at the World Trade Centre and the persons and organisations responsible therefor;
- 1.2 The terms in which permission for the demonstration was sought from and granted by the South African Police and local authority;
- 1.3 The respects in which the terms referred to in 1.2 were transgressed and the persons and organisations responsible therefor;
- 1.4 The events which occurred inside the World Trade Centre;
- 1.5 The response by the South African Police to the planned demonstration and the events which occurred at the World Trade Centre;
- 1.6 Recommendations which the Commission should make on the steps to be taken in order to avert a recurrence of such acts of public violence and intimidation as may have taken place.

2. The following parties and organisations were represented at the inquiry:

- 2.1 The South African Police (SAP);
- 2.2 The South African Defence Force (SADF);
- 2.3 The African National Congress (ANC);
- 2.4 The Inkatha Freedom Party and the Kwazulu Government;
- 2.5 The Afrikaner Volksfront (AVF);
- 2.6 The Administration of the Multi-Party Negotiating Process;
- 2.7 The Multi-Party Security Force at the World Trade Centre;
- 2.8 The City Council of Kempton Park.

3. The SAP placed before the Commission full and helpful written and oral submissions on the events in question.

4. The AVF also put in a written submission which was supplemented by an oral submission by its attorney, Dr A Van Wyk, who also made submissions on behalf of Dr F Hartzenberg, MP and General Constand Viljoen.

5. From the documentary and oral evidence placed before the Commission, the following facts are relevant:

5.1 The World Trade Centre has been the scene of many demonstrations by groups across the political spectrum;

5.2 At the World Trade Centre an impartial Multi-Party Security Force was established to protect all parties represented in the negotiating process. It is charged with maintaining the

security at the World Trade Centre and ensuring the safety of all persons within its premises. Security outside the World Trade Centre is the responsibility of the SAP.

- 5.3 In a letter dated 15 June 1993, the AVF, represented by its secretary, Colonel Piet Botha, applied to the City Council of Kempton Park for permission to hold a protest meeting (protesbyeenkoms) at the World Trade Centre. It was stated that:

"Die terrein binne die sekerheidsheining sal nie betree word nie behalwe ñ klein afvaardiging van ongeveer vyf persone vir wie daar aansoek gedoen word om ñ protesskrif binne-in die Sentrum te gaan oorhandig".

In the accompanying form of the local authority, the AVF furnished the following information, *inter alia*:

- 5.3.1 The meeting would last from 06:00 to 12:00;
- 5.3.2 The organisers were Dr F Hartzenberg, MP, General Constand Viljoen, General Tienie Groenewald, Colonel Piet Botha and others;
- 5.3.3 The meeting would take place in Jones Street;
- 5.3.4 Cars would be parked in the surrounding area and participants would move on foot to the meeting place;

5.3.5 There would be no procession;

5.3.6 Addresses would be delivered at the meeting, but all leaders would be requested to ensure that no unruly behaviour be allowed. Sufficient leaders would be appointed for purposes of control.

5.4 In response, the Kempton Park City Council granted permission for the AVF to hold its protest meeting subject to the following conditions:

5.4.1 The meeting would be held only on the road reserve of Jones Street to the east of the World Trade Centre;

5.4.2 The organisers of the meeting would be held liable for any damage whether caused to a member of the public or private property;

5.4.3 The free flow of traffic in Jones Street should not be hindered and entry to the World Trade Centre was to be kept open at all times for pedestrians and vehicular traffic;

5.4.4 No firearms were to be allowed at the meeting.

5.5 The Commission was informed by the SAP that the intelligence received by it was to the following effect:

"5.5.1 An attendance of not more than 5 000 people was expected;

- 5.5.2 There was no evidence of any planned or organised violence, but because of the nature of the protest and those involved, it was anticipated that feelings would run high;
- 5.5.3 Although members who were attending the demonstration were requested to bring hand weapons, it was emphasised that all statutory requirements should be met in relation to the carrying of firearms;
- 5.5.4 In some quarters it was anticipated that tear smoke would be used by the SAP and, if this did occur, preventative action should be taken by the demonstrators but, this notwithstanding, members and demonstrators were asked to act in a disciplined fashion.

(our underlining), and by this it was understood that this demonstration would be "peaceful, but any demonstrations which thereafter followed might not be peaceful".

5.6 From an affidavit of Hermanus Frederick Vercuiel it appears that on 8 June 1993 he was appointed by the Executive Committee of the AVF to arrange the protest meeting at the World Trade Centre on 25 June 1993.

5.7 On 22 June 1993 a meeting took place between the AVF, the SAP, the SADF and the Kempton Park Traffic Department. The AVF was represented by Vercuiel, Colonel Botha, Commandant Steyn and Mr Venter. The SAP was represented by Colonel Olivier, Major Richter, Major Nel and Captain Palmer. There were two members present from each of the Kempton Park Traffic Department and the SADF. Also present was Captain Van Eck, the head of the Multi-Party Security Force. It was agreed that:

5.7.1 The participants would park their cars on a rugby field of the South African Airways which is the vicinity of the World Trade Centre;

5.7.2 The participants would hand over their firearms for safe keeping at a mobile police station (two caravans) in the vicinity of the World Trade Centre;

5.7.3 Officials of the AVF would actively assist in ensuring that the participants in possession of firearms would hand them over to the SAP.

