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FROM: S L RICKARD
SIL
14 APRIL 1992

... and 22 April for the other two papers, so that with the deadline proposed in Mr Hill's minutes. I would draw the attention of POB and CPL in particular to paras 20(a) and (b) respectively of the fine detail on liaison committees and Assembly. Information may have changed unbeknown to SIL.

- cc PS/PUS (L&B) - B
- PS/Mr Fell - B
- Mr Thomas (L&B) - B
- Mr Ledlie - B
- Mr Alston - B
- Mr Bentley, LAB, HO - B
- Mr Steele - B
- Mr Shannon - B
- Mr Bell - B
- Mr McClelland - B
- Miss Mills - B
- Mr D J R Hill - B
- Mr D A Hill - B
- Mr Leach - B
- Mr Petch - B
- Mr West - B

(SIGNED)

MR COOKE

TALKS: SECURITY AND DEVOLUTION

Mr D J R Hill's minute of 23 March invited divisions to review the various papers generated last year in the course of formulating the UK negotiating position for talks.

2. I attach revised versions of the main internal paper on Security and Devolution and similarly revised versions of the two discussion papers which depend upon it, namely the (descriptive) Security Policy and Policy Mechanisms and Security: Possible Role of a Northern Ireland Administration (which contains proposals for discussion). The two latter are for talks with the parties if necessary. The changes are for the most part minor: the main being revised reference to the UDR.

3. I do not envisage that many changes will be necessary to update the already cleared papers, but it would be helpful if any necessary amendments could reach Mr West here by 16 April for

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Security and Devolution and 22 April for the other two papers, so that we may comply with the deadline proposed in Mr Hill's minute. I would draw the attention of POB and CPL in particular to paras 20(a) and (b) respectively, where some of the fine detail on liaison committees and Assembly disqualification may have changed unbeknown to SIL.

(SIGNED)

S L RICKARD
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14 APRIL 1992
OAB EXT 6466

2. That policy explicitly recognises the primacy of the police in dealing with all forms of crime, including terrorist crime, their operational independence in so doing, and their accountability (as also that of the soldiers who act in their support) to the law for all their actions. Arrangements are in place to provide for close co-ordination of the activities of the police and the Army which acts in their support. But other elements within the criminal justice system, notably both the prosecuting authorities and the courts, remain totally independent of both the security forces and the Government.

3. Within the Secretary of State's overall responsibilities for law and order, both statute and convention contribute to a distinction between security policy and security operations. Thus -

(i) the Secretary of State has certain statutory responsibilities in the security (and policing) fields. At Annex A is a list - illustrative rather than exhaustive of his main powers:

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SECURITY POLICY AND POLICING MECHANISMS

1. Security policy in Northern Ireland is conducted within a legislative framework set by Parliament. Formally and constitutionally, the Secretary of State for Northern Ireland has overall responsibility for law and order. In practice, the Secretary of State decides overall security policy in the light of advice from the Chief Constable and the GOC, who are his security advisers. Current security policy was described briefly in a Statement issued by the Secretary of State in November 1990 (attached as Annex B).

2. That policy explicitly recognises the primacy of the police in dealing with all forms of crime, including terrorist crime, their operational independence in so doing, and their accountability (as also that of the soldiers who act in their support) to the law for all their actions. Arrangements are in place to provide for close co-ordination of the activities of the police and the Army which acts in their support. But other elements within the criminal justice system, notably both the prosecuting authorities and the courts, remain totally independent of both the security forces and the Government.

3. Within the Secretary of State's overall responsibilities for law and order, both statute and convention contribute to a distinction between security policy and security operations.

Thus - (i) the Secretary of State has certain statutory responsibilities in the security (and policing) fields. At Annex A is a list - illustrative rather than exhaustive - of his main powers;

(ii) implementations of security policy as determined by the Secretary of State (ie "security operations") is the responsibility of the Royal Ulster Constabulary. They are supported where necessary by the armed forces. The RUC is under the direction and control of the Chief Constable. Like police officers in the rest of the United Kingdom, RUC officers have a wide range of powers and responsibilities invested in them by statute and common law. In security terms, the most important statutory powers for the RUC are those of stop, search, arrest and (short-term) detention provided under the Northern Ireland (Emergency Provisions) Act 1991 and the Prevention of Terrorism (Temporary Provisions) Act 1989. Under the general criminal law, police powers are, for the most part, now consolidated in the Police and Criminal Evidence (Northern Ireland) Order 1989. In the exercise of their powers under these and other statutes, as in all their actions as individuals, police officers are answerable to the law;

(iii) the armed forces, where their assistance is required, act only in support of the civil power. In so doing, they are subject to a chain of command which stretches back through the GOC at Headquarters, Northern Ireland to the Chief of the General Staff, and, ultimately, to the Secretary of State for Defence. Members of HM Forces have limited powers to stop, question and arrest under the Northern Ireland (Emergency Provisions) Act 1991. The GOC and his officers remain responsible for the operational deployment of the armed forces in support of the tasks allocated to them by the police; like police officers, the actions of individual members of the armed forces are always subject to the law;

