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ANGLO-IRISH INTERGOVERNMENTAL CONFERENCE

SPECIAL MEETING: 30 DECEMBER 1985

JOINT STATEMENT

At the request of Mr Peter Barry, a special meeting of the Conference, in accordance with Article 3 of the Anglo-Irish Agreement, was held in London on 30 December.

Mr King informed Mr Barry of the facts regarding the current hunger strike in the Maze Prison and the rights of appeal available to all those concerned. He explained the policy that no prisoner should be compelled to accept food against his will.

Mr Barry put forward views and proposals designed to give substantial expression to the aim of ensuring public confidence in the administration of justice.

Both sides agreed that the present hunger strike was to be deplored as a wrong and wasteful attempt to bring about change in this area.

The next regular meeting of the Conference will be held as planned early in the New Year.

Speaking Points for Minister

Opening Remarks

- We are grateful that it has been possible to hold this special meeting of the Conference over the Christmas holiday period. We requested it because we are seriously concerned at the way the situation could develop in the next few weeks.
- The immediate period ahead is vital to the survival of the Agreement. The whole Agreement is designed to ensure that nationalists have confidence in the system of justice and the institutions which support it. This is the point which we must get home now.
- Public confidence in the administration of justice, among nationalists, has again been eroded by the convictions based on the Kirkpatrick supergrass evidence. The political aspects have been highlighted by the threatened hunger-strike to death of the twenty-seven convicted prisoners beginning with the hunger strikes of Tohill on 19 December and of Steenson on 26 December. Sinn Fein have come out with a statement backing the hunger strikers. The immediate political threat, therefore, is that the hunger strike may swing support away from constitutional nationalism at the by-elections with the SDLP contesting four seats. We all remember the Assembly elections after the hunger strikes in 1981 when Sinn Fein gained 39.29% of the nationalist vote (10% of the total vote) and so became a major threat to the constitutional nationalism of the SDLP. If I may say so, the less than delicate handling of the hunger strikes at that time played its part in bringing about this situation.
Last time you made concession in the end which you refused at the beginning: if you had made them earlier much of the grave political damage could have been avoided.

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- We need to discuss:

- (a) what steps to take to build up public confidence in the administration of justice with action even in a limited way in the very near future; and
 - (b) the immediate question of how to bring about an end to the Maze hunger strike and so defuse the situation.
- The holding of this special meeting of the Conference is itself a signal to constitutional nationalists that the Conference machinery is working: they are the people who need our support.
- The IRA and INLA will do everything possible to undermine the Anglo-Irish Agreement. The mortar attacks on RUC barracks over the last few weeks have clearly shown this. The INLA should not be let succeed in using the hunger-strike weapon to the same end.

Supergrass System

- We are concerned, as is well known, about the whole question of supergrass "evidence". This concern has increased as a result of the Kirkpatrick trial.
- This concern is by no means confirmed to the nationalist side. Unionist representatives have also expressed grave reservations about the use of "supergrass" evidence. The DUP has come out against it. This, in fact is an issue which crosses the divide: I understand that there have been cross-community relatives' committees in connection with "supergrass" trials.

- The Kirkpatrick evidence contained quite a number of serious inconsistencies. In one instance, as I recall, there were very strong indications that an individual alleged to have committed murder had in fact been in prison at the time the offence was committed. In another, Kirkpatrick alleged that a murder had been committed on one side of a street in Belfast whereas it had in fact been committed on the other. He changed his testimony overnight. In the judgement which he delivered on 15 December, Mr. Justice Carswell himself conceded that in several instances Kirkpatrick's evidence had been "unreliable", "hard to reconcile", "mistaken", "vague", "deliberately false" and so on.
- Legal points against the use of "accomplice" or informer evidence in the "Diplock" Courts include:
 - dubious quality of the witnesses who themselves have committed serious crimes and are offered immunity;
 - much of the evidence is uncorroborated;
 - the "warning" customary in the case of uncorroborated evidence is made by the single "Diplock" judge to himself (not before other Judges or a jury);
 - the large number of defendants and charges;
 - the delays between remand and trial and later the long delay before appeals can be heard.
- The only point in favour is the number of convictions which otherwise would not be obtained. As against that, in the one case where an appeal has been heard (Bennett UVF case) the convictions were quashed.

