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MEMORANDUM FOR THE INFORMATION OF GOVERNMENT

Ref: NI/21/1/3

10 September 1986

The Anglo-Irish Agreement: Review - June/September 1986

1. The Taoiseach wishes to inform the Government about the implementation of the Anglo-Irish Agreement in accordance with the Government decision S22628E/4 of 5 June 1986. This directed that a Memorandum reviewing the Anglo-Irish Agreement be submitted in due course. The Taoiseach wishes to seek the approval of the Government for the policy directions outlined at paragraphs 28 and 29.
2. The Taoiseach also draws attention to:
 - the Memorandum of 20 June 1986 on Extradition and related matters presented by the Minister for Justice and decision thereon of 16 July. A further memorandum concerning Heads of a Bill on Extradition will be presented shortly;
 - the Memorandum currently before the Government on the International Fund established under Article 10 of the Agreement.

Working of the Institutions under the Agreement

3. Two meetings of the Anglo-Irish Intergovernmental Conference were held since the Government's last review - a regular meeting on 17 June and a special meeting

on 29 July. The Joint Secretariat in Belfast has continued to consolidate its function as the Government's channel for dealing with situations arising on a day to day basis in Northern Ireland and for the submission of views and proposals on matters arising out of the Agreement. In the last two months detailed views and proposals have been submitted on items such as on Police Complaints Procedure, Bill of Rights and Fair Employment.

The Security Situation

4. Leaving aside the violence associated with the marching season, the security situation since June has been characterised by:
- attacks against members of the security forces (including 8 murders - 4 RUC, 2 Army and 2 UDR);
 - sectarian murders, mainly by Loyalists (4 Catholic victims and one Protestant victim since the beginning of June);
 - sectarian attacks on catholic homes (notably in Lisburn);
 - IRA attacks on security installations in border areas.
 - widespread instances of intimidation of workers in both communities.

Overall fatalities in the months June-August 1986 amount to 17.

Republican Paramilitaries

5. In general Republican paramilitaries appear to be seriously concerned that their support among the nationalist community is being eroded through the continued working of the Anglo-Irish Agreement.

6. The provisional IRA has continued to try to undermine the Agreement which it regards as a threat, by
 - a campaign against the security forces, particularly in border areas, with the object of showing the British Government and British public opinion that the Agreement has not brought peace;
 - sectarian counter attacks on Protestant targets in retaliation for Loyalist killings of Catholics, especially in Belfast;
 - death threats to members of the Police Authority (leading to the resignation of Michael Murphy in June);
 - an intensified campaign against people working under contract to or supplying goods and services to the security forces (announced on 5 August).

7. The reaction in the nationalist community to the campaign of intimidation against people working for the security forces has varied according to the incidence of such employment in the area in question. In areas such as Derry where many local nationalists are affected, the reaction has been hostile. In areas such as West Belfast, however, the reaction has tended to be one of indifference.

The killing by the IRA of informers (most recently that of David McVeigh in Armagh) has provoked hostile local reactions.

8. After a period of inactivity, the INLA reasserted itself in August with a series of bombing attacks in Belfast, Newry, Downpatrick, Derry and Antrim. Nationalist reaction was hostile.

Loyalist Paramilitaries

9. In recent months there have been indications that the Loyalist paramilitaries intend to step up their campaign against the Agreement. There is evidence that the UDA has acquired sub-machine guns and explosives. A car-bomb attack in Castlewellan on 14 July and an attempted explosion at Sinn Fein's H.Q. on 22 August were both claimed by the UFF (a pseudonym for the UDA). The UFF also issued a threat against nationalists working in Loyalist areas. The UVF has concentrated on sectarian killings of Catholics in North Belfast. The paramilitaries are still anxious to preserve their independence vis-a-vis the politicians but the gap between both has narrowed, particularly since Robinson's escapade in Clontibret and the increased role of the Ulster Clubs (an organisation in which both the political and paramilitary interests are represented). The latter have sought to maintain momentum after the marching season by a campaign announced on 8 September based on intimidation of unionist "collaborators".