- 5.8. During the course of a telephone conversation on 23 June 1993, it appeared that it was not practical for all the firearms to be handed in at mobile police stations. According to the SAP it was agreed that weapons would be left by the participants in their motor vehicle which would be kept under constant surveillance by members of the SAP.
- 5.9 It had previously been agreed between General Constand Viljoen and General J van der Merwe, the Commissioner of Police, that bodyguards of AVF leaders, clearly identified by armbands, would be in open possession of firearms.
- 5.10 According to the statement of Vercuiel, it was agreed with the SAP that no other participants would be allowed openly to carry firearms but they could do so if they were concealed.
- 5.11 According to the SAP it was never agreed that participants would be allowed to carry concealed firearms. It was reiterated and again agreed at a meeting held on 24 June 1993 that, apart from twelve clearly identifiable bodyguards, no participant would be in possession of a firearm. At that meeting the SAP was represented by Major-General Oberholzer, Brigadier Haasbroek and Colonel Olivier. The AVF was represented by Messrs Botha and Pretorius.
- 5.12 We will assume in favour of the AVF that there may have been a measure of confusion concerning the concealed carrying of weapons by participants. In a statement made on 5 July 1993 by Colonel Botha in his own handwriting, one reads the following:

"Op oggend van 1993.06.05 het die leiers van die AVF waaronder Dr Hartzenberg, Generaal C Viljoen, Mnr E Terre'Blanche en etlike ander weer met verteenwoordigers van die SAP by die Holiday Inn Jan Smuts ontmoet. Beide kante het weer die reëlings soos voorheen ooreengekom bevestig insluitende die reëlings t.o.v. wapens. By hierdie geleentheid het Mnr Terre'Blanche daarteen beswaar aangeteken dat die mense hulle wapens moet inhandig. Generaal Oberholzer het weereens verduidelik dat die betrokke gebied as 'n onrus gebied verklaar is en dat die dra van wapens onwettig en dus op die verbreking van die Wet sou neerkom. Eksel self het verduidelik dat die Polisie nie elke persoon sou deursoek vir wapens nie en dat dit dus daarop neerkom dat persone hulle wapens nie openlik moet ten toonstel nie. Die indruk wat ek gekry het, was dat Mnr Terre'Blanche hom by so 'n reëling neergelê het want hy het aangebied om een van sy eie offisiere aan te stel om persone wat wapens openlik gedra het aan te sê om dit in hul voertuie toe te sluit of andersins by die SAP in te handig. Almal was daarvan skynbaar tevrede met die reëlings en nadat ooreengekom is oor die voorsiening van skakel offisiere tussen die SAP en die AVF het hierdie byeenkoms tot 'n einde geloop".

5.13 Whatever the precise terms of the agreement between the AVF and the SAP, it is clear beyond any doubt that:

5.13.1 It was an unambiguous condition of the local authority's permission for the meeting to be held that

there would be no firearms allowed at the meeting;

- 5.13.2 The leaders of the AVF, including Mr Terre'Blanche were aware that in terms of the law the carrying of arms in the area was unlawful (the area having previously been declared an "unrest area").
- 5.14 It is not in dispute that the AVF leaders gave solemn undertakings to the SAP that the gathering would be peaceful and that property would not be damaged.
- 5.15 On 24 June 1993 Vercueil was informed by some of the prospective participants that the area allocated for the meeting outside the gate of the World Trade Centre was too small. Adv T Langley, MP, a member of the Conservative Party's negotiating team at the Multi-Party Negotiations was approached by Vercueil and requested to seek permission for the meeting to be held on a grassed area inside the premises of the World Trade Centre. Until then such permission had been refused. Mr Langley was unsuccessful in obtaining such permission from the Planning Committee at the World Trade Centre.
- 5.16 On 24 June 1993 the Negotiating Council published "Revised Proposed Guidelines for Demonstrations". A copy is attached hereto as Annexure "A". It was handed to the SAP on 24 June 1993.
- 5.17 On the basis of its initial intelligence, the SAP decided to make available 200 policemen at the World Trade Centre.

- 5.18 However, by 23 June 1993 the SAP received information that as many as 10 000 to 15 000 people might attend the meeting. Although they believed this was an exaggerated figure the number of policemen was increased from 200 to 700. This appears from Annexure "E" of the SAP's written submission.
- 5.19 Following the meeting which was held at approximately 07:00 on 25 June 1993, and in the light of a belligerent attitude displayed by Mr Terre'Blanche, the SAP decided to engage Unit 19 of the Internal Stability Division. However, it only arrived at 11:00 after the incidents had taken place at the World Trade Centre.
- 5.20 That, then, is the information furnished to the Commission concerning the events prior to the protest meeting on the morning of 25 June 1993.

