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SECRET AND PERSONAL

24 March 1987

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Mr. E. O Tuathail
Assistant Secretary
Department of Foreign Affairs

Dear Eamonn

I had a discussion today with Tony Stephens, Deputy Permanent Under-Secretary at the Northern Ireland Office. Stephens is administratively in charge of the Northern Ireland Office in Belfast. As you know, the Permanent Under-Secretary, Andrew, shuttles between the London and Belfast branches of the NIO. Stephens also heads up the Divisions of the Northern Ireland Office dealing with security matters.

Stephens was accompanied at our discussion by Mark Elliott, the British Head of the Joint Secretariat. Elliott is an Under-Secretary on secondment from the Foreign Office and he is also Head of the Political Affairs Division of the Northern Ireland Office.

Provisional IRA violence

Stephens expressed appreciation for the public statement of the Tanaiste on the three murders carried out at Magee College last night by the Provisional IRA.

He said that the security authorities had been expecting a "heave" on the part of the Provisional IRA in the Derry area for some time. There had been a number of attempts by the

organisation in Belfast in the past two months to organise widespread disruption by explosions and hoax "bombings", as well as attempted murders of members of the police. He mentioned the murder of Constable Nesbitt, following a number of requests for a police presence to deal with an alleged robbery in Ardoyne. This was intended to provoke the police into repressive retaliation so as to undermine an emerging sense of improvement in the relations between the police and the Catholic community on the ground. The Provisional IRA were aware of the efforts being made to improve this situation and wished to stop them from succeeding. In the case of Belfast, many of the efforts over recent months by the Provisional IRA had been aborted through the interception of explosives and weapons as a result of successful intelligence efforts.

He said that the Provisional IRA had also been similarly unsuccessful in the Derry area in a large number of instances, particularly through the interception of explosives. Relations between the police and the nationalist community in Derry City had been improving more markedly even than in Belfast over the past year. (Note: Incidentally, this assertion was borne out by a Panorama programme on BBC last night which conveyed an impression of a more hopeful situation in the nationalist community in several respects than had been the case since 1969).

Stephens said that the authorities here detect an element of desperation within the Provisional movement, on both the political and military fronts, arising from the weak performance by Provisional Sinn Fein in our recent General Election and from the stated commitment of the new administration in Dublin to implement the Anglo-Irish Agreement.

I stressed the importance of very sensitive handling of the tense situation in Derry City today following the murders last night and the problems surrounding the Logue funeral. Stephens said (as we had been told earlier in the Secretariat - see our telex 262C) that the police under Turkington were determined to

handle the situation with the maximum sensitivity consistent with maintaining order.

Samson Report

I asked about the present state of play in the light of Samson's latest submission both to the DPP and to the Chief Constable (see our telex 259C of 23 March)*. (COPY ATTACHED)

Stephens said that this latest section would complete the file of material required by the DPP, so far as Samson was concerned. The material had gone simultaneously both to the Chief Constable and to the DPP (unlike the situation last year when Stalker's reports went first to the Chief Constable who delayed their submission to the DPP for several months). It was now a matter for the DPP to get a view from the Chief Constable before making his own decisions on prosecutions. Stephens stressed, however, that the DPP would not be obliged to accept the Chief Constable's advice and he reminded me that the DPP had in fact in the past rejected the recommendations of the Chief Constable: it was this in the first instance which had led to the Stalker investigation. In other words, the DPP now has the material on which to make his decisions on prosecutions and he will make those decisions following consideration of the views of the Chief Constable.

Stephens said, in confidence, that the DPP would consult personally with both the Attorney-General and Solicitor-General before making his decision. (Note: As you are aware, the DPP here, unlike the situation in our jurisdiction, is subject to the Attorney-General).

Samson must yet produce the final part of his report which will relate to the implications of his investigations for the structure of the RUC. Stephens felt that this would in practice relate to the role of the Special Branch within the RUC and specifically to matters in the "chain of command" area. The Secretary of State has undertaken to Parliament to make a

statement on this section of the report when it is received.

