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Meeting of the Anglo-Irish Intergovernmental Conference

Belfast, 5 November 1997

Item 2 (d) Policing

Speaking Points

Key Points:

The Bill does not tackle the core problem of lack of nationalist confidence in policing.

We expect that this Bill will be overtaken by developments in the talks process.

We welcome the implementation of the Hayes Review on police complaints.

Police Bill - General

- We have forwarded our detailed views on the draft Police Bill through the Secretariat.
- The Bill seems to presume that there is no absence of nationalist confidence in the RUC, yet that is the core problem. It does not refer in any way to such crucial issues as ethos, composition or identity of the police nor make changes to the oath of allegiance.
- It fails to include the White Paper's recommendations on the duties of a police officer to carry out his duties with impartiality, without favour or affection, malice or ill-will, without regard to status, gender, race, culture and tradition, religious belief, political belief or aspirations.
- It falls short of the belief in the Labour Party's consultation paper that "there is much that can be done outside those talks in terms of immediate initiatives and as invaluable preparation for those talks."
- The need to improve community relations does not seem to be a particular feature of the Bill. I believe that it should be.

- Is there scope for improvement on these points?

Fundamental Review

- What precisely is the problem in not passing a copy of the Chief Constable's Fundamental Review to us within the framework of the Conference?

Police Complaints

- I welcome the implementation of the Hayes Review of Police Complaints. The Hayes Review and its recommendation are an important and very valuable opportunity to infuse a sense of confidence in the police complaints procedure.
- Adequate resources will be essential to the independence of the operation of the Office of the Ombudsman, particularly in the initial phase.
- We believe that the Ombudsman should have the power to grant compensation when he considers this would be serve the cause of justice as recommended by Hayes. Is this still a live proposal?
- We believe that determinations regarding discipline of officers should be seen to be independent from the RUC and that prosecution should be done to the satisfaction of and preferably by the Ombudsman e.g through an independent tribunal under his aegis.

Plastic Bullets

- Are you now satisfied that the specifications regarding the manufacture of plastic bullets have been adhered to in the stocks currently held?
- Can you outline what changes have happened or are proposed which may affect the manner in which plastic bullets are deployed and used?
- We persistently hear that officers involved in public order operations often conceal their I.D. numbers. This completely frustrates complaints against them, including in regard

to the use of plastic bullets and excessive force. We would encourage some concrete steps to rectify this problem, particularly in advance on next year's marching season.

Derryhirk Inn

- You have responded to our concern about reports of the involvement of an RUC officer in both the incident itself and the current investigation into it, through the Secretariat. That concern needs to be firmly allayed if there is to be confidence in the integrity of the investigation and its outcome.
- When might we expect concrete results from the investigation of this case which has caused widespread concern ?

Robert Hamill

- On the face of it, this appears to have been a shocking case of police negligence.
- It has profoundly shaken nationalists in Portadown and confirmed their worst fears about the attitude and behaviour of the local RUC.
- How is the investigation progressing and when might we expect some developments?
- What prompted the dropping of murder charges against three of assailants?
- Can they be charged with lesser offences?
- We have heard that the officers concerned are now on sick leave. What is the current status of the officers who failed to take action?

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Item 2 (d) Policing

Background Note

General

1. The Government believes that a future policing service for Northern Ireland must be independent, broadly acceptable and representative of the community it serves. The SDLP have called for the establishment of a number of regional police forces. Sinn Féin have called for the disbandment of the RUC, though even it concedes that current RUC officers would feature in any new policing structures. The UUP and DUP are opposed to any major changes to the RUC, in particular to its ethos and identity, and tend to regard any such considerations as a betrayal of a force which has defended the Union over 25 years of sustained republican attack.

Draft Police Bill

2. A copy of this draft legislation in Order in Council format has recently been provided by the British side. We understand that the Secretary of State wishes to press ahead with changes to the structure of policing (i.e. the relationships between the Chief Constable and PANI and other changes in the management structures) and now intends to legislate in the area of policing by the enactment of a Bill rather than by way of an Order in Council as had previously been thought. It is her intention to have the Bill implemented by 1999-2000. The Government believe that since policing will feature as a core issue in that talks, legislative proposals on policing must not pre-empt discussions on the subject in the all-party negotiations and associated discussions between the two Governments.
3. The Bill draws on the Police and Magistrates Courts Act 1994, the 1996 Labour Party document *Policing in Northern Ireland - A service for all People*; the Hayes Report on the Police Complaints System in Northern Ireland, the 1996 NIO White Paper on policing and the RUC's *Fundamental Review*.