THE BREAK-IN

6. From about 08:00 participants began to arrive for the meeting outside the only gate of the World Trade Centre. A number of them wore AWB uniforms and logos. Many of the uniforms were of a camouflage design resembling those worn by members of the SAP.
7. Persons entering the World Trade Centre, including delegates and staff, were abused, harassed and jostled by AWB members. Members of the SAP in attendance were subjected to foul and unseemly abuse.
8. Because of the size of the crowd General Oberholzer requested a meeting with the Planning Committee of the Negotiating Council to

discuss the demonstrators' request that they be given access to a grassed area inside the premises. Whilst that meeting was in progress the demonstrators forcibly entered the grounds of the World Trade Centre. They were able to do so only because a motor vehicle occupied by AWB members followed a delegate's car through the gates and stopped in a position making it impossible for the gates to be closed.

9. The armoured vehicle referred to as a "Viper" entered through the gate accompanied by a human shield of demonstrators. The Viper had been observed at previous AWB meetings and its presence outside the World Trade Centre did not arouse suspicion on the part of the SAP.

10. Attempts by members of the SAP to stop the advance of the Viper towards the main building of the World Trade Centre were in vain. It came to a standstill in front of the building. Some policemen formed a line in front of the building in an attempt to prevent demonstrators from entering it.

11. Captain Engelbrecht attempted to prevent the Viper from entering the building. He was, however, assaulted by two members of the "Ystergarde" and sustained an injured rib and suffered internal bleeding. General Oberholzer who was in charge of the line formed by the SAP in front of the building, was also assaulted by a demonstrator. The Viper was then driven through a glass panel of the building. It was followed by hundreds of demonstrators including many uniformed and armed members of the AWB.

12. The events which followed were graphically seen in video films

and photographs shown on our television screens and printed in our newspapers in the days following 25 June 1993. It is unnecessary therefore to set out the detail of what occurred in this regard. Suffice it to say that:

- 12.1 A number of AWB members were armed openly with hand weapons and rifles;
- 12.2 Members of the AWB forced their way into the Negotiating Council Chamber and took possession of it;
- 12.3 Members of the AWB were abusive to delegates and members of the staff of the World Trade Centre. They committed assaults, were guilty of filthy verbal abuse and wantonly damaged property;
- 12.4 In short the AWB members conducted themselves as hooligans.
- 12.5 According to a preliminary estimate by the owner and lessor of the World Trade Centre the persons who seized the building also vandalised it and caused damage of over R700 000-00.

NEGOTIATIONS TO LEAVE THE BUILDING

13. Protracted negotiations were held between the AVF and two members of the Cabinet, Ministers R P Meyer and D De Villiers. It was agreed, *inter alia*, that:

- 13.1 No arrests would be made at the World Trade Centre that day; and

13.2 The AWB and AVF supporters would leave the premises.

These undertakings were carried out.

14. It is alleged by the AVF that it was also agreed that the events of the day would be investigated by a "Board of Inquiry" and not by this Commission. Whether that is so or not is not a matter which concerns this Commission. It has been appointed in terms of the provisions of the Prevention of Violence and Intimidation Act, 139 of 1991, and is obliged to hold this inquiry pursuant to the reference to it by the State President. However, quite apart from that reference, the conduct by those who stormed and seized the World Trade Centre clearly would constitute public violence and intimidation and falls directly within the terms of reference and mandate of the Commission. It was an incident which would in any event have formed the subject matter of an inquiry by the Commission.

15. The request from the AVF that the Commission should abandon its inquiry in the light of the alleged agreement with the Government to establish a "Board of Inquiry" is without any merit. What is meant by a "Board of Inquiry", what its powers would be, who would sit on it, were matters not raised. In the unlikely event that the Ministers or the Government would have agreed to such a strange procedure in no way would entitle this Commission to refuse to carry out its own duties.

THE RESPECTS IN WHICH THE PROTESTORS TRANSGRESSED THE CONDITIONS
IMPOSED BY THE LOCAL AUTHORITY AND COMMITTED CRIMINAL OFFENCES

16. The permission sought from the local authority, as already mentioned, was to hold a public meeting in Jones Street, in the vicinity of the gate of the World Trade Centre. That permission was granted on the terms set out above.

17. In blocking the entrance to the World Trade Centre, in breaking into the grounds thereof, in carrying firearms let alone openly displaying them, the protestors clearly violated the conditions imposed by the local authority.

18. Apart from these transgressions, the persons concerned also were guilty of public violence, assault with intent to do grievous bodily harm, criminal injuria, malicious damage to property and trespass.

19. The Commission welcomes the actions by the SAP in having some 60 persons arrested and charged. We would add only that any persons who encouraged such unlawful activity rendered himself or herself guilty of the same offences. They, too, should be charged appropriately.

20. As to the persons guilty of the transgressions of the conditions and of the criminal law, it is clear beyond dispute that the perpetrators were for the most part uniformed and armed members of the AWB.

21. The leaders of the AVF, and particularly Dr Hartzenberg and General Viljoen, claim ignorance of any plan to break into the World Trade Centre premises or building. They add, through their attorney, that the events were spontaneous and the result of the anger of their supporters at current political events and the refusal to allow them to hold their meeting on the grassed area inside the premises of the World Trade Centre.

