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IRELAND



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British Proposals for Changes in
Security Arrangements

1. Irish Government attitudes to the different British security proposals over the years have had to take account of a number of negative factors:

- (i) Constant British implications that the Border was the principal element in the Northern security problem. This implication gave rise to the danger that agreement to British proposals would be interpreted as acceptance that the Border was in fact the principal element.
- (ii) British emphasis on security rather than on the need for political progress. Many British proposals aim at the symptoms of the North's problems rather than at the problems themselves.
- (iii) The sincerity of British requests has been open to question. In particular, the British Army has generated unreasonable requests with a view to providing excuses for their own inability to provide a security solution.
- (iv) Some British requests (in particular direct army to army communication) have been judged by our security forces to be likely to be counter-productive.

In addition, of course, most of the British requests which have not been accepted have presented constitutional, legal, political, technical or financial problems.

2. Reviewing the British requests in the light of the London meeting, the above general arguments can be seen to have lost some of their validity and indeed in some cases to be no longer relevant. In particular, there is little point in present circumstances in contrasting political initiative and progress on security as alternatives, or even as differences of emphasis, because the spectacular successes of the IRA in the recent past have reduced to a negligible level the already slim chances of success of a political initiative. Nor is time on our side. The IRA are undoubtedly conscious that they now have the initiative and that (from their point of view), they must maintain their pressure to destabilize the North. There is no reason to doubt that they have the will-power, the personnel and the supplies necessary to stage farther dramatic incidents. Accordingly, it is necessary to consider security improvements in order to get back to a situation in which political initiative and progress can again have some chance of success. It is suggested that this alternative approach is justified by changes in the factual background - it is not intended to question the underlying reality that fundamental stability can only be achieved by political means. Security measures cannot be a long term solution. Should the general analysis of this paper be accepted, this distinction will have to be got over to the public.

3. The security question combines operational, political and propaganda elements. The propaganda elements have an objective importance because if we lose the propaganda war, our political influence as well as our standing in world opinion

is diminished. We have never succeeded in more than defensive containment in the propaganda war and, following the atrocities of 27 August, we have suffered a propaganda defeat, particularly in the popular British press. The criticism from Northern Unionists was predictable, but it is not now an exaggeration to say that our stance on security has lost credibility in the UK and to a large extent in the US. This evaluation is intended as an objective assessment, not as a comment on the merits of the argument. To win a propaganda war we require not only arguments of merit but also manpower and resources. We have always been totally outgunned by the resources of the different elements of the British machine - official press officers, army press officers and not least a nationalistic press. The strategy which we have used in the propaganda war - a strategy which is respectable in spite of its lack of success - has been to argue on the basis of objective reality. It is one of the fundamental objectives of this paper to argue that it is now essential for us to adopt a different strategy - namely to accept British proposals at face value and where the constitutional, political, legal, technical or financial difficulties are neither insuperable nor intolerable, to try them in practice and let them be judged by their results.

4. What is at issue is not only propaganda and political influence. The objective of IRA policy is to destabilize Northern society. In this they may or may not succeed. They are unlikely greatly to affect British society. But there is a danger that either directly or through a Protestant backlash leading to renewed violence in the South that they could profoundly destabilize Southern society also. It is therefore

argued that a fundamental priority should now be given to defeating the IRA and that this should be seen as a problem which affects us even more than it does the British Government. There is a danger that a reluctant policy will be "too little, too late" and that measures such as internment may then become necessary in an already unstable situation.

5. The present British requests are set out in the British Embassy Aide Memoire of 7 September which is attached in Annex I. Our traditional objections to these requests are summarized in the following paragraphs with, in each case, suggestions as to the attitude we might adapt at the next Anglo-Irish political meeting.

Steps to improve the anti-terrorist capability of the Garda

6. This British request seems a little confused, or at least complex. They do not seem fully to distinguish in their own minds between the existing Garda anti-hijacking Special Task Force and an anti-terrorist crime squad specifically dedicated to action against terrorists in the border area. Mr. Atkins raised this latter concept at the meeting on 27 June, it seemed to disappear from sight at the meeting of 5 September and it has now reappeared, though in a secondary capacity in the British Aide Memoire.

