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GOC's CONCERN ABOUT PROGRESS WITH SECURITY

Last Friday, 9 October, I joined the GOC for a working lunch à deux in his office. Over our sandwiches, he developed the theme that progress in reducing the level of terrorism had got stuck. There had of course been a very great improvement since the mid-70s, achieved despite the absence of any lasting political break-through. For several years there had been a steadily downward trend in violence, notwithstanding a few serious setbacks such as Warrenpoint. However, the statistics for the past three years or so, taken in aggregate, showed quite clearly that the downward trend was not being maintained but had levelled out. It might be a relatively low plateau that we had reached, but it undoubtedly was a plateau and he could see no sign of our being about to step off it and resume a downward path of further improvement.

2. He understood the reasons why this was so, but he did not feel that we could just accept the position philosophically. We were in danger of losing the security initiative. Inevitably there would continue to be serious setbacks from time to time; if they were no longer being offset by a background of general improvement, it would become increasingly difficult to prevent public confidence from eroding, leading in turn to further violence in an upward spiral.

3. Yet he was convinced that the present steady-state level of terrorism was being maintained by only a quite small number of activists. He could not avoid the conclusion that it was our inability to remove those relatively few people from circulation that was alone preventing us from making further and indeed decisive progress in eradicating terrorism. It was immensely frustrating to be so near and yet so far; and he found it very

difficult to believe that some way could not be found to put those relatively few people behind bars. He hoped we would have another look at this.

4. I told the GOC that I agreed with his perception of being stuck on a plateau and that I shared his misgivings about allowing this to continue. I was not as confident as he was, however, that the fact of a limited number of leaders remaining at liberty was a decisive factor, though it would obviously help considerably if they were not. I saw plenty of evidence (eg the size of the PSF vote) for believing that the number of individuals or families who remained sufficiently dedicated to the republican cause to be at least potential participants in violence was quite substantial, albeit a minority of the minority. What then mattered above all was whether those people felt that they enjoyed sufficient if only ambivalent support or tolerance from the rest of the minority, and sufficient prospect of eventual success, to make it worth their while to engage in terrorism. This, of course, was not the least reason why we were persevering with the search for an Anglo-Irish agreement despite the difficulties that it might create for us.

5. However, assuming for the moment that he was right, surely the problem was not one of having the will to proceed against the activists but of having the evidence to sustain charges against them - unless, that was, he was advocating some form of extra-judicial process for detaining them. What had he in mind?

6. The GOC said he was not in favour of anything as crude and unselective as a general resumption of executive detention. He hoped it would be possible to find ways to proceed through the criminal law, perhaps by creating new offences but mainly by enabling witnesses to remain unidentified. Failing that, the answer might lie in detention for fixed period, preferably awarded by the established courts (and applied to a maximum of 40 or 50 people).

7. I told him that I could give him no encouragement at all to toy with the latter possibility. Attempts had been made before to find a respectable half-way house between conviction and detention, but the task was an impossible one. The difference between the two things was a difference of purpose and it was a fundamental difference. The purpose of a conviction was to punish, which meant a determinate sentence. The purpose of detention was solely preventive; detention for a fixed term was a contradiction in terms and would be self-defeating. Moreover, the idea necessarily carried two massive penalties. Even if the Judges would be prepared to make detention orders unsupported by convictions (which they certainly would not), the credibility of the judiciary would be totally destroyed. So would our efforts in the prisons to reject the idea of political or prisoner-of-war status. If there were to be any question of detention without conviction, it would be imperative to keep it quite separate from the orthodox process of trial, conviction and imprisonment.

8. As for straightforward executive detention, my own view was that it should be seen not as a moral issue but as one of expediency. The great drawback of detention was that it did not lead anywhere; it was a policy cul-de-sac and sooner or later one had to go into reverse in order to get out of it. I also thought it was a delusion that one could hope to stick to a predetermined ceiling for the number of people to be affected. The intention might be quite sincere, but in no time there would be persuasive pleas to add just a couple more, and then a few more again.

9. Reverting to what could be done within the framework of the criminal law and the Courts, a lot of thought had been given to the problem of protecting the identity of witnesses, and I was sure this would continue. But there were finite limits to how far one could go in this direction before the trial ceased to be a trial at all in the accepted sense. It was a basic requirement that the defendant must be able to hear the evidence against him and be able to subject it to cross-examination. Possibly, though I rather doubted it, there was still some remaining scope for

protecting witnesses without breaching that requirement.

10. We did not attempt to pursue the discussion to a conclusion, but left it that the GOC might wish to raise it with me again on another occasion.

Comment: The GOC raised the subject without any forewarning. It is a familiar enough theme, and understandably so; in earlier years it used to crop up at fairly frequent intervals and we have perhaps been somewhat overdue for a further manifestation. Whether the GOC had thought of it for himself or been put up to it, it is certainly consistent with the present CLF's known views. There was no indication that it had been mooted with the RUC and I should be surprised if it were to receive much encouragement from that quarter nowadays. (Sir Kenneth Newman was not averse to the idea of legal short cuts to reduce the number of Provos at large, but his successor has a purer concept of normality.) It may be mildly significant that the Army were prepared to float the idea without any certainty of RUC backing - rather than continuing to subordinate their ideas to those of the RUC in order to preserve the detente which has prevailed ever since General Lawson succeeded General Creasey.

11. We must, I think, be quite firm with the Army from the start that there is no foreseeable prospect of either a return to detention or adoption of some form of pseudo-detention administered by the Courts without the need for proper evidence. To allow them to build up expectations that either of these might be attainable would be misleading and liable to get out of control. However, I believe we should temper our firmness with understanding of their exasperation and with the promise to do everything possible with the trial process short of putting its credibility at risk. I know that there are few if any stones left unturned in this area, but we must be seen to be trying.

12. I have recorded this conversation at some length in case the subject is raised in other fora or conversations during the next few weeks (though I doubt if HQNI would want to raise it unilaterally in the formal setting of SPM or SCM). Mr Scott may like to be aware of it before he dines with the GOC

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at the beginning of next month. I propose to give the GOC a lead-in to talk about it again in a few weeks' time; the risk that this will breed false hopes is less than the risk of not knowing whether he has lost interest in the subject or is building up a mounting head of steam about it.



A W STEPHENS

18 October 1985

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