22. We agree fully with the submission made on behalf of the SAP that the conduct of members of the AWB was anything but spontaneous. The manner in which they manoeuvred the Viper into the grounds and the sudden emergence of the (until then concealed) assortment of rifles and other firearms they had with them are quite inconsistent with a spontaneous event.

23. That the leaders of the AVF who are not members of the AWB were ignorant of the criminal intention by the members of the AWB is quite possible and there is no evidence to gainsay their version. In the absence of such evidence and the hearing of viva voce evidence we accept that Dr Hartzenberg, General Viljoen and the other non-AWB leaders of the AVF had no prior notice of the intended break-in and seizure of the World Trade Centre. The conduct, particularly of General Viljoen at the time as seen on the video films lends strong support for his denial. It is noticeable too that many supporters were prepared to heed his commands. Those who did not do so were predominantly clad in AWB uniforms.

THE RESPONSE BY THE SAP

24. Counsel for the SAP submitted that their client committed an error of judgment in accepting undertakings from the AVF that the protest meeting would be peaceful and that at the very least no arms would be visible save in the case of a handful of bodyguards.

25. In the view of the Commission, the SAP committed more than an error in judgment. The relevant facts known to the SAP indicated the following:

25.1 The AWB as a member of the AVF would fully participate in the events of 25 June 1993;

25.2 Members of the AWB had been involved over many months in acts of violence. In particular, during 1992, in Ventersdorp, serious violence erupted between the AWB and SAP when the former attempted forcibly to break up a meeting of the National Party;

25.3 As stated earlier (see 5.5 above) a source had intimated to the SAP that confrontation was inevitable and it was thought that there might be a recurrence of the events which occurred in Ventersdorp;

25.4 The AVF and in particular the AWB had made no secret of their strong opposition to the events which had unfolded at the World Trade Centre and particularly to the holding of a non-racial national election in April 1994.

- 25.5 At the meeting held at 07:00 on 25 June 1993, Mr Terre'Blanche made it clear that members of the AWB would carry firearms, albeit concealed;
- 25.6 At the World Trade Centre there would be assembled leaders of most of the political parties and organisations in South Africa;
- 25.7 Information had been received that 10 000 to 15 000 people might participate in the protest meeting. They were also made aware that leaders of the AVF considered the area allocated for the meeting was too small and that they were annoyed at the refusal to allow them to meet inside the premises of the World Trade Centre. This situation had been exacerbated by AVF participants parking many cars in the area where the meeting was to take place;
- 25.8 Relatively insignificant security was provided by the Multi-Party Security Force;
- 25.9 The AWB is avowedly and openly a racist organisation and some of the parties against whom they aim their racist attacks were represented at the highest level at the World Trade Centre;
- 25.10 The nationally and internationally publicised multi-party negotiations at the World Trade Centre was an obvious target of the AVF and especially its more militant members and supporters;

25.11 The World Trade Centre was physically a vulnerable target.

26. In the light of the foregoing, not to have had an unambiguous, strong and visible show of force, at least at the entrance gate to the World Trade Centre on the morning of 25 June 1993 can only be regarded as a dereliction of duty on the part of those officers of the SAP responsible for the absence thereof. One sees from the video films that the perpetrators met with no effective resistance at all. The fact that, according to the SAP, some 600 policemen were present at the relevant times, the manner in which they were deployed and commanded is a matter which requires to be fully investigated by the SAP. The fact is that they were completely ineffective.

27. Dr T Eloff, who controls the administration of the Multi-Party Negotiating Process, informed the Commission that as far as he could see no one was in clear command of the members of the SAP. If that was his impression it is likely that the same was that of the AWB. The SAP should also fully investigated this aspect of their deployment on 25 June 1993. The Commission has no doubt that the decision by the SAP not to use force inside the World Trade Centre building was a sensible one in the circumstances. Had force been used a bloodbath could well have ensued. No contrary submission was made at the hearing.

THE REFERENCE BY THE MULTI-PARTY NEGOTIATING COUNCIL

28. The Negotiating Council identified and referred to the Commission a number of issues for investigation. They are the following:

- 28.1 The factual details of the incident at the World Trade Centre on 25 June 1993;
- 28.2 The role of the SAP and other security forces before, during and after the event;
- 28.3 The intelligence information bearing on the incident available to the SAP and other security forces before the incident;
- 28.4 The role of the organisers of the AVF demonstration;
- 28.5 The involvement of any party participating in the negotiations, in the incident.

29. All of these issues referred to the Commission have been dealt with in this Report. If there is further information required by the Negotiating Council, the Commission and its staff will be happy to obtain and supply it.

30. We would add that the Commission takes full cognisance of the concern of all the persons and parties at the Multi-Party Negotiations at the incidents of 25 June 1993. They represent in the very fullest sense the future of this country and the symbolic effect of the attack and seizure of the World Trade Centre has the most serious political connotations. Every possible effort must be taken to ensure that there is no repetition of such conduct.

