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Mr Brennan



cc: PS/Mr Bloomfield -M
Mr A Stephens - M
Mr M Elliott - M
Mr Chesterton, o/r
Mr Gilliland - M
Ms Elliott
Mr Spence - M
Mr McConnell - M
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PDG(86)4 - ANGLO-IRISH STRATEGY

... I attach a paper for Monday's meeting of PDG. It is predictably gloomy, although it concludes, in Mr Spence's words, that we have little alternative in the short term but to "soldier on with quiet diplomacy" on the route mapped out by PUS in his minute of 12 June. The novelties are two: a proposal that we should start planning now ways of bringing onside the Fianna Fail administration that is likely sometime from mid-1987 onwards; and, second, that it would be in our interests, after the summer break but before the first anniversary of the Agreement, to carry out a full review of at least our Anglo-Irish policies and preferably in tandem with our internal NI political policies to lessen the risk that the position is not worse by the year's end than it otherwise is likely to be. In carrying out that review, the methodology described in the Annex to Mr Butler's letter of 1 May to Sir K Stowe and other Permanent Secretaries may be a help in ensuring that we do not overlook salient questions. I should be happy, after PDG, to submit an outline of what such an evaluation might look like.

2. At the risk of exceeding my brief, it seems to me that a consensus is building up within the Office although it has not yet gained universal assent: the costs of walking

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away from the Agreement still seem higher than sticking with it - though this could change if the Irish collapsed on us. In any case, many of the objectives we sought to secure via the Agreement remain eminently desirable. However, and no doubt in part because of the Agreement itself, Northern Ireland politics are more than usually unstable, and could deteriorate further. Against this background

too enthusiastic a commitment to devolution, when there seems no prospect of this within the foreseeable future, appears at best self-deceiving and at worst a recipe for further destabilisation. This suggests in turn a strategy of continuing to operate the Anglo-Irish Agreement on present plans; abandoning devolution as a short or medium term policy objective - rather relegating it, perhaps, to the status of a long term, low intensity aspiration (rather like Irish unity for successive Dublin governments); but concentrating both in public and private on making direct/^{rule}more efficient, humane, responsive to local needs - and, if necessary, making the consequent institutional changes.

3. I would add personally that we also need to be, and be seen strenuously trying to be, enhanced both for domestic and international political reasons, but also if we are to keep terrorism within bounds. Part of our difficulties with the Anglo-Irish Agreement may be due to our sometimes giving the appearance of doing, or not doing at the behest of Dublin, things that we ought to have done, sometimes admittedly with difficulty, sometime ago.

4. My paper is obviously for officials (and shows its origins in a somewhat different remit) - but to the extent that its conclusions commend themselves to PDG, its essentials could easily be boiled down to fit into the single strategy paper required by PUS.

P N Bell

P N BELL

25 July 1986

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INTERGOVERNMENTAL CONFERENCE - STRATEGY

Purpose of Paper

This paper reassesses our strategy for Anglo-Irish relations, as set out in PUS's submission to the Secretary of State of 12 June, in the light of the most salient recent political developments, notably the divorce referendum in the Republic of Ireland but also Irish nationalist reactions to events over the 12th. It falls into two parts:

- (a) an analysis of the Irish referendum and its consequences for the Irish Government (Part 1); and
- (b) the implications of that referendum, along with other developments, for our Anglo-Irish strategy (Part 2).

2. Both parts draw on material provided by HM Ambassador Dublin, and the UK Secretariat.

Assumptions

3. The paper assumes that:

- (a) our objectives remain those approved earlier this year by the Secretary of State (set out at Annex A): in particular, to reinforce the chances of peace and stability in Northern Ireland, to sustain the SDLP belief, or the belief of their potential supporters, that there is some general movement towards recognition

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of their identity and rights, and reassure unionists of the benefits of the Agreement by using it to achieve more effective measures against terrorism;

- (b) the public order situation will continue into the autumn to be not worse as it is at present, that is controllable;
- (c) there will be no agreement between the NI political parties on an acceptable scheme of devolution during the summer, nor for the foreseeable future either.