- We realise that the use of accomplice evidence is permitted by law, but the problem is that in Northern Ireland it has been developed in recent years to such an extent and in such a systematic way as to appear not as an exceptional legal mechanism but as a "system". The facts are that in the four years since Christopher Black became identified as the first supergrass, there have been 9 supergrass trials, over 600 people, the great majority of them nationalists, have been charged with multiple offences on the basis of supergrass evidence, and over 100 people, all of them on the nationalist side, are now in prison on foot of supergrass trials.
- The nationalist community, with considerable support from the DUP and others on the unionist side, have come to see the long delays between remand and trial as internment in another form. The one Appeal Court case which has been taken (Bennett UVF case) resulted in the release of those unionists who had been convicted.
- The political unacceptability of the supergrass system among the nationalist community is the fact that has to be tackled. The Baker Report failed to face up to this political fact.
- We are worried that unless urgent action is taken - and seen to be taken - on the supergrass issue there will be a further erosion of nationalist confidence in the administration of justice and in nationalist relations with the security forces.
- We propose action on several planes:
 - (a) a public statement to be made that the use of uncorroborated "supergrass" evidence is not being officially encouraged; and that no further grant of immunity will be made to supergrasses who are

heavily implicated in murder or other serious crimes (we understand such a policy on immunity may be in practice already);

(b) a 'quiet' indication given in the Conference that the Director of Public Prosecutions will exercise his discretion to refuse to authorise prosecutions which depend solely on uncorroborated supergrass evidence;

(c) The Conference will meet at the level of the two Attorneys General to consider the matters under Article 8 of the Agreement. The proposed meeting of the Attorneys General should be announced now. It should be held within the next two weeks.

(The first Regular Meeting of the Conference set up a Sub-Group to consider proposals to establish machinery for furthering the issues identified in Article 8. The sub-group should report to the proposed Regular Meeting of the Conference on 9 January.)

(d) In case the British side see difficulty in the early implementation of (b), improved safeguards should be introduced in the short-term in the use of such evidence - which could include:

- reduction in the number of defendants and charges in any one trial;
- a time limit to starting trials and to their length (the Baker report recommended that a prisoner held in custody for over twelve months without having been committed for trial must be granted bail without surety): reduction in the time taken to hear appeals;

- increase the number of judges on the Diplock Courts from one to three (this would mean legislation to increase the number of judges);
- pending such an increase, introduce a formal system of 'observers' (lay assessors) at such trials.

Note: It is necessary to be seen to take some action speedily.

- (e) appointment of more Catholic judges on the Supreme Court. There are only ^{two} right now; we know of several Catholic senior members of the legal profession who would serve. We understand the appointment of one of these, Michael Nicholson, to the Supreme Court is imminent. We think the immediate announcement of this appointment would be useful.

OVER:

PROPOSED RESPONSE TO HUNGERSTRIKERS' DEMANDS

Maze Prison Hunger Strike

We understand that all 27 convicted in the Kirkpatrick trial have agreed to the hunger strike. We understand 10 or so of these are hard-liners fully committed to a strike until death. Sinn Fein came out in support of the strike on 27 December which is a very serious development. There is every prospect that a strike which began as an emotional response by the convicted INLA people to the judgement in the Kirkpatrick trial will come under the complete control of the IRA/Sinn Fein in the run-up to the by-elections on 23 January. It is therefore vital that you act now while relatives and clergy still have influence and while you need not appear to be acting under IRA pressure.

Another reason for urgency is the medical condition of the first hunger striker, Tohill, who suffers from ulcers. His condition will deteriorate rapidly in the next week or so.

My own position is difficult. Nationalists naturally expect the Conference will identify ways to end the strike and I have come under strong pressure to 'do something'. The relatives themselves have sought to see me. I have received a letter from them but I have not met them personally.

We understand the strikers' demands are :

- (a) Government announcement of an early appeal date.
(Tohill's solicitor has suggested an appeal within 6-9 months);
- (b) Appeal Court proceedings to be monitored by observers;
- (c) Immediate review of all other cases where the accused have been convicted on the uncorroborated evidence of informers.