The 1986 Marching Season

10. The fears that the marching season might provide loyalist opposition to the Anglo-Irish Agreement with the opportunity for a major confrontation with the British authorities proved unfounded. The police showed an impressive determination to stand up to trouble makers on both sides and to prevent the taking over of the parades by extremist elements. Their policing of the parades was generally fair and even-handed and there was a reasonable degree of sensitivity to local conditions. In Ballynahinch, Rasharkin, Keady, West Belfast, Derry and elsewhere, potentially explosive situations were kept firmly under control.

11. In Portadown, however, the decision by the RUC leadership to allow a limited number of Orangemen to parade down the predominantly Catholic Garvaghy Road but not along the traditional Obins Street on 12 July was regarded by nationalists as highly provocative. The RUC and the British authorities held that this was a compromise formula, which helped to avoid a major confrontation. The political implications were serious as nationalists regarded the decision as another instance of successful Orange blackmail.

12. The Special Meeting of the Intergovernmental conference which met at London on 29 July considered the question of parades and demonstrations and agreed that, although the views held by the two sides about the Portadown decision were different, those differences should be regarded as past ' and discussion should concentrate on the future. The British side said that it would be willing, after the current marching season was over, to discuss the lessons which had been learned and the implications for the future, including the possibility of an independent tribunal.

Cross Border Security

13. Despite some recent reports of dissatisfaction, the programme of work intended to enhance cross-border security co-operation under Article 9(a) of the Agreement has made very considerable progress. The most notable success was the discovery recently of a van loaded with mortars close to the border. The final reports of the police Groups are being considered by the Quadripartite Steering Group on 10 September and it is envisaged that, they will finalise this item for discussion and decision at the next meeting of the Conference.

Political Reaction in Northern Ireland

14. Nationalists

Although there have been no opinion polls in recent months, the general view of constitutional nationalist politicians is that support for the Agreement is holding. Nationalist opinion has been influenced by:

- the fact that the institutional machinery of the Agreement - the Conference and the Joint Secretariat at Belfast - are seen to operate regularly and effectively;
- the continuing firm support by the British Government for the Agreement in the face of persistent unionist opposition including attacks on the forces of law and order;
- the indications that the British Government are willing to make more progress on the nationalist agenda over the coming months;
- the changing perception of the RUC: during the marching season the RUC was widely seen to be confronting loyalist violence and protecting Catholics and there has been a noticable reduction in the complaints of serious ill treatment by nationalists against the security forces.
- the result of the 'supergrass' appeals heard to date (the Black appeal judgement in July acquitted 18 persons convicted on the basis of supergrass evidence) and the accelerated process of appeal in the remaining major cases (Quigley and Kirkpatrick).

14. Some Nationalists, however, have viewed the Agreement as a solution in itself rather than a framework for solutions; others expected results to come too fast. These have been disillusioned. Nationalists have also viewed with disquiet:

- the long delay in finalising and acting on the Stalker report on the shoot-to-kill incidents in South Armagh in 1982-1983;
- the fact that charges are still being made on the uncorroborated evidence of supergrasses, although no decision has yet been made by the DPP to prosecute.

Unionists

15. The two unionist parties (OUP and DUP) have remained united in their joint policy of 'saying no' to the Agreement. This political negativism was widely manifested in the street rhetoric and mob violence of the marching season, e.g. the mid-night march of Mr. Paisley and his followers at Hillsborough before the 12 July and Mr. Robinson's incursion with his followers into Co. Monaghan (Clontibret) on 7 August. Political movement on the unionist side remains frozen and the meeting of the OUP/DUP Joint Working Party on 5 September discussed plans for further ways of 'saying no' including resignation of all unionist Council seats.