7. It was obvious at the meeting on 27 June that the special Garda unit Mr. Atkins was pressing for was essentially different from the Task Force that has been instituted in the Garda and

which has operated as a unit from time to time. Accordingly, the relative lack of success the Garda believe the Task Force to have exhibited may not be strictly relevant to the British proposal in that Mr. Atkins on 27 June committed himself to the advantages of using the Task Force. As the British have offered training facilities with a view to instituting the kind of unit they envisage, it would at least buy time to explore more fully precisely what it is that they are suggesting.

8. Clearly it is for the Garda Commissioner and the Minister for Justice to determine how best Garda manpower will be used. For an outsider, however, it appears reasonable to argue that the efficiency of the fight against terrorism would be improved by having more men committed full time to the task in the form of an anti-terrorist crime squad. Other responsibilities of the Garda might suffer corresponding neglect but, as is argued above (paragraph 4) it would appear appropriate at present to give priority to the task of defeating the IRA.

Interrogation

9. This request was first made formally at the meeting Mr. Atkins had with Irish Ministers in June last. It had previously been mentioned from time to time at official level but discussion was never pursued beyond the point of its being accepted that any initiative for consideration at political level should come from the joint police groupings. According to the Department of Justice, these groupings were satisfied that the existing arrangements (whereby the RUC could be present in the police station but not in the interrogation room) were adequate. The Taoiseach indicated on 2 September that to have RUC officers

present in the interrogation room might be counter-productive and the attitude that the Courts might take to evidence obtained in such circumstances might be a source of difficulty.

10. It is clear that there would be advantages in RUC participation in interrogations. The more information interrogators dispose of, the more likely they are to trap the suspect into contradiction and self incrimination. It is unlikely that, if the Government were to support the idea publicly, the introduction of the procedure would lead to any considerable public opposition but it could lead to the IRA putting Garda interrogators on their list of so-called "legitimate targets". The procedure would also be used against us by pro-IRA propagandists in the U.S.

11. The present arrangements have not succeeded in bringing to justice persons in the South suspected of having committed offences in the North. This has led to our getting a very bad press on extradition, in spite of our using the obvious arguments on the lack of evidence. It is to our advantage both in substance and from the propaganda point of view that suspected persons should be brought to trial and allowing RUC officers to participate in interrogations would contribute towards achieving this. On balance therefore it is recommended that consideration be given to agreeing to the British request.

12. There are no obvious legal problems except in the cases of persons who are asked to give an account of their movements under the Offences Against the State Act. A suspect is legally obliged to give an account of his movements under certain

circumstances but it could possibly be argued that the presence of third parties removes the legal obligation. In all other cases, a suspect is free to reply to questions or not, as he thinks fit and so the question of the presence of RUC officers would appear to be irrelevant. As regards the acceptability as evidence of statements made during interrogation, there is no obvious basis on which the presence of RUC officers should prevent the use of such statements as evidence, provided that the statements otherwise conform to the requirements of the Courts.

13. A slightly different approach would be to explore ways in which RUC officers could be commissioned in some restricted way as Garda officers. This would seem however an unnecessarily complicated way to tackle the problem.

14. As with the other requests they have made, the British have offered reciprocal arrangements for Garda participation in the interrogation of suspects in Northern Ireland. This is probably of limited interest to us because of the smaller scale of the problem, because of manpower difficulties and because it would expose Garda officers to unjustified risk. It is however possible that Garda presence in Northern interrogation centres could be turned to account on the question of the abuses of human rights during interrogation in the North.

The appointment of police liaison officers in each others Headquarters

15. This is obviously a matter for the police authorities but any opposition to the request could easily be regarded (and presented publicly, if it came to that stage) as deliberate

foot-dragging. On the other hand, the presence of liaison officers could be a source of friction and confusion unless there was a clear and agreed basis on which they were operating.

16. There have of course been considerable improvements in the last five or six years in the intimacy, trust and cooperation between the two police forces. The appointment of liaison officers would seem a natural extension of that development.