4. The draft legislation involves a reworking of the relationship between the Chief Constable, PANI and the Secretary of State and the development of policing objectives, performance targets and policing plans. It also provides for the establishment of the Police Ombudsman's office, with power to independently investigate complaints (in line with the Hayes Review recommendations). The Bill transfers responsibility for support services from PANI to the Chief Constable. The police force, traffic wardens and the civilian staff of PANI are to form a single service, to be known as the Northern Ireland Police Service. The name 'RUC' is to be retained in reference to the police force. The Bill also includes provision for the consolidation of all Northern Ireland policing legislation dating back to 1836.
5. Overall, it has been observed that the proposals which are contained in this draft legislation are essentially the classical "management consultancy model" for the relationship between the police force and the executive. The proposals form a reasonable model for the relationships in a 'normal policing' context. However Northern Ireland does not present a 'normal policing' context and the Bill virtually ignores the core problem of nationalist alienation the RUC (and PANI). For example, the general duties of members of the police force as set out in the draft legislation are considerably less explicit than the NIO 1996 White Paper proposals. The White Paper offered that police operate "impartially, without favour or affection, malice or ill-will, without regard to status, gender, race, culture and tradition, religious belief, political belief or aspirations and with an understanding of differing views", that officers treat "all persons with courtesy, consideration and dignity, recognising the individuality and value of every person" and that the police operate "for the benefit of the community as a whole in the particular circumstances pertaining to Northern Ireland." The Bill fails to include these considerations in either the setting of strategic objectives or in the general duties of police officers. The new draft legislation also copper-fastens the taking of the Oath of Allegiance on attestation to the police force and retains the existing name of the force.

Police Complaints

6. The draft legislation provides for the establishment of a Police Ombudsman with the

power to independently investigate complaints including those of a criminal nature. This proposal is drawn from the Hayes Report. When the legislation is given effect (expected in early 1999), the Ombudsman will replace the Independent Commission on Police Complaints (ICPC). The Ombudsman will have the power to determine the admissibility of all complaints and the method of their investigation through either informal resolution after referral to the Chief Constable, formal investigation by the Ombudsman or referral by the Ombudsman to the Chief Constable for formal investigation by a police officer appointed by the Chief Constable with the approval of the Ombudsman.

7. The Hayes Report envisaged that, as a confidence building measure, the Ombudsman should initially investigate all complaints, other than those considered appropriate for informal resolution. As confidence in the process grows cases could be progressively remitted to the police for investigation at the discretion of the Ombudsman. The issue of sufficient resources for the Ombudsman's office, both in terms of investigators and support structures, will be the determining factor in the success or failure of the new complaints structure gaining public confidence.

8. The recruitment of investigators for, effectively, the Ombudsman's independent investigation unit is provided for in the draft legislation as being drawn from the existing ICPC's staff, direct recruitment by the Ombudsman and the engagement of members of the police force for a period of temporary service with the Ombudsman. The 'mix' of recruits to the investigation unit will be significant due to the perception of independence and investigative effectiveness which will be crucial if the Ombudsman is to generate confidence in its operation and be seen as a credible investigative force.

Attitudes to the RUC

9. A survey commissioned by PANI and carried out in September 1996 reported that more than 75% of Catholics were in favour of reform or replacement of the RUC. A third of Protestants were also in favour of RUC reform. Generally, nationalist attitudes to the RUC have hardened considerably as a result of the escalation of parade tensions and in particular the successive problems at Drumcree from 1995 onwards. The SDLP and

Sinn Fein have refused to forward candidates for membership of the Police Authority on the grounds that it is, in effect, a toothless organisation that is controlled by rather than in control of the RUC and the NIO. The changes envisaged in the Bill will not alter this approach to PANI.

