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ROINN AL TAOISIGH

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To: Secretary to the Government

From: W. Kirwan, Assistant Secretary.

SECRET

All-Ireland Court and Related Subjects.

1. Please see Mr. Murray's minute and associated papers beneath. We are aware from informal contacts that the Department of Justice have been unhappy about references to the possibility of joint interrogation. Our understanding is that this anxiety was made known to the Taoiseach and the Attorney General before the Attorney and his officials went to London, for the meeting with their British counterparts. However, it is necessary, I believe, that the basis of the Justice attitude, as set out in 1979 papers beneath, be brought to the Taoiseach's attention at this stage.

2. I have been told by Mr. Quigley of the Attorney General's Office that when he and Mr. Russell met British counterparts in the follow-up meeting in London on 10 December, the British referred to the Taoiseach's "Counterpoint" interview and indicated that they were obtaining a tape of it. You will recall that I told you that Mr. Quigley had earlier indicated that the British had been pressing that the meeting on 10 December be more widely representative of Departments concerned on both sides and have a wider agenda, including extradition, All-Ireland Court, prosecution procedure and channels of contact, joint Garda/RUC interrogation and harmonisation of laws relating to evidence etc. As you know, following consultation between the Taoiseach the Attorney General and the Minister for Justice, the meeting went ahead but confined to the Offices of the two Attorneys General. Mr. Quigley has told me that he made it clear at the outset that he was not mandated to discuss matters beyond the purview of his Office. He reported that the most significant feature of the meeting was that the British pressed very strongly for a further meeting before Christmas with the wider representation they had earlier envisaged and clearly to deal with joint interrogation, among other subjects. Mr. Quigley's counterpart in the discussions proposes to telephone him on 15 December to obtain our response on the subject of this further meeting.

3. As you have indicated orally, our response should be negative, given the sensitivity of joint interrogation, in particular, and the need to have a carefully prepared position cleared with the authority of the Taoiseach. In conveying such a response, however, Mr. Quigley may need to indicate our position on having a meeting after Christmas. I think that we will have to agree to this, even if only to listen or to give the British a response which may disappoint them.

As you know following discussion at political level, Mr. Quigley has indicated that we should agree to a meeting before Christmas.

ROINN AN TAOISIGH

Misc.
F. 2.

Uimhir.....

To:

-2-

From:

4. There is a need to get ^{heads,} hands together on these matters at both official and political level. At official level, nobody other than the officials in the Office of the Attorney General knows what precisely has transpired at the two meetings so far. No official report of the first meeting was prepared because of the Attorney General submitted a report directlt to the Taoiseach. If possible we should get this. There has not yet been time for preparation of a report of the meeting on 10 December. Going beyond the exchange of information, I believe there is a clear need to bring other Departments concerned into consideration of policy positions now that the talks have acquired a certain momentum and show signs of extending into new areas, involving other Departments - especially the Department of Justice which even in relation to the All-Ireland Court would in the normal course be responsible for promoting legislation to bring it into being. At political level having regard on the one hand to the Taoiseach's references to the possibility of some joint interrogation procedures, and on the other hand to the negative views in the papers beneath, there is a need to consider the security and political aspects of the matter without delay. This would involve weighing - and perhaps testing, in direct discussions with senior Garda officers, - the negative views in the 1979 papers and assessing how the balance of considerations was affected by perceived political benefits vis-a-vis unionists. The political impact within the State and on the nationalist section of the community in the North also require careful consideration.

5. There are some points of emphasis in the 1979 papers where I would not be fully in tune with the views then set down by the Department of Justice. For example, there is considerable emphasis on the potential dangers to the Gardai if arrangements were made for joint interrogation. Nobody wishes to expose the Gardai to mortal dangers and worries on this score must be given considerable weight but one has to observe that their job is to safeguard national interests in the matter of security and that an inherent element in this job is danger from subversive groups. To suggest that some desirable step in the security area should not be taken largely because of dangers to the Gardai would be to negate the purpose of State structures. However, the Department of Justice probably had in mind the balance of advantage. I must say here that my preliminary view would be that their doubts on the efficiency of joint interrogation are well-grounded. Some legal points e.g. on the admissibility of statements given to the Gardai arising from questioning in whole or in part by members of the RUC need to be teased out further, possibly with results that may not fully support the Justice views in the papers beneath. However, taking all their points together, I incline to their view that not alone would joint interrogation fail to improve the basic evidence problem but that it might make it worse. If this were eventually to be established to the satisfaction of all, one would have to ask are there net political benefits that would

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ROINN AN TAOISIGH

Uimhir.....