Standing authority for helicopter overflights

17. What the British are now seeking is standing authority for their helicopters to patrol over our jurisdiction to a depth of 10-15 kilometres. This may derive from their earlier requests for what they termed "hot pursuit", which is of course a misnomer. In international law, the doctrine of hot pursuit means that the authorities of a coastal state may pursue a foreign vessel which they have good reason to believe has violated the laws and regulations of the state, from the waters over which by international law they are entitled to exercise jurisdictional rights, and may seize the vessel on the high seas. The doctrine therefore does not apply to entry in pursuit into another jurisdiction. The British authorities recognized some years ago that the term was inapplicable and substituted in the request they were then making "follow up overflights", by which they meant permission for their spotter aircraft to cross the border when in pursuit of suspects and to remain in visual contact with them until the suspects could be apprehended by the Irish security forces on the southern side.

18. It is not clear whether the British are seeking the right to engage pursued suspects, as distinct from merely keeping them under observation until the Southern security forces can apprehend them. Nor is it clear whether they are proposing what might be termed "speculative reconnaissance", in addition to the pursuit of particular incidents.

19. To give the Northern security forces the right to engage suspects south of the border on their own authority would obviously be a radical step, with very few precedents in international law. (See however in Annex II unofficial translations of Articles 27 and 28 of a Benelux agreement of 1962.) It would require the conferring on the Northern security forces some at least of the privileges and immunities of our own security forces and this would be difficult, if not impossible to defend, were the British Army to continue to exhibit the "shoot-first" attitude which has caused the deaths recently of a number of innocent civilians, most recently William Hudson at Narrow Water on 27 August. In present circumstances, it is probably correct to regard a proposal to allow Northern security forces the right to operate in the South as impractical.

20. There remains the possibility of allowing aerial pursuit, without the right to engage suspects but with a view to facilitating apprehension by the Southern forces. When previously requested, the main arguments adduced against this proposal were

- (i) It had not been convincingly demonstrated that there was a problem

- (ii) It was not clear that the proposal would be effective
- (iii) The need to provide ground cover for the pursuing aircraft would impose an additional strain on the already over-taxed southern security forces
- (iv) There were legal problems in giving blanket clearance for overflights by military aircraft and the transport of firearms

In addition the Irish Army has consistently objected to authority being given to allow the British Army to perform functions within our jurisdiction which could be performed by our own forces.

21. We have calculated from time to time that the proportion of Northern violence demonstrably involving incidents along or across the border was of the order of 2-3%. We have been aware that it was possible that there was an unknown cross-border involvement in other incidents and, in addition, this statistical analysis is open to criticism because it is based on all incidents i.e. counts as statistically equivalent everything from mass-murder to stone-throwing. Finally, the calculations are based on old figures.

22. This year there has been further development in the pattern of violence and IRA killings along the border have played an increasingly prominent role. In the eight months to end August 67 people were murdered in Northern Ireland and 33 of these were killed in rural border areas. (There was in addition one murder in a border town.) In some of these cases there was an observed flight across the border; in others it was reasonable to presume a cross-border element. It is no longer

defensible to argue that there is not a cross-border security problem.

23. Because it is not clear what sort of overflights the British are seeking it is difficult to analyse their probable effectiveness. The British are known to have highly sophisticated aerial reconnaissance equipment whose operation could perhaps lead to a build-up of a degree of low level intelligence about the border area which would usefully complement the information already available to the Garda (and the Army). The British flew a series of reconnaissance flights along the border some years ago but this had a limited purpose and the results of the series or the evaluation thereof are not known to this Department. To maximize the usefulness of such a concession to the British would clearly require the development of appropriate technical expertise on the part of our own security forces in order to integrate the results of aerial reconnaissance with intelligence on the ground.

