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CABINET
MINISTERIAL COMMITTEE ON ECONOMIC STRATEGY

THE USE OF TERRITORIAL AND VOLUNTEER
RESERVES DURING INDUSTRIAL DISPUTES

Memorandum by the Secretary of State for the Home Department,
Secretary of State for Defence and
Attorney General

Introduction

We were invited (E(79)17th meeting) to consider the case for legislating to permit the use of the Territorial and Army Volunteer Reserve (TAVR) in industrial disputes, and to review relevant existing emergency powers. We have also taken the opportunity to examine all the practical and other issues which involvement of the TAVR would raise.

Legal Aspects

2. The Attorney General's assessment of the possibility of using the TAVR in industrial disputes, both as a body and as individual volunteers, is set out at Annex. He concludes that the existing law relating to the role and duties of the TAVR is intended to provide for its call out and training on military tasks and that there is no legal basis for the deployment of individual TAVR volunteers to meet an emergency caused by industrial disputes. Amending legislation would therefore be needed.

Call-out The TAVR may be called out as a body where national danger is imminent or a great emergency has arisen. It is not believed that the normal type of industrial dispute - or even a series of disputes such as occurred in 1978/79 - would be interpreted as falling within those categories. A general strike or general civil disobedience might, but even then TAVR members could only be employed on civilian tasks by using the mechanism of Section 2 of the Emergency Powers Act 1964.

Note (1) Following the recent change of title to TA, the initials TAVR are now used only in connection with legal aspects. As this paper contains both legal and policy matters, for the sake of consistency, TAVR has been used throughout.

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Volunteering The only legal provisions for a TAVR member to act in a voluntary capacity allow him to consent to be called out for certain Army Service or for ancillary military training, and it is considered that this does not extend to his volunteering to assist in the context of an industrial dispute.

Practical implications of using the TAVR during industrial disputes

3. The attraction of using the TAVR is its disciplined manpower, capable of speedy mobilisation and possessing a flexible command and control structure. In addition to military skills, TAVR members possess a wide variety of skills as a result of their jobs in civilian life.

4. However, there are significant disadvantages. Use in the MACM role would severely damage the image of the TAVR as an apolitical force which exists to meet the needs of the country in time of tension or war; this public perception is vital to both manpower retention and future recruitment. TAVR members could be put in an invidious position through strained loyalties and there could be loss of the goodwill of both employers and unions, upon which the TAVR is heavily dependent. Prolonged use of the TAVR would cause considerable disruption to priority tasks and training, to the detriment of its operational function and capacity. The TAVR could not relieve the Regular Army of its peacetime operational duties (eg in Northern Ireland or Belize), nor could it alleviate the loss of training which is the major penalty of Regular Service engagement on MACM duties.

5. An additional consideration under a voluntary system of deploying TAVR members is that the unpredictable and piecemeal response would undermine the gains of using a disciplined and uniformed body. Where members within individual units and/or sub units held sharply differing views, the effect on the TAVR would be divisive. Contingency planning would not be possible because of the inherent uncertainty over how many suitable men would volunteer for any particular MACM task. Those with the skills most needed for a particular operation (eg driving) would be least likely to volunteer, for fear of incurring disfavour with their employers or unions. A patchy response would also weaken the command and control structure, causing confusion and delay. In our view such a scheme would be impracticable.

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Conclusion and Recommendations

6. We conclude that:

a. The existing law relating to the role of the TAVR does not permit the use of the TAVR as volunteers in industrial disputes.

b. Use of the TAVR as a whole on civilian tasks (under the mechanism of the 1964 EPA) might be possible where it had been called out to meet national danger or a great emergency. It could not be used on civilian tasks in normal industrial disputes.

c. Even if legislation were formulated to permit the use of TAVR volunteers in industrial disputes, there are considerable doubts about the practicability and effectiveness of such a course.

d. There is also grave concern about the repercussions on the public perception of the TAVR as a non-political force and on long term manning, training, morale and efficiency of the TAVR as a whole.

7. We recommend that the TAVR should not be considered for use in industrial disputes and that there should not be any change in the present law relating to the call-out and employment of the TAVR such as to permit its use for this purpose.

Ministry of Defence
24 MARCH 1980

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USE OF THE TAVR DURING INDUSTRIAL DISPUTES:

ANNEX

NOTE ON LEGAL ASPECTS

1. The current statutory provisions which relate specifically to the functions of the TAVR are mainly comprised in S.19, 20, 22 and 25(1) Auxiliary Forces Act 1953, s.3 Army Act 1962 and s.5(1), 6(1) and 16 Reserve Forces Act 1966. Under this legislation the role and duties of the TAVR fall into two categories, call out and training.
2. There are three circumstances in which the TAVR as a whole may be called out compulsorily. Under s.25(1) Auxiliary Forces Act 1953 there is a liability to call out for actual military service in any place in the UK or the Channel Islands on home defence service against actual or apprehended attack. s.5 Reserve Forces Act 1966 provides for call out if national danger is imminent or a great emergency has arisen. Under s.6 of the 1966 Act TAVR members (with certain exceptions) are liable to be called out for permanent service in any part of the world where warlike operations are in preparation or progress. Of these three situations only the power under s.5 of the 1966 Act can be relevant in the present context.
3. The power to call out under s.5 of the 1966 Act provides for call out of the TAVR as a whole in any part of the world for permanent service where it appears that national danger is imminent or that a great emergency has arisen. Whilst it appears that this
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provision is not limited to the case where warlike operations are in preparation or progress, it is doubtful whether the Committee have in mind this kind of contingency. The danger has to be "national" so that there must be an apprehension of danger to the nation as a whole, and a "great" emergency suggests something far more serious than an emergency. It is doubtful whether the usual industrial dispute, even if it involved the temporary withdrawal of vital materials (such as coal), would fall within s.5. To justify call out under s.5 the existence of quite exceptional industrial circumstances (such as might arise in the event of general civil disobedience or a general strike) would seem to be required.