Plastic Bullets

10. In the aftermath of the disorder which accompanied the Orange parades in 1996 (during which more than 6,900 plastic bullets were fired, the vast majority, over 6,000, during nationalist protests), the then Secretary of State for Northern Ireland announced that the Inspector of Constabulary, as part of his annual review of the RUC, would examine the use of plastic bullets in Northern Ireland. This review was published last January and contained a number of useful recommendations on training and accountability. These proposals are reported to have been accepted in full by the RUC and to have precipitated a review of guidelines on the use of plastic bullets. However, as yet there is no indication as to when any new guidelines will be published.
11. Long held concerns in Northern Ireland regarding the use of plastic bullets by the security forces have been reinforced by revelations that dangerously defective batches of plastic bullets were being withdrawn from operational use. It has also emerged that the British Ministry of Defence were aware of these defects as far back as July 1995 and failed to notify either the Northern Ireland Office or the RUC.
12. Our position with regard to plastic bullets has been to urge that they should be used only as a weapon of last resort, that their potential to cause death and serious injury should be all but eliminated, that they should be deployed in such a way as to ensure that their overall use is dramatically reduced, and that police officers who use them (or their commanding officers) should be held fully accountable. There is now a heightened sense of urgency in finding alternative and safer methods of addressing situations of public disorder in Northern Ireland.
13. There is a small stock of rubber bullets still held by the Defence Forces in this

jurisdiction. It is understood that the disposal of this small stock is at present under review both in the Department of the Taoiseach and the Department of Defence and a decision, as recommended by the Taoiseach, to discontinue the stock of these weapons is imminent. **[Situation to be confirmed]**

Incident at Derryhirk Inn

14. On the evening of 14 March 1997 a shooting incident took place at the Derryhirk Inn at Aghagallon near Lurgan. Three members of the RUC reportedly opened fire on the pub while they were in and around the premises. The incident is at present the subject of an investigation which is being overseen by the ICPC. This investigation is on-going, but is close to being concluded.

Robert Hamill

15. Robert Hamill died in hospital on 8 May 1997, 12 days after being attacked by a mob in Portadown. Six RUC officers had been inside a nearby van at the time of the attack, but they failed to intervene. No interim action has been taken against the officers. Three of the six people charged with the murder of Mr. Hamill were released on 31 October 1997, following the DPP stating that "there will be no reasonable prospect of a conviction". Three other local men remain remanded in custody charged with Mr. Hamill's murder.

Security Section

29 October 1997

Meeting of the Anglo-Irish Intergovernmental Conference

Belfast, 5 November 1997

Item 2 (e) Bloody Sunday

Speaking Points

Key Points:

Movement from the British side is required soon.

Advance consultation on any decision is critically important.

- Since we handed over our Assessment on 24 June last, political pressure has mounted on us to declare our position.
- We cannot resist this indefinitely. The obvious course of action would be to publish our Assessment.
- It is our considered judgement that an apology will not now be sufficient to resolve this issue. Only a new inquiry can achieve this.
- When can we expect some movement from you on this issue?
- Broadly speaking, what options are you currently considering?
- I would emphasise again that it is essential that you consult us in advance of any public announcement of your position on our assessment or on any other aspect of Bloody Sunday.
- In this regard, I am grateful for your personal assurance, conveyed through the Secretariat, that you will brief us at least some days in advance of any public statement.

Meeting of the Anglo-Irish Intergovernmental Conference

Belfast, 5 November 1997

Item (e) Bloody Sunday

Background Note

Government Assessment

1. The Government's Assessment was handed over to the British Government in confidence on 24 June 1997. The Assessment considers the significance of the new material and presents a detailed deconstruction of the Widgery Report. It finds that the Widgery Report presented a fundamentally flawed and inaccurate version of events and that its purpose appeared to be to exculpate the actions of the British Army. The Assessment concludes that

- *The new material fatally undermines and discredits the Widgery Report. A debt of justice is owed to the victims and their relatives to set it unambiguously aside as the official version of events. It must be replaced by a clear and truthful account of events on that day, so that its poisonous legacy can be set aside and the wounds left by it can begin to be healed. Given the status and currency which was accorded to the Widgery Report, the most appropriate and convincing redress would be a new Report, based on a new independent inquiry.*
- *The terms and powers of any new inquiry would need to be such as to inspire widespread public confidence that it would have access to all the relevant official material and otherwise enjoy full official support and cooperation, that it would operate independently, that it would investigate thoroughly and comprehensively, and would genuinely and impartially seek to establish what happened on Bloody Sunday, why it happened and those who must bear the responsibility for it.*

2. In order to allow the British authorities time to consider the Assessment and to formulate a response, the Government did not indicate publicly the nature of its recommendation. The British Government is considering the Assessment in the context of its own consideration of the new material which has emerged.