(iv) under the Prosecution of Offences (NI) Order 1972, the Director of Public Prosecutions for Northern Ireland is responsible for initiating, undertaking and carrying on prosecutions in respect of all serious criminal offences in Northern Ireland. The Director is responsible to, and in certain circumstances may be directed by, the Attorney-General for Northern Ireland. The Director is wholly independent both of the Secretary of State and of the police;

(v) the Secretary of State appoints the Police Authority for Northern Ireland, an independent public body, wholly funded by the NIO. The Authority determines (within the overall constraint imposed by the Secretary of State and the Treasury) the size and the structure of the force, appoints senior officers, provides and maintains buildings, equipment, and supplies, and exercises budgetary control over police services. It is required to keep itself informed about the way complaints against the police are handled and it is the complaints and discipline authority for senior officers;

(vi) the NI Prison Service has responsibility for accommodating securely prisoners remanded or convicted by the Courts. Its members are civil servants and, as such, they are directly accountable to the Secretary of State and subject to his direction within the framework of prison legislation approved by Parliament;

(vii) the Secretaries of State for Transport and for the Home Department have certain national responsibilities for security at airports and ports.

ANNEX A: SECRETARY OF STATE FOR NORTHERN IRELAND'S PRINCIPAL DIRECT RESPONSIBILITIES IN THE FIELD OF POLICING/SECURITY

1. Under the Police Act (NI) 1970 the Secretary of State must approach the appointment of a Chief Constable made by the Police Authority and may require his retirement. He transmits the Chief Constable's annual report to parliament, and may himself call for a report from the Chief Constable on any relevant matter. He may also make regulations as to the government, administration and conditions of service of members of the RUC and its reserve.

2. under the Northern Ireland (Emergency Provisions) Act 1991 the Secretary of State may proscribe or de-proscribe organisations; direct the closure of highways; pay compensation; set time limits to preliminary proceedings; make directions in relation to custody of young persons; requisition property; and make regulations for promoting the preservation of the peace and maintenance of order.

3. Under the Prevention of Terrorism (Temporary Provisions) Act 1989 the Secretary of State may exclude persons from Northern Ireland of the United Kingdom. He may also, on application by the RUC, authorise the continued detention for questioning of persons reasonably suspected of involvement in acts of terrorism for periods not exceeding a maximum of 7 days in total from the time of first arrest.

4. Under the Public Order (NI) Order 1987, he may exempt certain classes of procession from requirements to give advance notice; or prohibit, in certain circumstances, public processions or open air meetings, in consultation with the relevant committee of the Police Authority wherever practicable.

5. Under the Firearms (Northern Ireland) Order 1981, he considers appeals against the refusal by the Chief Constable to grant, renew or vary a firearms certificate or to issue a certificate of registration to a firearms dealer. He authorises firearms clubs and issues licences under the Explosives Acts, 1875-1970. He also makes regulations.

6. Under the Police (Northern Ireland) Order 1987, he may refer to the independent Commission for Police Complaints any matter, not the subject of a complaint, if he considers it is in the public interest that the Commission should supervise the investigation of the matter. He makes regulations on complaints and discipline matters.

3. Security policy is decided by the Secretary of State in the light of advice which he receives from the Chief Constable and the GOC; security operations, by contrast are a matter for the Chief Constable, within the framework determined by the Secretary of State. The armed forces, whilst ultimately answerable to Westminster through the Secretary of State for Defence, act in Northern Ireland in support of the RUC. Many of the major issues of public concern in the security field are, in fact, primarily matters of operational judgement and, therefore, matters for operational commanders to determine. But in relation to other matters, there is properly a role for Government. That may be either because the particular security force activity has implications for some other matter for which Government is directly responsible, or because questions of security policy are at issue. But, at all times, the principle of the operational independence of the police and army has to be preserved - not only to ensure the effectiveness of security force operations but also to preserve the political independence of both the police and the Army.

SECURITY: POSSIBLE ROLES FOR A NORTHERN IRELAND ADMINISTRATION

1. This paper outlines possible ways of giving Northern Ireland - based democratic institutions some input to security matters, and identifies some of the underlying issues raised in each case.

Preliminary issues and constraints

2. There are two important distinctions to be drawn. The first is that between security policy and the implementation of that policy, ie security operations.

3. Security policy is decided by the Secretary of State in the light of advice which he receives from the Chief Constable and the GOC; security operations, by contrast are a matter for the Chief Constable, within the framework determined by the Secretary of State. The armed forces, whilst ultimately answerable to Westminster through the Secretary of State for Defence, act in Northern Ireland in support of the RUC. Many of the major issues of public concern in the security field are, in fact, primarily matters of operation judgement and, therefore, matters for operational commanders to determine. But in relation to other matters, there is properly a role for Government. That may be either because the particular security force activity has implications for some other matter for which Government is directly responsible, or because questions of security policy are at issue. But, at all times, the principle of the operational independence of the police and army has to be preserved - not only to ensure the effectiveness of security force operations but also to preserve the political independence of both the police and the Army.