Summary

3. The failure of the divorce referendum was a serious defeat for the Irish Government. It is also evident that prejudice within the Republic has set back the Anglo-Irish process and not Unionist fear or apathy in Britain. It has also called into question the political judgement and effectiveness of Dr FitzGerald. It has thereby highlighted the political weakness of the present Irish Government, stiffened Unionist resistance, and underlined the increasing likelihood of a Fianna Fail victory at the next Irish general election. This casts doubt on the ability of the present Irish Government, even if willing, to deliver in the autumn the controversial legislation necessary to ratify the European Convention on the Suppression of Terrorism without significant amendments. More recent events, such as the decision of the RUC to allow loyalists marches in a nationalist area of Portadown are likely to combine with the increasingly septic 'Stalker' affair to predispose the present Irish Government, faced with an imminent general election, not to go out of its way to oblige the UK Government.

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4. The consequences for our Irish policies are less certain. On the one hand, it seems imprudent to rely on the ability of the Irish to deliver what, in their terms, are controversial policies or entail important resource commitments (eg cross border security). Equally, however, it still remains in our interest to persevere both with the Anglo-Irish Agreement and the strategy outlined by PUS since this remains *faute de mieux* the best way of satisfying legitimate nationalist aspirations, while also improving cross border security cooperation. Whether we can achieve the former depends greatly on whether we are able to make significant reforms in the administration of justice, most notably by the institution of three-man courts. If not, then unless we can offer other substantial measures, nationalists (and the Irish Government) are likely to see progressively less value in the Agreement - which will in turn affect our assessment of its value.

5. In any case, however, given the increasing political weakness of the present Government and the correspondingly higher likelihood of a Fianna Fail victory in the next general election, it is increasingly prudent to assess the likelihood of attitudes of a Haughey administration to the Anglo-Irish Agreement and make plans accordingly. Further measures designed to win the support of a Fianna Fail administration for the Anglo-Irish Agreement are accordingly sketched in.

6. A fuller and more systematic evaluation of the Agreement and our strategy will be necessary in the autumn.

PART 1 - CONSEQUENCES OF THE REFERENDUM

The Result of the Referendum

7. The referendum proposing an amendment to Article 41 of the Irish Constitution enabling the Oireachtas to pass a Bill

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permitting divorce was defeated by a majority of two to one (36% for, 63% against). There was a slim majority in only 6 Dublin constituencies, but large majorities against in rural areas. The turnout, at 63%, was good for a referendum but 10% lower than the last General Election. Opinion polls forecast the amendment to win - but the opponents of divorce fought an effective campaign, scaremongering on both the material and moral consequences of voting "yes" (towards the end of the campaign handbills were widely circulated saying GOD SAYS "VOTE NO"). Those in favour of the amendment, by contrast, were uncoordinated and hesitant in their approach. Mr Barry, the head of the Fine Gael campaign, came across as luke-warm in his support for divorce and his party was also handicapped by its sizeable and prominently placed conservative Roman Catholic wing.

The Effect on Dr FitzGerald's Government

8. The defeat has damaged the Taoiseach's standing and questioned his political judgement. There have been some recriminations by those in Fine Gael who opposed divorce on principle or who thought the referendum misguided. But neither the Labour Party nor Fine Gael members are likely to do anything which would precipitate an early election because of their low position in the polls; in the short term, the referendum may have increased the coalition's cohesiveness.

9. It is, in any case, in their Government's interest to hang on as long as possible, because the economic indicators are good; however, since wage increases are still running below the level of inflation, voters still feel poor and fail to credit the Government with improvements. There seems accordingly little chance of Fine Gael winning the next election, even if postponed - as is likely - to the middle of 1987. (The present

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... composition of the Dail is shown at Annex B: the Government has recently lost its majority in the Dail, although the Opposition will not command a theoretical majority until a safe Fianna Fail seat is fought at a by-election in the autumn. Figures from recent opinion polls are at Annex C.)

