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DWL

Secretary of State (L&B)

cc PS/Ministers (L&B)
PS/Mr Bloomfield
Mr Brennan
Mr A Stephens
Mr Buxton
Mr Carvill
Mr Merifield
Mr Ferneyhough
Mr Chesterton
Mr Abbott
Mr Lyon
Mr Reeve
Mr Bickham



Mr R J Clayton HO

REQUIREMENT FOR CANDIDATES IN NORTHERN IRELAND
ELECTIONS TO SIGN A DECLARATION OF NON-VIOLENCE

1. Following Dr Paisley's suggestion to you on 5 February that candidates in local elections should be required to sign a declaration of non-violence, I asked for a note to be prepared setting out the arguments relating to this proposal. It seemed to me that, in view of the many problems which will arise if Sinn Fein win a large number of seats in the May elections, we should re-examine this possible weapon. Even if we rejected its use we should be clear that our reasons were well-founded. More recently, Sir John Biggs Davison has advocated an approach along these lines and has referred to a declaration which he believed had been used in Spain against terrorist sympathisers in the Basque Region.

2. I attach a note which examines the issues. For the reasons given in the note, I am persuaded that it would not be profitable to pursue this proposal further. If you agree, we shall reply suitably to letters - we already have two from Borough Councils - explaining why a declaration of opposition to violence would not in fact be effective. We shall also work up material for you to use, as necessary, in Parliament. (This issue could well be raised when we are Top for Questions on 7 March).

26 February 1985

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RJA
R J ANDREW

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REQUIREMENT FOR CANDIDATES IN LOCAL ELECTIONS TO SIGN A DECLARATION OF NON-VIOLENCE

Background

1. There has been a recent wave of enthusiasm in unionist circles in Northern Ireland for a proposal that candidates should be required to declare themselves as being against violence before being allowed to contest elections. Dr Paisley raised this with the Secretary of State at their meeting on 5 February and resolutions on similar lines have been going the rounds of district councils. We have so far received letters recording these resolutions from Larne and Ballymena, and Belfast has also passed a resolution on the subject. At his meeting with the Secretary of State of 14 February Sir John Biggs Davison pressed the same point, suggesting, like Dr Paisley, that the requirement should be introduced for local elections. The council resolutions we have seen to date have referred to all elections. The idea is one which has been canvassed for some time by Professor Paul Wilkinson of Aberdeen University. Following an approach by Professor Wilkinson, Sir George Baker took it up during his review of the Emergency Provisions Act though without specifically endorsing it. (His report commended the proposal for public discussion.). In the light of the DUP's current backing for the idea it is interesting that when Sir George Baker mentioned it at a meeting with Dr Paisley, Mr Robinson and Mr Kane, they rejected it. They pointed out that a definition of violence would be very difficult and, by way of example, asked whether it would exclude self-defence or what some people call police and army violence. Mr Robinson said that he would be worried about any device which would tie the hands of those standing for election and that he would rather see Sinn Fein proscribed.

2. The thinking behind the proposal appears to be that Sinn Fein candidates should be prevented from standing for election thereby denying them publicity during election campaigns and the opportunity of demonstrating their electoral strength. This would require candidates to make their declaration at the nomination stage. Thus

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a candidate's consent to nomination might include his declaration that he was opposed to violence. The Returning Officer would then have no option but to accept a nomination in the normal way provided the candidate had given his consent. But the declaration of opposition to violence would have no practical effect. If the candidate subsequently advocated violence, he would no doubt argue that his declaration of non-violence was sincerely made at the time but that he had changed his mind. This is a notoriously complex area in law. The inclusion of such a declaration in the consent to nomination could be achieved by an Order in Council, subject to affirmative resolution, under section 38(1)(a) of the Constitution Act. It would not be possible to include such a power for all Northern Ireland elections in the Representation of the People Bill without changing its scope as that Bill deals with only UK parliamentary, GB local government and, as respects the franchise, European Assembly elections. The draft Local Elections (NI) Order 1985 could in theory have included the power contemplated in respect of nominations as that Order in Council will be made under section 38(1), but the draft has already been made.

3. It might be argued that if the declaration at the consent to nomination stage is ineffective, the answer is to make advocacy of violence, whether before or after an election, a ground for disqualification. But it would be very difficult, and probably impossible, to reduce criteria which would work in practice. Disqualification criteria have to be tightly drawn if they are to work. It is scarcely credible that advocacy of defence against "attacks on the nationalist people" could be a ground for disqualification; and if it were, Provisionals would have little difficulty in turning it to advantage, at home and abroad, in the propaganda war. The Provisionals would claim that the Government was trying to exclude them from the democratic process because we believed that they were about to achieve electoral victory at the expense of the SDLP; and they would further claim that the Government, having for so many years urged them to contest elections, was now trying to deny them electoral success while at the same time not being prepared to re-proscribe them.

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4. It is far from clear that a declaration as proposed would only affect Sinn Fein. As Mr Robinson appears to have envisaged when the possibility was raised by Sir George Baker, several members of the DUP and several other unionists could easily run foul of any likely formulation of a declaration, for example those involved with the "Third Force" and other loyalist politicians who have claimed the right of the unionist community to defend itself if the security forces were unable to do so.

The Spanish Example

5. Sir John Biggs Davison suggested (Mr Daniell's note of 15 February) that the Spanish had been able to introduce declarations of this kind for elections in the Basque area. The Embassy in Madrid has followed this up and has established that although there is nothing specific in law, a rejection of violence is implicit in the oath to accept and abide by the Spanish Constitution, which all members of both Houses of Parliament must make before taking their seats. The relevant article in the Constitution is Article 15 which states inter alia that "everyone has a right to life and to his physical and moral integrity and may not be subjected to torture or any form of penalty or treatment which may be inhuman or degrading". Several members of the Basque party Herri Batasuna (which stands in a similar relationship to ETA as Sinn Fein does to PIRA) won seats in the 1982 Spanish parliamentary elections. However, they refused to swear allegiance to the Constitution and never took up their seats. The Spanish example is not therefore particularly relevant to the current proposal, because it does not relate to the nomination stage and amounts to little more than the oath of allegiance which MPs here are already required to take and which is, in part, the basis of Gerry Adams' present abstention.

Existing Powers

6. Powers already exist prohibiting membership of a proscribed organisation and dealing with other offences such as incitement to

violence - on the part of a candidate or of anyone else. Sinn Fein candidates could of course be excluded, at least from campaigning as Sinn Feiners, if Sinn Fein were again to be proscribed. This raises much wider issues, but Ministers' recent thinking has been firmly against such a course. It would not in any case prevent candidates such as "Armagh/H Block" candidates from standing as ^{whose} in the past/relationship with Sinn Fein would be clear but unspoken. Under the Representation of the People Act 1981 and the Local Government Act (NI) 1972 persons who have been in prison for not less than twelve months and three months respectively within a stated period before the election are disqualified. This effectively excludes many potential Sinn Fein candidates and may be causing them difficulties in selecting for the forthcoming elections.

Conclusion

7. The political and practical objections to seeking to prevent candidatures in local or other elections appear clearly to outweigh any advantages. The procedure suggested would not be effective. Those proposing the idea are primarily attracted to proscribing Sinn Fein and probably regard a declaration of non-violence as second best as a means of achieving some of the ends of proscription without actually taking that step. The proposal seems all too likely to be counter-productive.