24. The question of "follow-up" overflights - either to pursue a fleeing suspect or to ensure that there isn't a firing point or radio detonation point on the southern side of the border - gives rise to different considerations. Obviously, speed of response is a prime factor. In the event of an incident occurring north of the border, we cannot normally expect to have a spotter aircraft in position as quickly as the British, nor can we normally achieve the same effect by saturation at ground level. If we do get our forces into position, then coordination with the northern side is difficult because of the

limited communications system in effect. The British Army, the normal operating force on the northern side can only communicate with the southern side through the RUC (who may not necessarily be present at the scene of the incident) and the Garda on the scene can communicate with our Army units apparently only via battalion headquarters.

25. Improved communications (not only Army to Army) would obviously remove some of the inefficiencies in response to incidents. So would the provision of better equipment for our forces and this is something which (as is argued in paragraph 35) might be pursued with the British. It would appear however that as long as terrorists can use the border for their own purposes, there will be a presumption that the security forces' operational efficiency in the ^{course} ~~cause~~ of a particular incident will be improved by enabling them to cross the border in the course of the incident. Against this must be offset the possible effects on morale on our side, the alienation of the local population (particularly if, as is all too likely, the British abuse any concession made to them) and the danger that the IRA would begin to include our security forces among their so-called legitimate targets. A final evaluation must clearly be a political decision. However, it would seem desirable first to obtain a much clearer idea of precisely what the British are seeking in this field. In the meantime, it seems possible to summarize the state of the argument as follows

- (i) To allow the British security forces any operational role in the south (along the lines prevailing within the Benelux) would appear politically unacceptable

- (ii) routine aerial reconnaissance has not in the past caused any problems but has not shown any demonstrable results
- (iii) follow-up overflights would appear to have operational advantages in the case of the individual incident but there may be off-setting disadvantages. Some of the advantages might be attainable by means of improved communications and equipment.

26. It has been argued in the past that the legally necessary consent of the Minister for Foreign Affairs to an overflight by a foreign military aircraft should be in advance, should be express and should preferably be written. Should it be considered politically desirable to alter present procedures it may be necessary to have a new legal opinion on the interpretation of the Air Navigation (Foreign Military Aircraft) Order 1952 or to consider revising it.

Direct Army to Army Communications

27. The present position is that the two police forces have a range of equipment for mutual communication (including in addition to normal telephone links, coded and direct lines and radio links). The two police forces each have their own systems for communicating with their own armies and of course the two armies each have their own radio network. (It appears to be the case that there is no communication system linking Garda units on the ground and Irish Army units on the ground. The Garda unit must radio its headquarters, which contacts the Army battalion control room which radios the army unit.)

28. As it is the British Army which is more active close to the border on the northern side and as it is the Irish Army which effectively affords protection and cover along the southern side when the British are engaged in an operation on the northern side, the British have argued that efficiency would be improved if the roundabout channel BA-RUC-Garda-Irish Army could be replaced with a direct army to army link. Specifically, in cases such as the Warrenpoint explosions of 27 August, the British believe that lives could have been saved, and in some cases suspects apprehended by cutting down reaction times by more direct communications.

29. The Irish Army believes that the British Army monitors their radio frequency on a more or less regular basis. (Indeed, on occasion they transmit on it, which is improper.)

30. The traditional Irish objections to direct army to army communication is that as our army can act only in support of the civil power, direct army to army communication would not enable the Irish army to act without first taking up the question with the Garda, which would merely replace one cumbersome procedure with another. In addition, it has been argued, it would be counter-productive to replace a single unambiguous chain of communication across the border with a variety of links which could cause misunderstanding and confusion. There may also be arguments connected with the mutual relations of the Garda and the Army and the willingness of the army to engage in direct relations with their British opposite numbers, but of course such arguments are not put to the British.

31. The Taoiseach indicated in London that there might be some scope for the introduction of emergency stand-by communications facilities between the two armies. Indeed, if it can be convincingly argued that an improved speed of response could avoid fatalities such as those resulting from the second Warrenpoint explosion on 27 August, it is hard to see how we can refuse to try to improve speed of response through direct communications. The Army does not need Garda authority to deploy a company on the ground and it might indeed be possible to find a legal basis in either existing or new legislation to expand the scope of the Army's legitimate activity in support of the civil power.

