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COPY NO OF 17

- cc PS/Minister of State (L&B) (3&4) - B
- PS/PUS (L&B) (5&6) ✓ 14/ - B
- 1. PS/Sir K Bloomfield (7) - B
- Mr Ledlie (8) ✓ - B
- Mr Burns (9) - B
- Mr Thomas (10) - B
- Mr A P Wilson (11) - B
- Mr Miles (12) - B
- Mr Bell (13) - B
- Mr McClelland (14) - B
- Mr Daniell (15)
- File and Box (16&17)
- ANNEX A TO FOLLOW BY HAND



PS/SECRETARY OF STATE (L&B) (1&2) - B

NEGOTIATIONS WITH THE IRISH ON THE ANGLO-IRISH AGREEMENT
CONCERNING THE UDR

Background

The Secretary of State asked for details of those parts of the negotiations between British and Irish officials leading to the Anglo-Irish Agreement which led to the inclusion in the Joint Communique issued at the signing of the Agreement paragraph 8 (a) which, as we all know to our cost, said,

"8. In addressing the improvement of relations between the security forces and the minority community, the Conference at its first meeting will consider:

- (a) the application of the principle that the Armed Forces (which include the Ulster Defence Regiment) operate only in support of the civil power, with the particular objective of ensuring as rapidly as possible that, save in the most exceptional circumstances, there is a police presence in all

operations which involve direct contact with the community;"

This paper draws on a history of the negotiations that led to the signing of the Anglo-Irish Agreement written by a senior NIO official - now retired - who was a member of the British negotiating team that was headed by the Cabinet Secretary, Sir Robert Armstrong.

The Story

2. The conclusive round of serious negotiations between British and Irish officials began towards the end of the April 1985 when the British side handed over a proposal for an Agreement that had been approved by Cabinet Committee OD (I). As part of their response the Irish advanced the view that there might be both an inter-governmental agreement and, separate from it, their preferred declaration on the constitutional status of Northern Ireland, together with such "confidence-building measures" as the British might agree to. Included in the Irish list of possible confidence-building measures was the role of the UDR. In subsequent discussions the Irish pressed for a reduction in the role of the UDR, for example, by getting rid of part-time members or restricting their role to the manning of static points and vulnerable installations.

3. In June, the Irish returned to their ideas about confidence-building measures and raised the idea that members of both the RUC and the UDR should be required to make a declaration acknowledging the validity of both traditions in Northern Ireland. Irish officials stressed that the Taoiseach, Dr Fitzgerald, attached great importance to confidence-building measures that would visibly change the situation on the ground at the time the Agreement was signed. British officials responded that it would be illusory of them to expect the British Government

to make far reaching changes in the UDR as part of any proposed package.

4. During June the Irish submitted a "non-paper" on the UDR for consideration by the British side. That paper identified three broad options: maintaining the Regiment in its existing role; disbanding it and replacing it with Regular Army units; and retaining it with a modified structure and role. Factors which contributed to "present problems" were, the paper suggested, the rather short time spent by part-time members of the Regiment under direct military discipline; the shortage of Regular Army staff at senior levels; the minimal training; and the dispersal of off-duty members which made them very vulnerable. Remedies might include the introduction of Regular Army officers (with supporting NCOs) as company commanders with responsibility for the training, discipline and conduct of their troops; making the company the lowest sub-unit to have a base separate from battalion headquarters; providing for UDR operations to be wholly in support of the RUC or under the control of Regular units; allowing the UDR to mount checkpoints and other controls only in the presence of the RUC and in their support; confining powers of arrest to the RUC; and requiring all UDR members to receive 8-10 weeks basic training under Regular Army supervision. The British side agreed to look at those proposals in consultation with the MOD.

5. The next record of the UDR being raised by the Irish side is in Charles Powell's record of the meeting between the Prime Minister and Doctor FitzGerald in Milan on 29 June 1985. This is a crucial meeting so far as the subsequent working of the Agreement is concerned because Dr FitzGerald has since claimed that certain undertakings were given to him by the Prime Minister on joint courts and on RUC accompaniment of the UDR. Mr Powell's note does not substantiate Dr FitzGerald's claims. The Taoiseach is recorded as saying that the Irish Government needed the Agreement to be accompanied by specific evidence of improvements

for the northern minority such as joint courts, changes in the RUC and the UDR, and a commitment to a major review of sentences if violence was brought to an end. The Prime Minister pointed out the dangers to the British Government's position if such measures were linked to the signing of the Agreement. In reply the Taoiseach is recorded as saying he realised that abolition of the UDR, sought by the nationalists (? ie the SDLP) was out of the question. He asked only that it should be made into an efficient and disciplined force.