I asked how this would be handled. Stephens said that this part of the report would be submitted to H.M. Inspector of Constabularies (a Home Office functionary who serves as an interface in these matters between the relevant Constabulary and the relevant Secretary of State, normally the Home Secretary, but in this case of course the Secretary of State for Northern Ireland). The likelihood was that the Secretary of State would take the advice of the Inspector.

I asked how the Secretary of State's decisions on this part of the report would be given effect within the RUC. I said that this was an area with which we constantly had difficulty given the operational independence of the Chief Constable on all operational-management matters (and other operational matters) of which we were repeatedly reminded both by the Chief Constable and by the Secretary of State. Stephens said that the Secretary of State would naturally hope that the Chief Constable would agree with the recommendations that he was making, following the advice of the Inspector of Constabularies. In the event, however, that the Chief Constable opposed the Secretary of State, a serious situation would arise in which the Secretary of State would have to exert his ultimate authority by asking the Chief Constable to state why he refused to implement such recommendations: this would have the most serious implications for the position of the Chief Constable. (Note: I took this to mean either resignation or dismissal).

I asked whether the whole process involving the Inspector of Constabularies and eventual exchanges between the Secretary of State and the Chief Constable would have to be complete before the Secretary of State would report to Parliament. Stephens said he did not know and could not know in advance of seeing Samson's recommendations. He would assume however that the Secretary of State would probably wish to address as many of the issues in this report as quickly as possible, leaving for public mention later only those issues which had not been resolved at

the outset between himself and the Chief Constable.

Code of Conduct

I said that Minister Scott had told the Tanaiste on Saturday last that the Code of Conduct had got "stuck" in the Police Authority arising from the insistence of members of the Police Authority who had been nominated by the DUP that the Constable's Oath be integrated fully into the Code. I reminded Stephens of the long discussion on this matter during the negotiations (Stephens had been on the British negotiating team), and of the public commitment given by the Chief Constable in paragraph 4 of the Communique from the Conference meeting on 11 December 1985:

"The Conference also agreed that the RUC and the Armed Forces must not only discharge their duties evenhandedly and with equal respect for the unionist and nationalist identities and traditions, but be seen by both communities to be doing so. The Chief Constable of the RUC advised the Conference that a number of other UK police forces were introducing Codes of Conduct and that, in consultation with the Police Authority, he had for some time been preparing and would introduce as soon as possible in 1986 a Code which would include these matters."

I said that to include the oath would be quite at variance with "equal respect for the unionist and the nationalist identities and traditions" and would seriously damage the British Government's own stated policy on "action to increase the proportion of members of the minority in the Royal Ulster Constabulary" (Article 7(c) of the Agreement). Stephens said that "there is no disagreement between us".

He went on to explain in somewhat more detail the background to this problem. During the course of 1985, and before the conclusion of the Agreement, Hermon had started to meet with a number of members of the Police Authority whom he himself had

selected and who (this is new) did not constitute a committee of the Police Authority, in order to draw up a Code of Conduct. This unconstitutional procedure had created considerable resentment on the part of other members of the Authority.

There had been, as you are aware, procrastinating delays on the part of the Police Federation in their consideration of a draft of the Code of Conduct. When Hermon brought the draft back to the Police Authority, lobbying efforts were made by members of the Police Federation of DUP colour to get people on their own way of thinking inside the Police Authority to insist on the oath being integrated into the text of the Code. A meeting was held in January of the Co-ordinating Committee of the Police Authority to consider the draft. That Committee comprises the Chairmen of all the subsidiary committees of the Authority. Unfortunately the two members most likely to oppose the inclusion of the oath, Vice-Chairman Shields and Mrs. Bateson, an ordinary member, were not present. The Co-ordinating Committee had recommended that the oath be included in the draft.

Hermon then considered the situation and came to the conclusion that the only way to deal with it was to drop any reference to the oath inside the text or in any annex to it. The draft that was sent to the full Police Authority for consideration did not include the oath in any way. The damage had, however, been done and, given the central position of the Co-ordinating Committee within the Authority, a move inside the Authority to restore the oath became irresistible.