4. The second distinction is between arrangements designed to offer some input into the formulation of security policy, and those which would give to the Northern Ireland based democratic institutions the power to take decisions. The former could include some scrutinising functions, or they could involve participation in discussions leading up to the formulation of security policy or about how best to handle the interface between security and other matters, including policies for which responsibility had been devolved. Under the second scenario, the Northern Ireland institution(s) might take direct responsibility for some, or all, of the work of the Northern Ireland Office which is concerned with the discharge of the Secretary of State's functions in the law and order field. Such responsibility might but need not carry with it legislative responsibility for some law and order matters. The Government has previously indicated a willingness to contemplate devolution of such functions, but only after a stable and widely acceptable system of government had been established in Northern Ireland.

An input to security policy

5. The most direct method of enabling a Northern Ireland institution to participate in the formulation of security (or a more limited range of law and order) policy would be by way of an advisory committee drawn from the institution. This could, if the scheme involved an Executive (or comparable body) be that Executive. If no Executive or comparable body were formed, it could be a "home affairs" or "general purpose" committee of the Northern Ireland institution.

6. Questions to be resolved before any such a committee could be constituted would include:

- i) what would be the composition of the Committee? Would it be elected, selected, or appointed? Would there be any constraint (eg of political balance) on nominations to the Committee? In principle, a small body would be likely to be more effective and cohesive; how would this be reconciled with the need to represent different parties and interests within the Northern Ireland institution?
- ii) given that the Committee's main function would be the tendering of advice to the Secretary of State, should there be a power for the Committee itself, (or the Northern Ireland institutions, or both) to determine its own agenda? Might it also be desirable to provide for the Committee to act on references by the Secretary of State?
- iii) what would be the modus operandi of the Committee? Looked at simply from the point of view of accountability to the Northern Ireland public, it might be desirable for the Committee to deliberate and tender advice in public. But, in practice, the Committee would almost certainly find itself dealing with subjects of some security sensitivity, which would need to be handled in strict confidence. Moreover, for the Committee's advice to carry the greatest weight, that advice should ideally be agreed; and this might more easily be achieved in a small body able to protect itself from the glare of publicity. These considerations suggest that it might be desirable to keep both the Committee's advice to Secretary of State, confidential. Whether any such Committee should also be expected to exercise collective responsibility for its advice would depend upon the arrangements adopted elsewhere in the Northern Ireland institution(s);

iv) the Committee might wish to have access to expert advice in formulating its recommendations to the Secretary of State. Should it, therefore, be able to appoint an independent adviser or advisers? Or should it have access to advice, in some form, from the security forces and/or the Northern Ireland Office? So long as the Secretary of State remains ultimately responsible for security matters to Parliament, it would appear not to be appropriate to delegate to the new body any power to call for persons and papers analogous to that presently enjoyed by Select Committees of the House of Commons. But alternative arrangements could be devised which would allow for informal contacts between NIO Ministers and the committee and for briefing papers to be provided.

8. An alternative approach, not involving the creation of a single standing committee capable of providing continuous advice, might be to establish, as necessary, one or more temporary commissions to examine particular subjects or issues in the security or policing field. Such "commissions" might produce reports and then disband. Adoption of this approach would raise similar questions relating to appointment, composition, modus operandi and access to advice as would the advisory committee discussed at paragraphs 5 and 6. But the "commission" option might be capable of providing a sharper focus on particular law and order issues, as well as greater flexibility (in the sense of being able to engage a wider range of political opinion; as well as in being able to take advantage of special expertise on particular issues).

9. Still another possibility raising more difficult issues, would be to give the Northern Ireland institution(s) some decision-making powers in relation to law and order matters (not excluding a power to legislate). The government stated in 1982

that it would consider, once a durable and stable system of government had been established in Northern Ireland, whether any of the "reserved" matters in the Northern Ireland Constitution Act 1973 (ie most law and order matters) could be placed in the "transferred" category and become the responsibility of a devolved administration. The precise legislative structure may not be relevant to future arrangements, and is referred to here only of illustrative purposes; but in that structure, Section 3 of the Constitution Act contains a mechanism whereby the matters specified in schedule 3 to the Act ("minimum reserved matters on the appointed day") could be made "transferred" matters, and become the responsibility of a Northern Ireland institution (in this case a devolved administration) by subordinate legislation subject to affirmative resolution in Parliament. Devolution of such responsibilities would require the creation of a new "home affairs" department in Northern Ireland; and, more importantly, presupposes agreement about how the new powers would be exercised. The latter issue should be a key element in discussion of this approach.

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