3. Speaking in Dáil Éireann on 9 July 1997, the Taoiseach reiterated that the Widgery Report must be repudiated and the truth of Bloody Sunday must be told and acknowledged. On 30 September 1997, the Taoiseach stated that he believed that establishing the truth about Bloody Sunday will make an important contribution to building confidence. The Taoiseach noted in the Dáil on 21 October 1997 that he had met with the relatives of the victims of

Bloody Sunday on 14 October 1997 and he stressed his support for them and their campaign. He reiterated that the Widgery report must be repudiated and the truth of Bloody Sunday must be clearly established.

British Position

4. The attitude of the Secretary of State personally was summed up by her remarks in Derry last May that "Bloody Sunday and what happened to people on Bloody Sunday and what their families and friends have gone through since is a situation which I find totally unacceptable and one that my heart just goes out to them and we're just going to have to do something". However, officials in the NIO have yet to agree on how to proceed and we understand that no decisions have yet been taken. While in Derry on Monday, 13 October 1997, Prime Minister Tony Blair refused to comment on the issue saying, "As we've already said, I mean, this is a matter which is under consideration; the evidence is under consideration by government departments and I won't comment in advance of making a decision upon it". The Prime Minister had responded to the Taoiseach in similar terms when the issue was raised at the Strasbourg bilateral on 10 October 1997.

5. We have been assured that we would be notified of whatever decision is reached well in advance of any public announcement and that the British have taken fully on board the importance of Irish Government support for whatever course is decided if it is to have the desired political impact on the nationalist community.

Bloody Sunday Relatives

6. The core demand of the Bloody Sunday Relatives' campaign is for a repudiation of Widgery and the establishment of a new independent inquiry with an international dimension. The Relatives have met the Government on a number of occasions, most recently meeting the Taoiseach on 2 July and 14 October, 1997. They indicated that they were particularly pleased with the commitment of Irish Governments, past and present, to pursuing the issue, as illustrated by the Assessment and the Government's endorsement of it. The Taoiseach assured them of his commitment to resolving the issue of Bloody Sunday.

Security Section

3 November 1997

Meeting of the Anglo-Irish Intergovernmental Conference

Belfast, 5 November 1997

Item 2 (f): Emergency Legislation

Speaking Points

Key points:

- **I welcome your decision to take internment off the statute book and introduce audio recording in the holding centres, and Jack Straw's ending of exclusion orders.**

- **I would, however, have also welcomed some advance notice of the announcement of a consultation paper on the emergency legislation.**

- **I understand that we had been promised a briefing on the EPA bill at official level which did not materialise.**

- **These are important issues under the Anglo-Irish Agreement and I hope that there will be full consultation as you consider the future of anti-terrorist legislation.**

- **I note that you are extending the EPA for a further two years from next August.**

- **Is a two year extension necessary?**

- **Is there any scope for assessing the situation closer to August 1998?**

- **In the context of the forthcoming consultation exercise I hope that it will be possible to move towards abolition of the Diplock Courts and holding centres.**

- **I note that Jack Straw has already indicated an openness to judicial involvement in the extension of detention and I would hope that the seven day period can be reduced.**

- I would also have a particular concern to ensure that the consultation effectively addresses certain aspects of the PTA, such as landing and embarkation cards, which are perceived to be targeted more specifically at Irish people.