10. There is no realistic challenge to Dr FitzGerald's leadership from within the coalition and he remains personally a popular leader. Whether or not the Anglo-Irish Agreement itself will affect his chances of re-election is moot: perhaps the most convincing view is that the Irish Government of the day can lose credit if it fails to respond to complaints by Northern nationalists, but cannot correspondingly gain much credit by significant advances. Nevertheless, the Agreement itself is still widely approved by the Irish people (although recent media coverage has been critical) and this is something of a plus for Dr FitzGerald. Either way, a demonstration that the Anglo-Irish Agreement was working in the autumn would not do him or his coalition harm - while, as will be argued in paragraph [24] below, this could make it harder for a Fianna Fail administration to resile from the Agreement. But Dr FitzGerald now had little room for manoeuvre, and it would be politically dangerous for him to be seen to be taking too soft a line with HMG. (This may, in part, explain the reaction of Irish Ministers to the march in Portadown on 12 July.)

The Effect on Northern Ireland

11. The possible effect on the North only plays a small part in the referendum campaign. But the result was interpreted widely as a blow to the progress of the Anglo-Irish Agreement which, it remains widely believed, is designed slowly to move both parts of Ireland towards unification. On this view, the ending of the constitutional ban on divorce could have been

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interpreted as a step towards a united Ireland. It has also baulked rather larger in the aftermath in the South. Thus Dr FitzGerald was criticised for not introducing Northern Ireland into the campaign; he retorted that: "I think (sc. the referendum) shows how deep seated partition is. We recognise fundamentally that it was so deep-seated that to have made Northern Ireland an issue would have done serious damage to the cause". Irish members of the Secretariat have even argued that the referendum result demonstrates that Ireland cannot be united in this generation, and that Unionists therefore have been convinced for the first time since November 1985 that the Irish Government cannot now seek to impose Irish unity.

12. This is nonsense. The effects of the referendum have been wholly negative: in the south, they have killed both the tentative moves made in recent years towards the development of a less backward looking Roman Catholic society, and made a further referendum on Articles 2 and 3 of the Constitution (the "territorial claim") seem still more likely to fail, and even more unlikely accordingly to be attempted. It has publicly confirmed the suspicion of Ulster unionists and others of the power of the Roman Catholic in the Republic and intensified unionist resistance to Irish intervention in Northern affairs. Finally, it is hard to deny that the credibility of the Irish Government as a spokesman for minority rights has been damaged: even the Belfast Telegraph and Alliance spokesmen have described the result as undermining the moral basis for the Irish Government to press their case through the Agreement.

13. On the other hand, although the referendum may have injected a further destabilising effect into Northern politics, the result does not necessarily affect the functioning of the Agreement. The unionists interpretation of it as erecting a further barrier to Irish unity is probably correct, but beside the point since the Agreement was not designed to promote such unity. On the

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other hand, the referendum result does not affect directly the two main concerns of the Agreement: enhancing cross border security, and promoting the interests of the nationalist minority in the Province. The Agreement is likely ultimately to succeed or fail in relation to these two objectives so that, while there may be some reduction in the Irish Government's authority and credibility on human rights issues, the essential processes of the Intergovernmental Conference should be unaffected.

14. More important are the failure of the Irish Government, in its reaction to events over the 12th weekend, to do anything to repair its image outside nationalist circles, combined with the fact that the referendum has drawn attention to their own weakness. The implications of this weakness for our strategy are explored below.

PART 2 - INTERGOVERNMENTAL CONFERENCE - OUR EXISTING STRATEGY

14. PUS's submission (see paragraph 1) argued that our general objective must be to maintain the momentum of the Agreement and to demonstrate that, in spite of Unionist attempts to undermine it (and now despite nationalist reactions to the Portadown marches), the two Governments are determined to go on operating it; and that through the Intergovernmental Conference it is producing significant results. By extension, current disagreements arising from the marching season ought now to be put aside and both Governments should concentrate on working towards an "autumn package" to emerge from the IC, which would reassure nationalists that the Agreement was working but also demonstrate unionists that they have now succeeded in undermining it.

15. Fundamental problems, however, remain: first, whether or not we are prepared to contemplate three-judge courts, which remains the primary Irish demand. But there is also now a second question: even if we are able to offer a commitment to

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such courts or provide a sufficiently attractive package for the Irish without them, it must be increasingly problematical, given the weakness of the Irish Government, whether they will be able to steer through the Dail the controversial legislation necessary to enable them to ratify the ECST. Finally, account needs also to be taken of the implications for our strategy of a Fianna Fail administration, led by Mr Haughey, at any time from, probably, mid 1987 onwards. These issues are dealt with in turn below.