There is now an impasse. Hermon is trying to find a way out, perhaps by including the oath in an annex outside the text of the Code of Conduct. I said that any reference to the oath, let alone its inclusion, would defeat the purpose that we were working for, because the Code would then no longer be "even-handed" in respect of the two traditions. I reminded Stephens of the difficulty that the Constable's Oath posed for the Irish Government and for nationalists in Northern Ireland and of a suggestion which he had himself helpfully made at a recent

meeting on this question in the Secretariat that there be two oaths, one addressed to the Queen and one in general terms without any reference to any such personage or institution.

Stephens said that the Northern Ireland Office shared our concerns and hopes in relation to the Code because they believed that a Code that was acceptable to the two sides could only be helpful to the police. He went on to say, however, that the nationalist side which, through the Irish Government in the negotiations, had insisted on a role for the Irish Government in the nomination of members of the Police Authority, had failed to make a single nomination and had thus made it, by default, extremely difficult to have their point of view represented inside the Authority (see my comment below on the background to the situation). The Government could not under any circumstances seek to dictate to the Authority which was a major statutory body independent of the Secretary of State. Any attempt to do so would lead to the resignation of the Authority. It was also in practice unthinkable that the Chief Constable should have no regard to the recommendations of the Authority and act against them in a matter such as this.

I argued against the inclusion of the text in an annex on the double grounds that (a) any reference would undermine the Code of Conduct and also (b) that its inclusion in an annex would require such a reference in the text as would have an effect tantamount to including that which was in the annex in the substance of the Code. Stephens said that one approach that Hermon had in mind was to make the reference to the oath, not in the text of the Code, but rather in a short introduction to the Code. He would say in the body of this introduction that the Constable's Oath embodied in itself the principle of treating all persons equally before the law, quoting appropriately from the text of the Oath. He said that this illustrative reference by Hermon to the oath in the introduction would exclude the oath from the substance of the Code. I said this would still be damaging. (On reflection, I feel privately that it could possibly be worn).

Stephens was not able to say when Hermon would resolve this matter finally. I said that it was my personal opinion that the whole question could so damage the Code as to make matters worse rather than better and that that aspect should be carefully considered.

Stephens said that the NIO had been chagrined to discover, on research, that no Constabulary in Britain except the London Metropolitan Police had a Code of Conduct. This would make Hermon's task with his own people that much more difficult particularly in the light of his statement to the effect that several British police forces were introducing Codes of Conduct which was reflected in the Communique of 11 December 1985 (see above).

In accordance with your letter of 16 March, I said that we found the reference in the Code of Conduct for the London Metropolitan Police discouraging membership of secret organisations to be particularly helpful. I reminded Stephens of recent controversies in Britain in which allegations of untoward masonic influences were made in relation to certain Constabularies and I added that such rumours had also surrounded the "Stalker affair". He said he was aware of this but that the general understanding relating to the reference in the Constable's Oath to taking or administering oaths covered not alone unionist or nationalist secret societies but also the Masonic Order. (Note: I did not have the text of the Constable's Oath in front of me and, on reading it later, I find this assertion difficult to believe - see text attached - I have since made this point to Elliott.)

Stephens said that the reference to even-handed treatment of the two traditions which the Irish side had specifically requested during the negotiations had survived the passage of the draft thus far.

Comment

There is no doubt that the absence of genuine nationalists from the Police Authority is the major source of our difficulty on the Code of Conduct. During the negotiations, the SDLP view had been, on the one hand, that a Code of Conduct which required as a matter of discipline that the police treated even-handedly members of the nationalist and unionist traditions would be of considerable assistance in reassuring nationalists. The SDLP and the Government were also concerned, on the other hand, to secure some significant say in running the police in Northern Ireland. The difficulty here arose from the operational independence of the Chief Constable, a concept which our side on reflection regarded as in itself an inescapable necessity. The problem, therefore, was to secure a means of having a say in the appointment of the chief officers of the police and in other important aspects of operational policy. There was considerable discussion of this issue and it was from this discussion that Article 6 of the Agreement emerged. (A say in security policy matters was secured under Article 7.) Article 6, the text of which follows, and which now covers appointments to the boards of several hundred public bodies, was thus included primarily to secure for the Irish Government a "say" in the way in which the police operate.