16. There has been evidence of OUP discomfort at this frozen situation:

- Mr. Molyneaux's refusal on 11 August to continue with regular weekly press conferences;
- continuation of some Council business despite the OUP/DUP official policy of adjournment/deferral;

- a number of conciliatory signals, most notably that on 2 September from unionist Council member, Mr. Peter Smith: 'the price for the continuation of the union... must involve conceding a role for the minority which the minority itself believes adequately safeguards its essential interests'.
18. In addition the West/McNarry/Ardill Charter Group initiative was relaunched on 8 September: this calls for talks outside the framework of the Anglo-Irish Agreement. These signals appear to be aimed partly at the moderate element in unionism who are concerned at the present political vacuum and partly at public opinion - including Westminster - which now perceives unionists as having nothing constructive to say. A risk in all such moderate proposals is that they may also be aimed at achieving postponement of British action for nationalists within the framework of the Agreement.
 19. The OUP itself is split on the issue of devolution versus integration. While unionism as a whole is going through a period of reappraisal, it is still too early for meaningful talks on devolution.

The Position of the British Government

20. Apart from the marching season during which the British Government had to face up to provocation by unionists, the Government has shown firmness also in several other significant ways and has so demonstrated its commitment to the Agreement:
 - On 12 June the Secretary of State announced the Government's intention to dissolve the Northern Ireland Assembly, as it was unlikely to be able to put forward workable devolution proposals and had wound up its Devolution Report Committee. Dissolution left open the date for a new election for a fresh Assembly. It is

clear that the British Government will act only after a devolution arrangement has been agreed and expect this to be in the medium rather than the short term.

- Later in June the Secretary of State reaffirmed the Government's support for devolution as opposed to integration because to 'suggest that there are no differences in Northern Ireland from other parts of the United Kingdom is to ignore completely the whole background of different history, traditions, community attitudes, and political parties'.
- During the marching season on 10th August the British leaked that further progress could be expected in the Autumn on various issues of interest to nationalists - also publically confirmed by Mr. Scott. These matters included repeal of existing flags and emblems legislation, Irish language and culture, Bill of Rights for Northern Ireland (See Annex I).

21. The British side now seems convinced that, in the period immediately ahead, the Agreement must be maintained and shown to be working in order to:

- bolster nationalist support in the face of the Anti-Agreement campaign of the Republican paramilitaries;
- show unionists that the Agreement is there to stay;
- provide the context in which the Irish Government can secure the passage of the legislation to amend the 1965 Extradition Act and so permit ratification of the European Convention on the Suppression of Terrorism.

22. The British appear to consider the Autumn/early Winter as the optimum time to announce a series of measures resulting from the Agreement. This is probably because the period around the 15th November - Anniversary of the signature of the Hillsborough Agreement - will be used as a focus for unionist opposition to the Agreement. Already there is speculation that there may be a loyalist strike at that time.

Position of the Irish Government

23. The Hillsborough Communique indicated a commitment on the British side to early progress as regard, inter alia:

- relations between the security forces and the minority, and;
- measures which would give substantial expression to the aim of underlining the importance of public confidence in the administration of justice.

Accession of the Government to the European Convention the Suppression of Terrorism was set against this background. The Government signed the Convention on 24 February and announced its intention to introduce implementing legislation in the Autumn. However, progress is still awaited from the British side in a range of issues:

- introduction of a Code of Conduct for the RUC;
- accompaniment by the RUC of all UDR and Army patrols that have contact with the public;
- legal and administration of justice reforms, including, notably, the introduction of mixed Courts and in the shorter term the introduction of three judge Diplock Courts, the appointment of more Catholic judges, power sharing in the Northern judiciary and amendment to the Emergency Provisions Act.