Three-Man Courts

16. The arguments against three-man courts are well known; so is the Irish preference for them and their avowed reluctance to introduce legislation in the Dail to ratify the ECST unless we are committed to their introduction. The other arguments in favour, in terms of promoting a court system that is both more just and seen to be so than the present arrangements are less well known. As the resolution or ability of the Irish to deliver legislation on extradition in the autumn in the Dail they become of increasing importance. These arguments will be the subject of a separate paper. They ^{may} have been strengthened by the criticism of the original (single) trial judge in Black by the Lord Chief Justice.*

17. None of this, however, should obscure the fact that a decision either way depends critically on the readiness of the Prime Minister, of which there is so far no sign, to overrule the Lord Chancellor primarily, though not exclusively, on political grounds, arguing that only by offering this concession to the Irish could we secure the extradition benefits we desire.

17. In these circumstances, it seems best to counsel Ministers to keep their options open; for officials to refine their own

* now that the judgement is available, this is less certain

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views of the merits of such a reform;* and to consider further a possible compromise of offering the Irish in the autumn a more detailed study of the matter than has so far been possible in Legal Sub-Group I. This study would have to include the judiciary and address issues such as collegiate judgements and special procedures. We could hardly decide on a change of policy without such a study, even though the Irish might well be unsatisfied by such a study unless it were accompanied by a commitment in principle. It remains the case, however, that if we cannot offer the Irish the three-judge courts, then we shall have to put together the best package we can of more minor measures. In such a package the significance of the repeal of the Flags and Emblems Act should not be underrated.

Irish Ratification of the ECST

18. One of our chief targets hitherto has been ensuring the ratification of the ECST (including of Article 2) and without any substantive reservations under Article 13. We also wish to settle a number of technical points, and by introducing a "prima facie" requirement.

19. On paper, they have a bare majority of one (on the assumption that one independent member will vote with them) over Fianna Fail and the Progressive Democrats and the independents who may oppose proposals on extradition in whole or part. But such headcounting ignores the political impact of the issue in the Republic. There can be no guarantee that all backbench Fine Gael or Labour TDs, mindful of re-election, might not choose to court the more republican minded vote in their constituencies either by opposing legislation or, more likely, by seeking to limit its scope. They may well be encouraged by the Progressive Democrats who, whilst supporting the principle of extradition for those who use violence in pursuit of political ends, are committed to the concept of a "prima facie" case being established

* there is reason to believe the Foreign Secretary, a former Law Officer, is sympathetic

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before extradition. The issue could easily be one which united the Progressive Democrats and Fianna Fail against the Government. Hence, it is quite possible that the Irish Government, whatever we may do, will bend to these pressures and offer us an unsatisfactory package. We would then have the choice of refusing it, with consequent allegations from the Irish of bad faith; or we would have to accept it and come under strong pressure to give them something substantial in return. Although ratification is likely to be more of symbolic than practical utility, we are so committed that it would be hard to draw back.

19. The Irish have argued that they could only succeed in passing legislation ratifying the ECST without reservation if there were movement towards three-man courts. And they have been evasive over their legislative intentions so far. However, we may not be able to offer three-man courts as a quid pro quo, or provide other items of sufficient weight that would enable them to carry the necessary legislation. In these circumstances legislation ratifying the ECST is even more likely to be unsatisfactory from our point of view. The final judgement, however, about whether such legislation should be regarded as a satisfactory or acceptable outcome from our point of view can only be taken in the autumn.

20. In making that judgement, however, one must take account of the fact that a Fianna Fail administration would be unlikely to introduce any more favourable legislation than Fine Gael; indeed, they could well fail to ratify the Convention at all. They might also try to put into reverse gains that had been made within existing legislation. On the other hand, it is improbable that Fianna Fail would repudiate a Convention on which legislation had been passed in the Dail and which had been so widely ratified internationally. If that legislation was in place, however, unsatisfactory, when Fianna Fail took office, it might encourage the Courts to continue to develop case law in a way that was

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helpful to us - even though we should be unwise to count upon it.