6. It was while taking stock after Milan that British officials first came up with the idea that the Communique accompanying the Agreement might announce that there would be a very early meeting of the new Committee (subsequently to be named the Conference) and to indicate the likely agenda for that meeting which might include consideration of confidence-building measures. The NIO was invited to prepare a paper on the possibilities.

7. At Cabinet on 25 July following discussion in OD (I) approval was given for the proposed tactic of accompanying the Agreement with a Communique announcing an early meeting of the new inter-governmental committee and its proposed initial agenda. The Prime Minister agreed that in discussing this proposal with the Irish, matters which might be included in the agenda would be illustrated by mentioning the suggested code of conduct for the security forces, improved training for the part-time UDR, and the filling of outstanding vacancies in PANI.

8. The then Secretary of State, Mr Hurd also met James Molyneaux and Enoch Powell on 25 July and during their discussion had felt obliged to make it clear that a re-structuring of the UDR or its abolition would not be part of any agreement.

9. In discussion with Sir Robert Armstrong on 26 July about the next exchange with Irish the Prime Minister felt that any reference in the Communique to the UDR would be badly received by the Unionists and make implementation of the Agreement even more difficult. Changes in the UDR, even if desirable in themselves, should be kept distinct from the Agreement.
10. At the meeting with Irish officials at Chevening on 30-31 July the Irish suggested that the Communique should be expanded to include after all in a new sub-paragraph a reference to the UDR. After referring to the principle in the conduct of public order in the United Kingdom that the military operated only in support of the civil power, the Communique should say that "in this context the intergovernmental body would consider how the operations and deployment of the British Army in Northern Ireland, including the Ulster Defence Regiment, could increasingly be conducted at the request and also in the presence of the Royal Ulster Constabulary....." The British team took note of the suggestion but did not say it was acceptable. Wisely, as it turned out as British Ministers did not accept the change.
11. During the holiday month of August, British officials' assessment of the chances of achieving an Agreement was that at the end of the day the Irish judgement would be based on instinct rather than reason and would depend on such questions as mixed courts and further movement on the UDR.
12. British Ministers continued to be unhappy about any explicit reference to the UDR in the Communique. Mr Hurd was wary of advertising any moves on the UDR in a post-summit Communique. His preferred course was a unilateral statement to Parliament on changes in the training of the UDR, etc., which could be accompanied by a re-statement of policy on its deployment in nationalist areas.

13 At a meeting with the Prime Minister on 30 August officials reported that the MOD had looked at the scope for further moves on the UDR which could be justified on their merits. As a result the Defence Secretary had agreed to a few more small steps. It was already practice that the power of arrest under the EPA was not used, except in extreme conditions such as physical emergency by those members of the UDR who had not completed initial training and six months of service. It was proposed to formalise this into an instruction. A special contingency provision for some 2½ thousand extra part-time members of the Regiment, over and above its part-time establishment of some 6½ thousand, was to be eliminated - essentially a cosmetic move since the establishment itself was never likely to be reached. The Defence Secretary also agreed that the Irish could be told in confidence that the part-time establishment would be reduced over the next year by some two thousand, bringing it more into line with the actual number of part-timers. The Irish could also be told that MOD would consider the possibility of incorporating elements of the new RUC Code of Conduct in some form of standing instruction for the Army in NI, and that it would be used in the training of soldiers there. Finally, there was to be an increase in the degree to which UDR soldiers took part in Regular Army training such as the standard Officers' Course at RMA Sandhurst.

14. At the next meeting with the Irish on 3 September the Irish welcomed what the British side had to offer on the UDR as steps in the right direction. But they insisted that more was needed. They were looking for three things: phasing out the part-time cadre of the Regiment; a much greater RUC presence alongside the UDR in areas where the UDR operated; and a visible reduction in UDR operations in strongly Republican areas. They recognised that these were not things that could be achieved rapidly but agreed that it should be possible to give immediate signs of change such

as the more frequent accompaniment of UDR patrols by members of the RUC, especially in largely Republican areas.