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PROPOSED RESPONSE

Early Appeal

1. We urge you to make it known publicly or otherwise that the provision of the transcript and any other delaying factors on the Government side will be speeded up to permit the Kirkpatrick appeal to take place within 6 to 9 months.

Observers

2. Arrangements could be made by Catholic Church authorities (Bishop Daly) to be represented at the Appeal. We take it there is no impediment to observers wishing to attend from the South, for example, TDs, or to International observers from say, the International Commission of Jurists.

Review

3. The question of review may be met by expediting the appeal process. Only one supergrass appeal has been heard (the Bennett UVF appeal in which the convictions were quashed). We believe the Black appeal will begin on 7 January. The Lord Chief Justice should set dates now for the outstanding supergrass appeals : McGrady and Quigley, which are due shortly, and Kirkpatrick. In the Kirkpatrick case the date could if necessary be approximate and could be announced at the same time as the Mc Grady and Quigley appeals.

4. I have already mentioned the meeting of the Attorneys General in the Conference to discuss legal matters and the immediate announcement of the appointment of Michael Nicholson to the Bench. We think these immediate announcements will have a beneficial effect.

OTHER MATTERS

ARREST OF 18 SINN FEIN MEMBERS/SYMPATHISERS OVER THE WEEKEND

Eighteen Sinn Fein members/sympathisers were arrested by the RUC (under the N.I. Emergency Provisions Act and the Prevention of Terrorism Act) early on Saturday morning, including Derry Assembly member Martin McGuinness and Sinn Fein Counsellors from Belfast, Armagh, Strabane, Craigavon, Fermanagh, North Antrim and Mid-Ulster. They are being held for questioning at the Castlereagh (Belfast) and Gough (Armagh) holding centres and at Strand Road, Derry. (Sinn Fein Counsellor Seamus Cawley from Ballygawley Co. Tyrone was charged at Fmiskillen Special Court Sunday with possession of explosive substances - an Army flare). We asked for the facts through the Joint Secretariat on Saturday afternoon, pointing out also the likely effect that the number of these arrests and the timing would have in political terms. While for the RUC such arrests may be an operational matter, made 'purely for police professional purposes', the political effects may well compound a situation already made difficult by the Kirkpatrick trial results and the Maze hunger strike. Even the DUP (Assembly man Gregory Campbell) has dismissed the arrests as 'a last desperate attempt to make the Anglo-Irish Agreement more palatable to Unionists.

We want to know in the present case and in similar cases in future, through the Secretariat, when incidents with important political implications (i.e. arrest on one morning of a large number of elected representatives at a time of an election campaign) occur. (We in fact received useful information at the time of the Owen Carron arrest). In the present case, we would like to have details of the persons arrested, whether they have been charged and if so what are the charges, and in case they are held for interrogation only, if the formal consent of the Secretary of

State will be given for the further five-day period permitted by law or for part of it.

SECURITY SITUATION / CROSS BORDER COOPERATION IN SECURITY

We have condemned the recent series of attacks on RUC/Army posts and deplored the loss of life. They have been claimed by the Provos and are obviously aimed at undermining the Anglo-Irish Agreement.

Garda-RUC cooperation is close both as regards the programme of work undertaken under Article 9 of the Agreement (threat assessments, exchange of information etc.) and as regards individual incidents. The Garda Commissioner and the Chief Constable met in Dublin on 2 December, a high-level meeting took place between RUC-Garda members in Belfast on 19 December and the Superintendent at Lifford met with the RUC at Strabane on 23 December in connection with a mortar incident. The Gardai have investigated claims by the DUP that some of the mortars used in the attacks in the North were manufactured in the South, but have not been able to substantiate these with evidence.

PRESS RELEASE

A draft joint press release has been agreed (check) before the meeting began. We are not satisfied with the press handling of the Belfast meeting. We feel we should agree on a common line with the Press in the Conference and stick to it. (Mr. King briefed the press at the Belfast meeting: we should do so in London.)

NEXT REGULAR MEETING OF THE CONFERENCE - NINTH JANUARY

We can agree to the date of 9 January but we must insist that it should take place in Belfast (not London as proposed by the British).