To:

-3-

From:

outweigh the adverse security results and justify proceeding with joint interrogation arrangements. A further question would relate to the relative merit of proceeding ~~with joint~~ with an All-Ireland Court ^{without} joint interrogation arrangements.

6. It may be that in looking at what can be done by us in the security area, in order to save lives and to reduce the negative political impact of Provisional I.R.A. violence, we need to give greater attention to measures that will prevent murders and other violent acts before they happen rather than focus very largely on measures that involve bringing the culprits to justice after the crime has been committed. Of course, we already have a panoply of measures in operation involving very substantial cost to the Exchequer, directed to the objective just suggested. But the reality of recent weeks was that despite these measures and the close North-South co-operation on Border security, the Provisionals were able to carry out a series of murders, mainly of part-time security personnel. The reaction to these murders on the part of unionists went a long way towards swamping the positive response to the Taoiseach's Constitutional Crusade and other oventures to unionists. A number of the murders took place in areas close to the Border. It is known that there is a not insignificant number of Provisional I.R.A. activists or sympathisers, mostly natives of Northern Ireland, who are resident on our side of the Border. There can be no certainty in these matters - if there were the problem I am addressing would not exist - but it is possible or even likely that some of the recent murders were committed by some of these residents of the State or at least involved their participation. If the activists in question could be prevented from engaging in violence, the result might be a significant reduction in murders, explosions etc near the Border, with positive political effects.

7. The most effective preventive measure, in the very limited sense of preventing violence by known activists currently resident in the jurisdiction against whom evidence that will stand up in Court is not available, would be to intern them which could be done if Part II of the Offences Against the State Act, 1940 were invoked - but it would be open to the Dail to pass a resolution annulling the proclamation bringing this Part into operation. Internment was effective in the past in bringing to an end the IRA campaign of the late fifties and early sixties. But circumstances are now greatly different. In the past internment here mainly affected natives of the Twenty Six Counties. Today, the main strength of the Provisionals is drawn from natives of Northern Ireland. If those known to the Gardai who are resident in our jurisdiction were picked up, they might be replaced by others from the North, who might not at first be known to the Gardai. There is also the question of the "no-go area" in South Armagh and the possibility that other such areas could be established within the North. Thus, even within the

ROINN AN TAOISIGH

Uimhir.....

To:

-4-

From:

area of security itself, the initial impact might not be so effective as it in the past. At the same time, it seems likely that -purely in the limited sense already defined - internment would be quite effective in preventing murders etc being committed by Provisional activists resident in the State.

8. But, of course, one cannot look at the matter in any purely limited sense. One has to have regard to the possible security effects in Northern Ireland, to the political effects, North and South and to human rights aspects. As regards the security effect it would be widely held that internment could only be effective in bringing the Provisional IRA campaign to a halt if it were introduced simultaneously in the North. Certainly, it remains our perception that while activity by persons resident on this side of the Border has increased in importance over the last two years, the direction of the campaign is still very much based in the North and most of the murders and other acts of violence are carried out by persons resident in the North.

9. It is certain that if internment were introduced here, there would be tremendous pressure from unionists to re-introduce it in the North, pressure which the British Government would find it difficult to resist. Would the result of its re-introduction in the North be beneficial, on balance? I believe the answer is in the negative. While the nationalist community at large may be opposed to the IRA violence and sick and tired of its effects, there is a substantial alienated section within that community from which further significant recruitment of fresh members could well take place, as a reaction to internment, even if it was carried out efficiently, in the sense of picking up the people who are actually directing operations or pulling the triggers or plungers. Internment in the North would represent a reversal of the policy of operating the rule of law, as far as possible, pursuit of which tends to isolate the violence as terrorism and which is desirable in the broader perspective of promoting community reconciliation and minimum political consensus in a deeply divided society. It would provide a new rallying point and basis for propaganda in the U.S. and elsewhere. For the hunger strike. One must recall that the real escalation of violence in the North followed directly from internment in 1972. The effects outlined would be all the greater if internment was mishandled as in 1972. One has the impression that RUC intelligence is now greatly superior to what it was then but it is still quite possible that many of those detained or initially picked up would be "the wrong people". Even if this did not occur on any significant scale, the process of surrounding and raiding minority areas in force would have major adverse effects.

10. Even if internment in the North were successful in reducing violence significantly, I believe that any beneficial political

The Provisionals which they have carried since the end of

ROINN AN TAOISIGH

Uimhir.....