24. The Taoiseach in his conversations with Prime Minister Thatcher at the Hague on 27 June and with Mr. King at Barretstown Castle on 6 August stressed the link between three judge Diplock Courts and legislation to enable ratification of the Convention on the Suppression of Terrorism. The Taoiseach specifically indicated to Mr. King that a public commitment to three judge Diplock courts in sufficient time would result in publication by

the Government of draft legislation before the Dail resumes on 22 October. Although it was agreed at the Special Meeting of the Conference at London on 29 July that there would be a meeting of the Conference in September to consider inter alia legal matters Mr. King has recently indicated that he wishes to resolve the issue of the Courts with his colleagues before coming to a meeting of the Conference.

25. The British side is now fully aware of the Irish position. It remains for political decisions to be taken at the highest level. In particular they are aware that Dail approval depends on significant changes in the administration of justice in Northern Ireland, especially a decision to introduce three-judge courts. They know that without such changes ratification of the Convention will not take place, or will take place only on the basis of reservations which would lessen the political and practical impact of the Convention. The British side are also aware of the serious political consequences for Anglo-Irish relations if, because of lack of action on their part, we were unable to ratify.
26. At this stage it is not possible to predict what the British decision will be. There are, however, three clear possibilities:
- (a) full introduction of three judge Diplock Courts. This appears unlikely in view of the discussions that have taken place in the Conference and technical Working Groups;
 - (b) introduction of three judge Diplock Courts to deal with a limited range of offences. The Minister for Justice and the Attorney General are exploring this possibility;
 - (c) no change. It is indeed clear that certain senior British law officers continue to oppose change.

27. If the British side take a positive decision then an announcement to introduce three judge Diplock courts could be made at the next Conference meeting or in the Queen's speech at the opening of Parliament in early November. The change would require Westminster legislation which could take some time. In that event, the Irish ratification of the Convention would be timed to coincide with the coming into effect of that legislation.

28. The Government's response will be determined by the decision taken by the British Government on these issues. The Minister for Justice has already undertaken to prepare separate drafts of the legislation needed to follow up the signature of the Convention - (i) including and (ii) omitting provision for a reservation under Article 13 of the Convention (Government decision S.18805E of 16 July 1986).

29. The Taoiseach proposes that the Government should continue to press strongly for British agreement on these issues, especially the introduction of three judge Diplock Courts. If the British side make the necessary concessions including three judge courts, then it will be possible to publish draft legislation before the Dail convenes subject to a further memorandum being submitted, as is proposed by the Minister for Justice. If, however, the British side fail to make these concessions and in particular, if they cannot agree to announce the introduction of three-judge Courts, then no draft legislation would be published before the Dail convenes and the Government would be asked to reconsider the whole question in the light of the details of the British response.

A N N E X I

TIME TABLE FOR POSSIBLE SHORT-TERM PROGRESS

Estimated progress by end of year:-

- (i) Army-UDR/RUC accompaniment - statistics relating to September are expected in October;
- (ii) I Voters - Assembly elections - should be enacted by November at the latest as only a simple statutory Instrument is required for this; primary legislation is required to permit them to vote in local elections and this is not expected to be introduced in 1986.
- (iii) Police Complaints Procedure - British Government's Draft Order in Council is expected to be finalised and enacted, possibly in November;
- (iv) Emergency Provisions Act - amending legislation providing for some improvements inter alia relating to the granting of bail and conditions for arrest should be introduced in November.
- (v) Flags and Emblems - expected to be included in the Order in Council extending the forthcoming Public Order Act to Northern Ireland. The Order in Council is expected to be published in November. It may well not be enacted until 1987.
- (vi) Irish Language - a draft Order in Council is expected perhaps in November - but it is not expected that it would be enacted in 1986.

- (vii) Code of Conduct - we have strongly urged that this matter be dealt with quickly so it will be possible for it to be approved by end 1986. (No legislation is required). The Code has yet to pass through the Police Authority and the Police Federation.

- (viii) Fair Employment Legislation - a draft order will be issued shortly aimed at strengthening the existing legislation.

- (ix) Bill of Rights - discussions are taking place on a Bill of Rights for Northern Ireland. We will press for an early announcement by the British in favour of the principle of such a Bill but legislation will take a long time.

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