Meeting of the Anglo-Irish Intergovernmental Conference

Belfast, 5 November 1997

Item 2 (f) : Emergency Legislation

Background Note

Proposed Amendments to Emergency Legislation

1. On 30 October, Secretary of State Mowlam introduced into the Commons the Northern Ireland (Emergency Provisions) Bill, which she had announced during her speech at the recent British Labour Party Conference. The Bill repeals the internment provisions of the Emergency Provisions Act, which were last used in 1975. It provides for the audio-recording of police interviews with terrorist suspects. It also amends the schedule of offences attached to the Emergency Provisions Act so as to increase the number of offences which may be "certified out" (the EPA schedule contains a list of offences which are to be tried by Diplock Courts unless, in a particular case, the Attorney-General for Northern Ireland certifies otherwise; certain offences may never be "certified out").
2. However, the Bill will also extend the life of the current EPA for a further two years beyond its current expiry date of August 1998.
3. Also on 30 October, the Home Secretary, Mr Jack Straw, speaking in the House of Commons, announced the British Government's intention to replace both the PTA and EPA with permanent UK wide counter-terrorism legislation, which will draw on the Lloyd report (see below). The proposals, to be presented by both the Home and Northern Ireland Secretaries, will be contained in a consultation paper to be published early in the New Year.
4. He also announced that, provided the security situation does not change, he intends to allow the PTA exclusion powers to lapse when the act is renewed in March next year. On the same day, he revoked the last 12 exclusion orders in effect under the Act. However, the Home Secretary made clear that the PTA will also be renewed next year.

Government's Position

5. In dealing with the British emergency legislation, our focus has been to seek the elimination of its more contentious elements in the short term. Accordingly, the formal abolition of internment (contained in the EPA), and of the exclusion powers contained in the PTA, are welcome, as is the introduction of audio recording of interviews under the PTA in Northern Ireland. While the amendment of the schedule to the EPA is a step in the right direction, we would have preferred that it be modified so that offences would have to be "certified in", rather than retain the requirement that they be "certified out" in specific cases.
6. It is, however, disappointing that Dr Mowlam has already decided to extend the EPA for a further two years without waiting for an assessment of the need for this closer to

August 1998.

7. The announcement that the further proposals to be contained in the consultation paper will be based on the Lloyd report is also broadly welcome. In December 1995, the then British Government commissioned Lord Lloyd to consider the future need for specific counter-terrorism legislation in the UK in the context of a lasting peace in Northern Ireland. In October 1996, his report recommended, *inter alia*, the abolition of Diplock Courts, a reduction in the time for which a suspect can be detained without charge from 7 days to a maximum 4 days, with judicial involvement in the second 48-hour period, and also the introduction of codes of practice to govern the exercise of stop and search powers. It is to be hoped that all these recommendations will be implemented (Lloyd also recommended removal of the powers of internment and exclusion, which has been accepted by the British Government).
8. At the same time, the Government will wish to ensure that the proposals for the permanent counter-terrorism legislation contain the firmest legal safeguards and protection from abuse. We will also wish to see a significant diminution of the EPA's powers to stop, search and question, as well as the adoption of the Police and Criminal Evidence Act (PACE) 1984 standard on the admissibility of confessions.
9. The Government will have a particular concern in seeking to ensure that the proposals effectively address certain aspects of the PTA which are perceived to be targeted more specifically at Irish people, and are therefore of particular concern to the Irish community in Britain and to Irish people traveling between Ireland and Britain. These include the provision of the PTA whereby passengers arriving in or leaving Britain or Northern Ireland can be required to complete a landing or an embarkation card for an examining officer. This provision applies only to travel within the Common Travel Area. Unfortunately, Lloyd's recommendations in this regard are not in accordance with the Government's positions; he strongly favours retention of the port powers, and did not specifically address the issue of landing and embarkation cards in his recommendations.

Lack of prior consultation

10. Despite the provisions of the Anglo-Irish Agreement, the British did not provide us in advance with details of the amendments to the EPA, or of the Home Secretary's statement to the House of Commons. During the Stocktake Meeting, held in Belfast on 22 October, the Irish side had requested a full briefing on the new Bill and had asked for an advance copy. The British agreed that such a briefing should take place once the British Government's thinking had become clearer. However, the promised briefing was never given.
11. The British had also told us that the Bill would only be introduced in November. The British explained the earlier introduction by saying that a parliamentary slot had become available unexpectedly.

Security Section
Anglo-Irish Division
3 November 1997