RECOMMENDATIONS

31. For well over a year the Commission has called for the complete prohibition of the display in public of all dangerous weapons. The Commission cannot but express its disappointment that the steps thus far taken in this direction are by no means sufficient.

32. Carrying, let alone the display, of firearms in public by members of the public is quite unacceptable in any decent society. This practice is becoming more and more common in the streets of our towns and cities.

33. The Commission agrees, therefore, with the submission on behalf of the SAP that the penalties for the unauthorised carrying and displaying of dangerous weapons, including firearms, at public demonstrations should be substantially increased. In making a recommendation that penalties be increased, the Commission wishes to state that it is unanimously opposed to the provision of minimum sentences. That route was tried in the not too-distant past in respect of other offences and was an abysmal failure and abandoned. The discretion for the imposition of appropriate sentences should be left with the courts.

34. The Commission also agrees with the submission by the SAP that the provision in Government Notice 13801 of 28 February 1992,

exempting bona fide bodyguards at political meetings and political gatherings is too vague. The Commission agrees, too, that the exemption should be deleted in toto. A new provision should be considered in which necessary bodyguards would have to be agreed upon by an appropriate authority and the names, addresses and firearm details registered.

35. There was some debate concerning the wearing of uniforms at public gatherings and especially uniforms resembling those worn by the SAP. Having given the matter due consideration, the Commission is of the view that it is in the interests of peace and democracy and especially relevant to counter intimidation, that the wearing of any para-military uniforms at public political meetings be outlawed. The Commission does not believe that such a prohibition in any way infringes upon the right of assembly or free speech. An interesting reference to the British provisions in this regard is attached hereto as Annexure "B".

36. There is no doubt that the wearing of disguises and especially balaclavas or other face coverings at a public gathering or meeting should not be allowed. The provisions of the Prohibition of Disguises Act, 16 of 1969 are too confined and the penalties provided are far too low. The Act requires detailed reconsideration.

37. As already announced by the Commission, the provisions of the Draft Bill Regulating Demonstrations are being reconsidered by the Commission. The experience of the events at the World Trade Centre will be taken into account in that reconsideration.

38. In view of the behaviour by members of the AWB, the Commission is of the view that no authority, whether the Security Forces, local authorities, or magistrates can, without more, rely upon assurances given to them by the leadership of that Organisation. In respect of gatherings at which members of the AWB are likely to be present adequate precautions should be taken, especially by the SAP, to protect members of the public. It is relevant in this regard that the AWB members paid no regard whatever to important undertakings given also on their behalf by the leaders of the AVF.

39. It was submitted on behalf of the AVF that the unlawful behaviour by the AWB could have been averted if the meeting had been allowed to take place on the grassed area inside the World Trade Centre premises. Having regard to the conduct by members of the AWB earlier that morning and the behaviour of AWB members on prior occasions, this submission is not only speculative but the converse is more probable. The decision by the Negotiating Council not to allow that meeting inside the perimeter fence of the World Trade Centre appears to the Commission to have been both sensible and reasonable. If the area outside the World Trade Centre was too small for the meeting, the AVF can blame no one but should see that it chose the venue and applied for permission to use it.

40. It is appropriate to draw attention to the fact that with very few exceptions the parties to the Interim Agreement on Mass Marches and Demonstrations have kept to the letter and spirit thereof. Those parties are the SAP, the ANC Alliance and the IFP. The Commission agrees with the submission by the JAF that other organisations should be encouraged to become parties to the agreement pending the promulgation of appropriate legislation.

SUMMARY OF RECOMMENDATIONS

41. The following are the recommendations made by the Commission:
- 41.1 The carrying or display of all dangerous weapons and especially firearms by any person who participates in a public meeting or demonstration should be made an offence and severe penalties should be provided for the contravention thereof. The appropriate penalty in any particular case should be left to the discretion of the courts;
- 41.2 Provision should be made, subject to strict control, for necessary bodyguards to be exempted from the prohibition referred to in 41.1;
- 41.3 The wearing at public gatherings or meetings of disguises or any form of face covering should be made an offence and severe penalties should be provided;
- 41.4 Public authorities and the SAP should not in future recruit its members by the AWR. Appropriate precautions should be taken in respect of all public gatherings and meetings at which such persons are likely to be present.

REVISED PROPOSED GUIDELINES FOR DEMONSTRATIONS

24 JUNE 1993

1. Background:

The Multi-Party Security Force at the World Trade Centre is an impartial force, aimed at the protection and safety of all parties represented in the Negotiating Process. It exists to assist in maintaining the security of the World Trade Centre and to ensure the safety of all persons within the premises. The South African Police are responsible for safety outside the premises of the World Trade Centre.

2. The Right to Demonstrate:

The Negotiating Council acknowledges the fundamental right of free speech and expression and therefore the right to demonstrate peacefully. The Negotiating Council therefore acknowledges the right of all individuals and groups to express their views with regard to the negotiating process. This is especially true because of the fact that the process should be open and transparent. For these reasons, the Negotiating Council does not support the prohibition or banning of demonstrations but is of the view that they should be managed in accordance with the guidelines set out below, and in consultation with all concerned.