"Article 6

The Conference shall be a framework within which the Irish Government may put forward views and proposals on the role and composition of bodies appointed by the Secretary of State for Northern Ireland or by Departments subject to his direction and control including

the Standing Advisory Commission on Human Rights;
the Fair Employment Agency;
the Equal Opportunities Commission;
the Police Authority for Northern Ireland;
the Police Complaints Board."

In the early summer of 1985 it became necessary under statute for the Secretary of State to appoint a new Police Authority. It was seen as being too early to appoint nationalists to such a Police Authority and there ensued difficult exchanges in the negotiations intended on our side to secure provision for the nomination of nationalists after the conclusion of the Agreement later in the year.

The Secretary of State accordingly appointed a Chairman, a Vice Chairman and 16 other members to a new Police Authority, leaving 4 vacancies on which the Irish Government would put forward proposals for nominations following the Agreement.

In the event, following consultation between the Government and the SDLP, it was decided that it would be prudent to let some time elapse even after the Agreement had been concluded before making these nominations. In June 1986, Mr. Michael Murphy, one of the Secretary of State's nominees and the only genuine nationalist then on the Police Authority, resigned following a direct threat to his life by the Provisional IRA. This made matters even more difficult.

We are paradoxically in a situation where, having insisted on the inclusion of Article 6 overwhelmingly for the purpose of nominating nationalists to the Police Authority because we decided that this was the best and perhaps the only way to ensure that nationalists had an adequate voice in the Authority's control of the police, we now have this major issue, the Code of Conduct, running into trouble precisely because (for very understandable reasons) the SDLP have not been able to come up with nominations to the Police Authority.

Looking at the situation from here, it would seem to me that consideration might now be given to three options:

- let the work on the Code of Conduct go ahead subject to the issue of the oath being resolved in a manner satisfactory to us. (Note: This would be difficult to

ensure given the autonomy of the Police Authority from the Government here, a principle on which we for our part insist);

- ask for a postponement in the promulgation of the Code of Conduct until such time as genuine nationalists can take their places on the Police Authority and when the draft of the Code could be sent back for consideration by the full body;

- consider whether we could make appointments now to the Police Authority to run until June 1988 when the present Authority expires; here the question would be to find people who would be at once authentic voices of nationalist concern and yet not vulnerable to assassination by the Provisional IRA; a suggestion made in the Department was that consideration might be given to the nomination of members of the clergy e.g. Fr. Faul; if this approach were to be taken we should quickly ask that the process of promulgating the Code should be held over pending the filling of what are now five vacancies to the Police Authority and until the draft had been considered by the fully constituted Authority.

Yours sincerely

M-J. Lillis
Michael Lillis

FORM OF OATH

I, swear by Almighty God that I will well and truly serve our Sovereign Lady the Queen in the office of without favour or affection, malice or ill-will; that I will to the best of my power cause the Peace to be kept and preserved, and that I will prevent to the best of my power all offences against the same; and that, while I continue to hold said office, I will faithfully, according to law, to the best of my skill and knowledge, discharge all the duties of the said office, and all such duties as may be attached to such office by law, and that I do not now belong to, and that I will not, while I shall hold the said office, belong to any association, society, or confederacy formed for or engaged in any seditious purpose, or any purpose tending to disturb the public peace, or in any way disloyal to our Sovereign Lady the Queen and that I will not, while I shall hold the said office, engage or take part in the furthering of any such purpose, or take or administer, or assist or be present at or consent to the administering of, any oath or engagement binding myself or any other person to engage in any such purpose.

Sworn before me, one of Her Majesty's Justices of the Peace.

This day of 19.....

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