4. In addition to his liability to be called out compulsorily as a member of the TAVR as a whole, a member of the TAVR may under s.3 Army Reserve Act 1962 enter into a written agreement for a specified period of twelve months renewable by a further agreement at the end of the twelve months, making himself liable to be called out for Army service for not less than six months. The aggregate number of such members may not exceed such number as may from time to time be approved by Parliament (Reserve Forces Act 1966 s.4 (1)). Any service in this context would not extend to the use of TAVR members to assist the civil ministries in connection with an industrial dispute.

5. The call up of a member of the TAVR has the legal effect that he becomes subject to military law under s.205(1)(h) of the Army Act 1955 and may undertake duties which fall within the scope of a Serviceman's military obligations or duties. Thus he could, for example, replace other Servicemen on routine military duties, freeing them to undertake other tasks. It is considered, however, /that.....

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that call up as such would not justify the use of the TAVR on essentially civilian tasks such as the driving of private tanker lorries. If it was desired to use TAVR members on such tasks consideration would have to be given to the use of s.2 Emergency Powers Act 1964. Thus the TAVR, having been called out in the exceptional circumstances described in paragraph 3 above, and therefore made subject to military law, might be employed on civilian tasks by using the mechanism of s.2 Emergency Powers Act. This empowers the Defence Council to authorise members of Her Majesty's military forces under their control "to be temporarily employed in agricultural work or such other work as may be approved in accordance with instructions issued by the Defence Council as being urgent work of national importance"

6. The other role of the TAVR for which statutory provision is made is training. By virtue of s.19 and 20 of the The Auxiliary Forces Act 1953 and s.16 of the Reserve Forces Act 1966 every member of the TAVR has to undergo periods of initial and annual training. In addition s.22 of the 1953 Act, as amended, provides that "nothing [in s.19 and 20 of that Act] shall be construed as preventing a man with his own consent, in addition to any other training, being called up for the purposes of duty or instruction in accordance with orders and regulations under this Act." It is considered that none of these provisions enable TAVR men to be used except on military training. S.22 of the 1953 Act merely provides for the situation where a TAVR member consents to being called up for ancillary military training and does not extend to his volunteering to assist the civil ministries in the context of an industrial dispute.

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7. Except for the limited circumstances referred to above, the legislation relating to the TAVR contains no provision that would enable a TAVR member to act in a voluntary capacity. In those cases where he may volunteer the legislation only permits his employment on military duties. It appears, accordingly, that it would be unlawful under this legislation for TAVR volunteers to be used in industrial disputes.

8. Another aspect of the use of TAVR volunteers in industrial disputes is that such persons are not subject to military law (including military discipline) since by virtue of s.250(1)(h) of the Army Act 1955 as applied by s.23(1)(b) Reserve Forces Act 1966 a member of the TAVR is subject to military law only when he has been called out or is on training.

9. The Emergency Powers Acts of 1920 and 1964 are of course, concerned generally with the Government's powers in a national emergency. Under s.1 of the 1920 Act Her Majesty may by proclamation declare that a state of emergency exists when it appears to her that there have occurred or are about to occur events of such a nature as to be calculated by interfering with the supply and distribution of food, water, fuel or light or with the means of locomotion to deprive the community, or any substantial portion of the community, of the essentials of life. S.2 of the 1920 Act makes it lawful for Her Majesty whilst a proclamation is in force to make regulations for securing the essentials of life to the community, and conferring or imposing on (amongst others) any persons in Her Majesty's Service or acting on Her Majesty's behalf powers...

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powers and duties (to be specified in the Regulations) for the preservation of the peace, and securing the supply of food, water etc.

10. Assuming the existence of the circumstances in s.1 of the 1920 Act (which do not, of course, extend to all industrial disputes) and of a proclamation made under that section the question then arises as to whether a provision in Regulations that sought to confer the relevant powers and duties on enlisted members of the TAVR, who are not called out or on training, but who volunteer, would be lawful. There are a number of arguments that may be advanced against the legality of such a provision. For example, it is, in the first place, uncertain on the existing authorities whether a TAVR member in the circumstances contemplated is a person in Her Majesty's Service or acting on Her Majesty's behalf for the purposes of s.2. Secondly, it may be argued that it is unlawful for Regulations made under s.2 to make what is in effect a fundamental amendment to the legislation concerning the TAVR or to empower military personnel to be used on civilian duties. We are advised that it is more likely than not that a challenge to such a provision in Emergency Regulations would be successful.

11. To summarise, therefore, the law relating to the role and duties of the TAVR is intended to provide for its call out and training on military tasks, and there would appear to be no legal basis for the deployment of TAVR volunteers to meet an emergency /caused...

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caused by industrial disputes. If it were thought desirable to use members of the TAVR in this fashion, it would be necessary to introduce amending legislation to this effect.

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