3. Guidelines for Demonstrations:

In the light of the above, the Negotiating Council establishes the following guidelines:

- 3.1 All demonstrations should take place at the gates of the World Trade Centre. This arrangement is necessary because some demonstrations consist of large numbers and many vehicles/buses may be used and these can not safely be accommodated within the boundaries of the World Trade Centre. Furthermore, parking within the premises is reserved for all persons involved in the Negotiating Process.
- 3.2 Demonstrators should not block the free flow of traffic into the World Trade Centre grounds.
- 3.3 Demonstrators should not stone or damage buildings, vehicles or any other property in the vicinity of the World Trade Centre.
- 3.4 No weapons will be allowed either outside the gates or on the premises of the World Trade Centre.
- 3.5 The Multi-Party security would welcome dialogue between itself and heads of

demonstrations. Any reasonable request regarding facilities at the gate, will be considered with the view of making conditions at the gate as comfortable/hospitable as possible.

- 3.6 Multi-Party security should assist leaders of demonstrations in forwarding memoranda through Administration to the relevant people concerned. In this regard, parties whom the demonstrators want to meet, should be notified. If such a party does not want to meet the demonstrators, the memorandum should be received by the Head of Administration, who should ensure that the memorandum is subsequently handed to the relevant party.
- 3.7 By agreement of all the parties, delegations of demonstrators wishing to hand over a memorandum is restricted to three (3) persons who may enter the premises to hand over such a memorandum.
- 3.8 The relevant participants in the Negotiating Council will, when a demonstrating party is connected to such participant or when a substructure of such participant is demonstrating, assist the Administration in ensuring that these guidelines are adhered to and that peace and order is maintained.

ANNEXURE "B"

Civil Liberties: Cases and Materials

Third Edition

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in *Public Disorder* (1989); E. G. Dunning, et al., *The Social Roots of Football Hooliganism* (1987). The use of protest by the peace movement is described in J. Dewar, et al., (eds), *Nuclear Weapons, the Peace Movement and the Law* (1986), Part III and J. Hinton, *Protests and Visions: Peace Politics in Twentieth-Century Britain* (1989). For comparative perspectives, see J. Roach and J. Thomaneck (eds), *Police and Public Order in Europe* (1985) and J. Brewer, et al., *The Police, Public Order and the State* (1988).

3 Freedom of association

There are few legal limits on the freedom of people to associate together for political purposes. The criminal law of conspiracy only applies to agreements to commit a crime, to defraud or to do an act which tends to corrupt public morals or outrage public decency (Criminal Law Act 1977, Part 1; *Smith and Hogan*, pp. 256-287). Accordingly, the fact that people associate to perform certain acts will not render them criminally liable unless those acts would be illegal if performed by an individual, subject to the three limited exceptions stated. The tort of conspiracy is committed where two or more people agree to do an unlawful act, or to do a lawful act by unlawful means, or to perform acts other than for their own legitimate benefit, with the object of inflicting damage on a third party (*Clerk and Lindsell on Torts*, 16th edn, paras 15.21-15.26); *Hubbard v Pitt* [1976] QB 142, CA, below, p. 162; *Lonrho Ltd v Shell Petroleum Co Ltd (No 2)* [1982] AC 173. The tort of conspiracy is thus now appreciably wider in scope than the crime, although it is necessary in tort for the plaintiff to prove that he has suffered damage.

The following section illustrates some statutory limitations on freedom of association in the public order context.

Public Order Act 1936

An Act to prohibit the wearing of uniforms in connection with political objects and the maintenance by private persons of associations of military or similar character; and to make further provision for the preservation of public order on the occasion of public processions and meetings and in public places.

1. Prohibition of uniforms in connection with political objects

(1) Subject as hereinafter provided, any person who in any public place or at any public meeting wears uniform signifying his association with any political organisation or with the promotion of any political object shall be guilty of an offence:

Provided that, if the chief officer of police is satisfied that the wearing of any such uniform as aforesaid on any ceremonial, anniversary, or other special occasion will not be likely to involve risk of public disorder, he may, with the consent of a Secretary of State, by order permit the wearing of such uniform on that occasion either absolutely or subject to such conditions as may be specified in the order.

(2) Where any person is charged before any court with an offence under this section, no further proceedings in respect thereof shall be taken against him without the consent of the Attorney-General (except such as are authorised by section 6 of the Prosecution of Offences Act 1979) so, however, that if that person is remanded in custody he shall, after the expiration of a period of eight days from the date on which he was so remanded, be entitled to be [released on bail] without sureties unless within that period the Attorney-General has consented to such further proceedings as aforesaid.

NOTES

1. The maximum penalty under s. 1 is currently three months' imprisonment, a fine not exceeding level 4 on the standard scale (currently £1,000) or both (1936 Act, s. 7 as amended by the Criminal Law Act 1977, s. 31, Sch. 6 and the Criminal Justice Act 1982, s. 46). The words in square brackets in s. 1(2) were substituted respectively by (1) the Prosecution of Offences Act

1979 Sch. 1, and (2) the Bail Act 1976 Sch. 2 para. 10. 'Public place' and 'public meeting' are defined in s. 9. Section 7(3) gives a power of arrest (*ibid.*).