21. The interim conclusion must be that our best interests would be served by continuing for the present to press the Irish for legislation ratifying the ECST, without reservation, through the Dail to underpin the progress recently made in the Courts, even though that legislation might be less satisfactory than we wished, and the Irish Government may suffer Parliamentary reverses as a result. It would also be desirable to press the Irish even harder to disclose their intentions about legislation about which hitherto they have been woefully evasive. On the other hand, it would be unwise to introduce measures in the north of whose value in purely Northern Ireland terms we were doubtful in the hope that the Irish would be able to deliver anything significant to us in return by way of legislation. The issue will need to be reviewed in the early autumn.

Interim Conclusions for the Strategy

22. Such difficulties, in the short term, neither invalidate our current strategy nor challenge the judgement that UK interests would, for the present, be best served by keeping the Agreement in place: it remains possibly the only vehicle for enhancing security cooperation and also for reducing minority "estrangement". On the other hand, to walk now away from the Agreement in the absence of any sign of a rapprochement with unionists would signal the bankruptcy of our current Northern Ireland policies and might be taken as evidence of wider weaknesses on the part of HMG. It would also damage our relations with the Irish Government and have further undesirable consequences internationally, particularly in the USA. It also remains in our interest not to give the Irish an opportunity to resile from Article 1: while that Article has not so far reassured unionists,

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its formal repudiation would destroy whatever chance there is of unionist acquiescence in the present Anglo-Irish process.

23. It cannot yet be forecast whether this strategy will remain viable in the autumn: if the Irish (or Northern nationalists) remain dissatisfied with our public order for policing policies and are not satisfied by our 'autumn' package, or for these or domestic political reasons are unable to deliver on extradition or enhanced security cooperation: then if unionist opposition continues unabated, or is intensified in the face of attempts to carry the "nationalist" elements of an autumn package following the divorce referendum or in response to prevailing Irish/SDLP attitudes, the question will become more problematic. This points once again to a fundamental re-evaluation of our strategy, preferably by early autumn so that our own views were clear (and if possible or necessary) agreed with the Irish as far before the November anniversary as possible.

23. In the meantime, and assuming that the outcome of that review is that it will remain in the interests of the UK to keep the Agreement in place (and for the time being, unamended) it is already necessary to consider the implications for our strategy of a likely Fianna Fail administration during 1987.

Securing Fianna Fail's support for the Anglo-Irish Agreement

24. It is increasingly likely that Mr Haughey will be the next Taoiseach. So long as the Agreement remains in our interest (and without the Agreement, Mr Haughey is likely to exercise less restraint on his Republican instincts while the International Fund will founder), it is desirable to secure the support of his administration for the Anglo-Irish process. There is no reason to believe that this is impossible: Dublin Telegram No 357 reports that Mr Haughey will, if elected, not repudiate the

Anglo-Irish Agreement even though he is likely to ask for a review of its terms. (He is, however, opposed to ratifying the ECST.) This suggests not simply that we should seek to ensure the ratification of the Convention by the present Irish administration, but that we should also adopt the following tactics:

- (a) the Agreement must continue to be seen to be a success which a Fianna Fail administration would find hard to denounce: in particular it must continue to attract the support of the SDLP whose views no republic party can ignore;
- (b) the degree of Mr Haughey's support might be increased if we were able to make it clear to him that further measures attracted to the minority might be offered to him as they have been to Dr FitzGerald provided that he maintains and improves the momentum on cross border security;
- (c) we should stress that there is no question of amending or repudiating Article 1; and
- (d) we should cultivate closer contacts with Mr Haughey.

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25. (a) - (c) above are largely self-explanatory. (d) is more speculative. However, Irish Ministers already see the official opposition in GB. It would be both right and proper for our Ministers and officials to do the same (as HM Ambassador in Dublin is already doing), notwithstanding the risk that the current Government would affect to be hurt. Provided that we could develop such contacts without giving the impression that we were taking sides in the forthcoming Irish election, this would also give us an opportunity to develop our own assessment of the policies a Haughey administration might pursue as well as cementing a personal relationship.