32. There have been previous discussions (between the police forces) on wave-bands for radio communications. Is there any reason not to explore the institution of a common waveband which the security forces on both sides could use and which would enable each, without direct communication, to be aware of the others position and activity.

33. It is unlikely that once instituted any new effective procedure could be limited to emergency use. If a facility is there it will be used, in routine as well as emergency situations.

34. The question of overall speed of response is an important one but it is complex. We have argued in the past that the failures which occur in communication occur between the British Army and the RUC, rather than between the two police forces

or between the Garda and the Irish Army. This may indeed be the case, but is not necessarily relevant. If lives can be saved by a concession by us on communications, then contrary arguments must be very cogent to be convincing.

35. Another element in speed of response is of course the difficulties of the terrain and the resulting length of time it takes to get soldiers into position on the ground. A British Army officer interviewed on RTE on 2 September said that 35 minutes was not an unreasonable length of time to get our security forces into position at Narrow Water on 27 August. Clearly a major element in reducing delays of this kind would be to put troops carrying helicopters at the disposal of the Irish Army. Consideration might be given to requesting the British authorities to make such equipment available on loan. This would not only improve efficiency and reduce the financial burdens on our exchequer, it would also put us in the position of making demands of the British.

36. It is unlikely that a concession to the British on direct Army-to-Army communication would dispose of the matter. They would be very likely to follow up with a request for coordinated operations along the border. These already exist to some extent on an ad hoc basis but the British seem to want a more structured arrangement. There seems little problem in principle in this.

Possible British assistance in Garda training

37. It would seem self-evident that any unwillingness to avail of this offer would need to be very persuasive to avoid giving the impression of lack of willingness to cooperate. Even if we are not persuaded that the British can be of assistance to us, and even if there are problems of morale in perhaps appearing to acknowledge British superiority in certain fields, there are certainly presentational advantages in accepting the British offer at face value.

Conclusions

38. This paper has dealt with the main points discussed at the meeting of 5 September, as summarized in the British Aide Memoire of 7 September. It does not attempt to deal in detail with the secondary list in the British paper or with such other requests in the security field which they have made from time to time such as, in particular, extradition. It may however be worth pointing out that the public revulsion in the wake of the killings of 27 September has probably made it politically more feasible to revise our rules on extradition than has even previously been the case. Of course, if we were revising our position on extradition, it would seem desirable to institute the procedures which normally obtain internationally, as distinct from the backing of warrants procedure which applies between Britain and the UK. In effect, this would require the British authorities to have prima facie evidence before applying to the Irish authorities for extradition.

39. It is to be anticipated that the discussion at the forthcoming ministerial meeting will be on the basis of an agenda close to the list (a)-(f) in the British Aide Memoire. We shall therefore require to have a position on each of these items. While the British will clearly welcome any movement on our part on any point on the list, it is unlikely that their pressure for security "concessions" on our part would be reduced by our agreeing to a few of the items but rejecting the others. (It would appear likely that at present the main British objectives are interrogation and cooperation between the armies.) A fortiori, it is not to be anticipated that British attitudes will be modified by security moves by us which they have not proposed, such as modification of the right to silence or an increase in Garda strength.

Presentation

40. The aim of this paper is to initiate a fundamental re-examination of our attitude on several aspects of Anglo-Irish security cooperation and, ultimately, to lead to a fairly radical change in these attitudes. It is suggested that such a radical approach is necessary because of the developing nature of the IRA threat, and because of the need to protect Ireland's image in the United Kingdom and elsewhere abroad. If it is accepted that our attitude should be changed then the presentation of this change will require careful, though rapid, preparation, not only vis-a-vis the British but also publicly in order to protect morale and to ensure that it cannot be suggested that the changes are being dictated by the British Government. The present climate in public opinion seems favourable to some of the proposed changes.

It is suggested that this climate can be transformed into popular support for more developed and more public cross-border security cooperation by explicit Government support for such changes as it is considered appropriate to make, as distinct from reluctantly making concessions, which it would then be necessary to defend ~~reluctantly~~.

Department of Foreign Affairs

10 September 1979