2. The Public Order Acts 1936 and 1986 (for the most part: see s. 42) do not extend to Northern Ireland. The equivalent legislation there is the Public Order (Northern Ireland) Order 1987 (S.I. 1987 No. 463): see B. Hadfield, (1987) 38 NILQ 86. See also the Prevention of Terrorism (Temporary Provisions) Act 1989, s. 3 (below, p. 282) and the Northern Ireland (Emergency Provisions) Act 1991, s. 29 (below, p. 251).

3. Section 1 was introduced in response to the increasing use of uniforms by political groups, notably the Fascists (see *Williams*, pp. 216-220). The first prosecutions were of Blackshirts: *R v Wood* (1937) 81 Sol Jo 108 (D sold Fascist newspapers while wearing a black peak cap with two emblems, black shirt, tie and leather motoring coat, dark trousers and dark footwear: fined £2); *R v Charnley* (1937) 81 Sol Jo 108 (at public meetings D wore black trousers, dark navy blue pullover, and red brassard on his left arm: convicted and bound over). See also (1937) 81 Sol Jo 509; E. R. Ivamy, [1949] CLP 184-187. Thus the wearing of a complete outfit is not necessary for a conviction. The section has also been used against members of the Ku Klux Klan (*The Times*, 8 October 1965) and supporters of the Irish republican movement (*O'Moran v DPP*; *Whelan v DPP* [1975] QB 864, DC).

In *O'Moran*, members of a funeral party accompanying the body of Michael Gaughan, a self-confessed IRA member who died on a hunger strike while in Parkhurst prison, wore black or dark blue berets, dark glasses and dark clothing. They were not identically dressed. An oration beside the coffin referred to the Irish republican movement, and an Irish tricolour flag was placed on the coffin. In *Whelan*, the defendants assembled with others at Speakers' Corner in order to march as a protest on the first anniversary of internment in Northern Ireland. The march was organised by Provisional Sinn Féin and other groups. The leaders all wore black berets and some also wore dark clothing, dark glasses and carried Irish flags and banners. The Divisional Court upheld convictions under s. 1(1). *Per* Lord Widgery CJ at pp. 873-874:

"Wearing" in my judgment implies some article of wearing apparel. I agree with the submission made in argument that one would not describe a badge pinned to the lapel as being a uniform worn for present purposes. In the present instance however the various items relied on, such as the beret, dark glasses, the pullovers and the other dark clothing, were clearly worn and therefore satisfy the first requirement of the section.

The next requirement is that that which was worn was a uniform. . . . the policeman or the soldier is accepted as wearing uniform without more ado, but the isolated man wearing a black beret is not to be regarded as wearing a uniform unless it is proved that the beret in its association has been recognised and is known as the uniform of some particular organisation. proof which would have to be provided by evidence in the usual way.

In this case [*O'Moran*] the eight men in question were together. They were not seen in isolation. Where an article such as a beret is used in order to indicate that a group of men are together and in association, it seems to me that that article can be regarded as uniform without any proof that it has been previously used as such. The simple fact that a number of men deliberately adopt an identical article of attire justifies in my judgment the view that that article is uniform if it is adopted in such a way as to show that its adoption is for the purposes of showing association between the men in question. Subject always to the de minimis rule, I see no reason why the article or articles should cover the whole of the body or a major part of the body, as was argued at one point, or indeed should go beyond the existence of the beret by itself. In this case the articles did go beyond the beret. They extended to the pullover, the dark glasses and the dark clothing, and I have no doubt at all in my own mind that those men wearing those clothes on that occasion were wearing uniform within the meaning of the Act.

Evidence has been called in this case from a police sergeant to the effect that the black beret was commonly used, or had been frequently used, by members of the IRA, and I recognise that it is possible to prove that an article constitutes uniform by that means as well.

The next point, and perhaps the most difficult problem of all, is the requirement of the section

Criminal Law Act 1977, ss. 28(2), 32(1); Magistrates' Courts Act 1980, s. 32).

2. This section was passed to meet the growth of private armies, in particular Fascist groups, between 1933 and 1936 (*Williams*, pp. 220-221; R. Benewick, 'The Threshold of Violence' in Benewick and Smith (eds), *Direct Action and Democratic Politics* (1972)).

3. Note that there is no reference to the promotion of a political object in s. 2(1)(a). Vigilante groups might accordingly offend against this provision.