To:

-5-

From:

effects on unionists would be offset by a very adverse political impact on the nationalist community. Opposition to the measure among that community was universal in the early seventies. Even if that owed much to the ineptitude shown in the identification of persons to be detained and to the use of inhuman and degrading treatment, I believe the political reaction would be the same today, even if it was largely "the right people" who were picked up. This is clear from the reaction including that of the SDLP to the recent suggestion of selective internment by Mr. E. Griffiths, M.P., legal adviser to the Police Federation in the North.

11. A fair conclusion might be that before an Irish Government could favour the re-introduction of internment in the North, there would have to be major political gains, perceived as such by the nationalist community, to be defended against Provisional IRA wrecking tactics.

12. Could one consider the introduction of internment in the State, subject to an agreement with the British that it would not be re-introduced in Northern Ireland, whatever the pressure from unionists? It might be hoped that such an arrangement would greatly enhance the credit of the Government with unionists. The first point to be made is that while the British may well welcome such an increase in our credit, they might nevertheless find it ^{politically} ~~potentially~~ impossible to reach such an agreement with us. The second point is that even if they accepted such a proposal, it would require a high degree of trust in them on our part, to introduce internment on such a basis. If they ~~veneged~~ ^{renege} and, under pressure, brought in internment in the North and especially if this led to the consequences considered in preceding paragraphs, the effects for the Government here would be appalling.

13. My conclusions from the above analysis are:

(i) the Government here could only contemplate introducing internment here, on the basis of an agreement with the British that they would not introduce it in Northern Ireland.

(ii) even to proceed on that basis would be a very risky option: it nevertheless may merit consideration but the decision should probably be negative.

14. Here, much depends on developments in the campaign of violence and on the assessment of the capacity of the Provisional IRA. I first came back to the questions discussed in the latter part of this note during the period

ROINN AN TAOISIGH

Uimhir.....

To:

-6-

From:

just before the murder of Rev. Robert Bradford, M.P. when the IRA were shooting UDR men and RUC reservists at the rate of two a day. The past three or four weeks, by contrast, have represented a lull period. Is this a pause for regrouping or otherwise purely tactical or is the Provisionals' capacity at a low ebb? Some recent intelligence from security sources has suggested that the latter is the case. If this is so, it would be preferable to eschew high risk options.

15. If this was the conclusion reached, is there any other measure that could be taken in the State? Here, I would draw attention to the views of qualified persons that the number of persons who actually shoot people and explode bombs, resident in our jurisdiction is quite small - as distinct from a larger number who may act as accessories in one way or another. Against this background, I would refer to another of the suggestions put forward by the British in September, 1979 - that intensive surveillance be mounted by our security people at the time was that to go too far in that direction might be to unproductively tie up too much of our anti-subversive manpower resources. For all I know, this type of surveillance is already being undertaken to the optimum extent. However, if the number of key people is quite small, - and especially if the assessment that IRA capacity is now quite limited is confirmed by events and the passage of time - this idea may deserve further detailed consideration. It is, of course, a "subterranean" measure, with no immediate political impact.

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murders, etc.
The view
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16. If, on the other hand, the Provisionals renew their offensive and sustain it at a level that causes many deaths and intensifies the fears and bitterness of unionists to the extent of swamping beneficial results of Irish Government initiatives and if a considered assessment concludes that joint interrogation and/or an All-Ireland Court will make no worthwhile impact or be counterproductive, it may be necessary to further consider the high-risk option of internment in the State, subject to agreement with the British that it would not be introduced in the North.

17. Finally, on the subject of extradition, I might recall here that three or four years ago, one or more Northern lawyers drew attention to the possibility of enacting a law to provide for the extradition of political offenders in such a way that it would be immune from constitutional challenge, by proceeding under Article 28.3.3° of the Constitution and the "national emergency", under Article 26 of the Constitution, under that Article and arising from the situation in Northern Ireland, declared by the Dail in September, 1976. In the light of the judgement of the Supreme Court, on the Emergency Powers Act, 1976, it is debatable whether any such law would

ROINN AN TAOISIGH

Uimhir.....

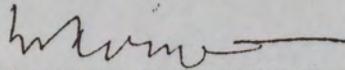
To:

-7-

From:

in fact be safe from challenge on constitutional grounds. Advice could be taken on this point, if at any stage there was a political wish to proceed in the manner in question here.

18. A report of the recent meeting between the Attorney General and his British counterpart has now come to hand and is filed across, *together with transcripts & cuttings of recent public references to joint interrogation, all Ireland Courts etc.*



17 December, 1981.