15. British officials in reply said that if the UDR was a sensitive matter for nationalists, changes concerning it were equally sensitive for Unionists. Announcing too many changes around the time of the Agreement could jeopardise the Agreement's success. Nor could the British side give private undertakings about further changes concerning the UDR since it must be possible totally to deny that there had been secret promises or side agreements on that or any other matter. However, the establishment of the UDR and the deployment of the Regiment would be kept under review, and there was no present intention of increasing its membership or extending its area of deployment.

16. The Irish reacted strongly to this saying that it was all contrary to the "spirit of Milan" and wondering whether the Anglo-Irish Agreement would be concluded after all.

17. Further talks with Irish officials were planned for 12/13 September. In considering a response to the Irish position in order to clinch the Agreement, British officials decided there was little room for manoeuvre on mixed courts but that "a small further move" on the UDR was all that was needed. The proposal was that it was already policy that UDR operations were undertaken jointly with the RUC (clearly a reference to one of the recommendations of the NIO/RUC/HQNI Security Policy Review of 1984), although putting the policy into practice had been inhibited by the need for "careful handling" within both bodies. The recent meeting in Dublin had suggested that if, under the policy, there were a higher proportion of joint operations the Irish would be satisfied. Following a helpful discussion which the NIO had had with the Chief Constable of the RUC, the Irish should be assured that the Catholic population could expect to see

more evidence of the policy on the ground, particularly at vehicle check points, by the end of October.

(Comment: This "card" was duly played both in the negotiations and in subsequent meetings of the A-I Conference. It was to become a continuing Irish complaint after conclusion of the Agreement that the pace of implementing the policy remained too slow.)

18. At the next meeting with the Irish, they were appreciative of what the British were proposing but they continued to press for the RUC or the Regular Army to replace the UDR in a few strongly Roman Catholic (Republican) localities. Such minor adjustments, they said, would be disproportionately helpful to them in the context of the Agreement. These suggestions were passed on to the MOD and the Prime Minister was informed.

19. The Irish also insisted on the insertion of a specific reference to the UDR in the draft Communique although the language was still some way from paragraph 8 of the eventual Communique.

20. During October as the negotiations moved to the final stage the Irish complained that visible evidence on the ground of more joint RUC/UDR patrols was not forthcoming as the British side had promised. This led to correspondence between the then DUS (Belfast) and the then Chief Constable which did not produce a satisfactory response.

21. When British and Irish officials met on 13 and 14 October, the British side handed over a "non-paper" on changes which had been made or were to be made in relation to the UDR. This "non-paper" is attached at Annex A.

22. In late October the then Secretary of State, Mr King, pointed out (prophetically) to the Prime Minister that there was

an imbalance in the draft Communique between its specific reference to British action on the UDR and the RUC and its lack of specificity on what the Irish would do to increase security co-operation. British officials suggested the Communique should be expanded to say that the intergovernmental body would "give attention" to achieving a "significant and lasting improvement to the policing of border areas". This was a formulation that the Irish were subsequently to refuse adamantly to accept.

23. The history of the last weeks of the negotiations carry no further reference to detailed negotiations over what finally emerged as paragraph 8 (a) of the Summit Communique. Within a period of two weeks paragraph 8 (a) emerged from the following anodyne draft sub-paragraph:

"... the meeting will address the principle that the military only operate in support of the civil power can be further applied in the operations and deployment of the security forces in Northern Ireland having regard to community relations as well as to operational needs."

24. It seems that it must have been agreed on the British side that the wording of 8(a) was necessary to clinch the Agreement and that the British gains in Articles 1 and 9 were worth that concession. It is also not clear from the papers available what undertaking Sir John Hermon gave to NIO officials which persuaded them to agree to such a hostage to fortune.

Conclusion

25. I am sorry that the story of the final negotiations is less than clear, but with hindsight it is perhaps fair to say that the British side concentrated more on the textual nuances of the Agreement itself not realising that the Irish would be just as theological about the precise text of the Communique as of the

Agreement. The latter has proved to be the case over the last 4½ years and was particularly evident during the negotiations over the Article 11 Review of the working of the Agreement.

(signed:)

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13 March 1990
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It seems that it must have been agreed on the British side that the wording of 8(a) was necessary to effect the Agreement and that the British gains in Articles 1 and 2 were worth that concession. It is also clear from the papers available that undertaking Sir John Hermon gave to SIS officials which persuaded them to agree to such a hostage to fortune.

Conclusion

I am sorry that the story of the 1985 negotiations is less than clear, but with hindsight it is perhaps fair to say that the British side concentrated more on the tactical success of the Agreement itself not realising that the Irish would be just as theological about the precise text of the Communiqué as of the