4. The first prosecution under s. 2(1)(b) was *R v Jordan and Tyndall* [1963] Crim LR 124, CCA (*Williams* pp. 222-223). J and T took part in the organisation of 'Spearhead', part first of the British National Party and later of the National Socialist Movement. At various times in 1961 and 1962 uniformed members of Spearhead were seen practising foot drill, carrying out attack and defence exercises at a tower building and exchanging Nazi salutes. At a camp near Cheltenham, the Horst Wessel song was sung and cries of 'Sieg Heil' were heard. The police searched the Movement's headquarters under a warrant issued under s. 2, and found documents referring to the former German National Socialist Storm Troopers and containing phrases such as 'Task Force', 'Front Line Fighters' and 'Fighting Efficiency'. They also found tins of sodium chlorate (weed killer) which could be used in making bombs. On one tin, the words 'Jew Killer' had been written. J and T were convicted of organising Spearhead members in such a way as to arouse reasonable apprehension that they were organised to be employed for the use or display of physical force promoting a political object. The Court of Criminal Appeal approved the trial judge's direction that: 'reasonable apprehension means an apprehension or fear which is based not upon undue timidity or excessive suspicion or still less prejudice but one which is founded on grounds which to you appear to be reasonable. Moreover the apprehension or fear must be reasonably held by a person who is aware of all the facts. . . . You must try to put yourselves in the position of a sensible man who knew the whole of the facts'. J was sentenced to nine, and T to six months' imprisonment, the Court of Criminal Appeal regarding it as an appropriate occasion for the imposition of deterrent sentences (see further M. Walker, *The National Front* (1977) pp. 39-42, 44-45). The prosecution of members of the 'Free Wales Army' under s. 2 is described by D. G. T. Williams at [1970] CLJ 103. The section has also been employed in respect of the organisers of IRA units: *R v Callinan* (1973) Times, 20 January, C Cr Ct; *R v Kneafsey* (1973) Times, 23 October; *R v Fell* [1974] Crim LR 673, CA (CrD).

5. Unauthorised meetings of persons for the purpose of being trained to the use of arms or of practising military exercises, are still prohibited by the Unlawful Drilling Act 1819, s. 1. Prosecutions under the Act were not brought against those responsible for drilling the Ulster Volunteer Force in resistance to Home Rule before the First World War, or in relation to the military activities of the British Fascists in the 1930s, despite, in the latter case, assurances from the Home Secretary that appropriate action would be taken (28 HC Deb 31 January 1934 cols 360-1).

6. For a discussion of the use of conspiracy charges in the context of public order see R. Hazell, *Conspiracy and Civil Liberties* (1974) Chap. 6. This must now be read in the light of the Criminal Law Act 1977, Part 1.

7. Certain organisations may be proscribed under the Northern Ireland (Emergency Provisions) Act 1991, s. 28 (see below, p. 250) and the Prevention of Terrorism (Temporary Provisions) Act 1989, s. 1 (see below, p. 282). In the *Review of the Public Order Act 1936 and related legislation* (Cmnd. 7891, 1980, p. 11), the government rejected an argument that since

much recent disorder had resulted from confrontations between the supporters of the National Front and others, including members of the Socialist Workers Party, there were grounds for banning one or both of these organisations. Proscription had been confined to organisations openly and avowedly dedicated to violent terrorist acts and to the overthrow of the civil authorities.

4 Public meetings and processions

In this country there are no unfettered legal rights to hold public meetings or processions. The law regulates (1) the location and (2) the conduct of public assemblies.

(a) THE LOCATION OF MEETINGS AND PROCESSIONS

All land is vested in some person or institution. People may be permitted to assemble at the landowner's discretion. Assembling without permission is a trespass, although proceedings may well not be taken. Meetings and processions must also conform to the common law of nuisance and to any specific statutory restrictions as to location. The residual freedom or 'liberty' to assemble must be exercised without infringement of the rights of others, and with due regard for their liberties. It is an important question whether English law gives sufficient weight to freedom of assembly. It is also open to argument whether judges have attached sufficient importance to this interest where the law only proscribes conduct that is 'unreasonable', and the conflicting interests of different people have accordingly to be balanced.

(i) The Highway

1. Tort

The use of the highway for meetings and processions is restricted by both the law of tort and the criminal law. Aspects of the law of tort which are theoretically relevant include trespass, public nuisance and private nuisance. The position in *trespass* was set out by Lopes LJ in *Harrison v Duke of Rutland* [1893] 1 QB 142 at 154. CA:

'If a person uses the soil of the highway for any purpose other than that in respect of which the dedication was made and the easement acquired, he is a trespasser. The easement acquired by the public is a right to pass and repass at their pleasure for the purpose of legitimate travel, and the use of the soil for any other purpose, whether lawful or unlawful, is an infringement of the rights of the owner of the soil. . . .'

In addition, the use of a highway for purposes incidental to passage may well be a proper use:

'Thus a tired pedestrian may sit down and rest himself. A motorist may attempt to repair a minor breakdown. Because the highway is used also as a means of access to places abutting on the highway, it is permissible to queue for tickets at a theatre or other place of entertainment, or for a bus.'

(Forbes J in *Hubbard v Pitt* [1976] QB 142, cf *Hickman v Maisey* [1900] 1 QB 752. CA). Such user must be reasonable in extent (*ibid*). Technically, therefore, a stationary meeting held on the highway, or even the picketing of premises other than in furtherance of a trade dispute (according to Forbes J in *Hubbard v Pitt*) may constitute trespass against the owner of the soil of the highway. Where a highway is maintainable at the public expense, as is