A Third Package

26. A corollary of this approach is that in addition to an "autumn package" of the kind sketched by PUS, it will be necessary to have in reserve a third package of measures likely to win nationalist support that could be offered to Mr Haughey in return for a commitment to improving security cooperation, and continued participation in the Intergovernmental Conference ... (for which the SDLP may also continue to press him). Attached therefore at Annex D is a first attempt to specify two packages derived ultimately from PUS's submission, of which the first would be for offer to the Irish in the autumn, with a second available to be deployed after the Irish general election.

Conclusions

27. Against this background PDG is invited to conclude that

- (a) there is in the short term no alternative to continuing with our existing strategy (which in practice means continuing to prepare an 'autumn package';

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- (b) the case for and against three-man courts should be considered further by officials with a view to making formal recommendations by the end of August to Ministers;
- (c) we should continue to press the Irish to ratify the ECST without reservation (and also improve extradition);
- (d) partly because of ^{doubts about} the ability of the Irish Government to ^{deliver} their side of an 'autumn' package (but also because of the apparent ineffectiveness of the Anglo-Irish Agreement in achieving its (and our) objectives, a fundamental evaluation of our strategy is necessary by early autumn in the light of political developments; and
- (e) without prejudice to the conclusions of that review, it is desirable to plan for the installation of a Fianna Fail administration in mid-1987. In particular, it is desirable to devise measures designed to win Mr Haughey's support for the Agreement.

Security and International Division
24 July 1986

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ANGLO-IRISH AGREEMENT - STRATEGY

LONG TERM OBJECTIVES

1. Peace, stability and reconciliation within Northern Ireland;
2. The sustained enhancement of relations between the United Kingdom and the Republic of Ireland; and
3. Northern Ireland's continuance as part of the United Kingdom so long as that is the wish of the majority.

MEDIUM TERM OBJECTIVES

1. An overall improvement in the relationship between the Governments of the United Kingdom and the Republic of Ireland over Northern Ireland (resting, wherever possible, on common perceptions of political, security and legal issues);
2. Reducing the estrangement of the minority community;
3. Defeating terrorism;
4. Agreeing a widely acceptable basis for devolution; and
5. Persuading Unionists that their interests and aspirations are safeguarded.

COMPOSITION OF THE DAIL

The present composition of the Dail is as follows:

Fine Gael	68
Labour	14
Total	<u>82</u>
Fianna Fail	72*
Progressive Democrats	5
Workers Party	2
Independents	4
Total	<u>83</u>
Speaker	1
TOTAL DAIL MEMBERSHIP	<u><u>166</u></u>

* This assumes that Fianna Fail will win a safe by-election in the Autumn.

It is expected that one independent would support the Government line on ratification of the ECST.

RECENT OPINION POLLS IN THE REPUBLIC

	June 1986		May 1986	April 1986
	(MRBI)	(IMS)	(RSI)	(MRBI)
Fianna Fail	51%	46%	50%	48%
Fine Gael	25%	27%	25%	26%
Labour	4%	7%	7%	5%
Progressive Democrats	15%	15%	11%	16%
Workers Party	3%	3%	2%	2%

POSSIBLE AUTUMN AND POST-ELECTION PACKAGES - UK CONTRIBUTION(a) Autumn

- UK - (i) Inquiry with judicial participation into practicality of three-man courts, with a view to devising a workable scheme (with commitment to its introduction?)
- (ii) Lesser changes in the administration of justice (eg: conditions of bail or remand, limitations of numbers of defendants; possible decline in supergrasses);
- (iii) A strengthened independent element in the reformed police complaints procedure (eg: some form of tribunal provision);
- (iv) Flags and emblems; repeal of legislation;
- (v) RUC Code of Conduct issue
- ROI - (vi) Extradition: ratification of ECST (without amendment); other improvement;
- (vii) Cross Border Security: acceleration of momentum; completion and monitored implementation of joint studies.

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IF*

(b) Post Irish General Election

- UK - (i) (Implementation of three-man courts?)
- (ii) Implementation of EESG?
- (iii) Bill of Rights for NI?
- (iv) Specific measures on Irish Language: implementation
- (v) Further Article 7(c) measures
- (vi) Cross border social/economic projects (Newry/Dundalk Road improvements, tourism; others); (NB: resources from International Fund will then be available);

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- ROI - (vii) Cross Border Security: keeping up momentum;
(viii) RUC: pressure on SDLP to support/encourage
nationalists to join RUC.